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Module 5: Regulations – Behavior & Enforcement

Purpose:

To focus on principles of behavioral change, regulations and enforcement to improve road safety.

Learning Outcomes:

Upon completion of the module the participant will be able to:

- Describe the size of minority groups always likely to disobey regulations
- List the three essential ingredients for sanctions to change behavior
- List the hierarchy of offences
- Describe one of two objective standard measurements for driver's blood alcohol content in developed Nations
- Describe three basic tests for standard field sobriety testing

Contents:

- A. Behavioral theory
- B. Application of theory
- C. Regulations – distinctions and definitions
- D. Traffic Offences
- E. Delta Bylaws – Case study
- F. Inadequacies of specific regulations
- G. Heilongjiang Province report – regulations
- H. Breakout session

Format:

1. Overhead Presentation

- General information on behavioral theory, legislation, regulations and enforcement

2. Group Discussion

- Group discussion on effects of impaired driving, and adequacy of system of road user fines to deter unsafe driving behavior.

1. Introduction to Behavioral Theory

The simple theory behind having traffic regulations is that regulations are supposed to eliminate highway chaos. Regulations require that road users will follow them and thus hopefully reduce death injury & property loss and improve orderly traffic flow. Additional regulations require that road users be properly identified, licensed and qualified, and, that vehicles be safely equipped and easy to identify.

The basic behavioral theory is that road users who have been educated and taught the rules of the Road will follow them, because it is the right thing to do. However there is no place in the world where this theory works simply based on education and training. Application of the behavioral theory requires that it be solidly backed by visible, consistent and appropriate enforcement. In any society a certain minority is lawless, reckless, inconsiderate, or just incompetent. This minority is unfit to operate a vehicle due to the hazard this creates for others.

To ensure public safety road user education must be backed by adequate regulations, an effective systems of sanctions (fines, jail etc.) and ample police traffic enforcement. For enforcement to be effective, the road user must believe and expect a reasonable likelihood of apprehension if he or she breaks the rules of the road. They must believe that if they break the law they are likely to be caught.

The behavioral theory of sanctions requires several components to be effective. If one component is missing this will render the system of road user behavior control ineffective. Observations of China indicate the application of the behavioral theory of sanctions is not working well. This is something that we all know.

Psychologists (those who study the theory of human behavior) in the developed Nations have a common saying that 8% of the people cause 80% of the problems. This principle is supported by observable behavior, such as Safety belt wearing rates. The highest wearing rates in the developed world seem to level off at 92%. It is difficult to get the final 8% to wear their safety belts.

In Canada when fatal collisions occur almost 2/3 of the occupants are not wearing belts, yet over 90% of all the other motorists on Canada's highways are using their belts. There is a crossover in lawless behavior for this 8% group. Police roadside safety belt checks reveal this group is commonly found committing additional offences. There is a higher incidence in this group other offences against the law. Most drunk drivers, most car thieves do not wear belts. This group is fundamentally lawless. They are likely to break all the rules of the road.

There is another behavioral theory which is that 1% will never comply with the law under any circumstance. In the developed Nations there is a criminal gang of conspirators (similar to a triad) called the "Hell's Angels". They have appropriated this 1% theory quite deliberately. They call themselves one percenters and wear a patch on their jacket

that says 1%. They took this concept directly from psychological behavioral theory and flagrantly advertise that they are lawbreakers.

If these psychological models are accurate for road user behavior in China we can generally assume the following:

- Eventually up to 92% of road users will abide by regulations, under ideal circumstances, with the right combination of coercion, that is education, public information, enforcement and sanctions.
- Up to 7% of road users will ignore education and training, but they may possibly abide by regulations with the proper levels of enforcement and sanctions. They are lawbreakers but their behavior may change if punishment is adequate and certain.
- 1% will not comply under any circumstance.

Observation of the measurable Safety belt wearing rates in the developed world, over the past 35 years, supports the psychologist's theories perfectly.

The theory of the application of fines, loss of driving privileges, vehicle impoundment or seizure, or even jail, is that lawbreakers will change their behavior and use the roads lawfully and in a way that does not endanger others.

Experience elsewhere indicates it is an achievable goal to ensure up to 92% compliance with safety regulations, and there is significant payback in road safety benefits to the community. Most of us would consider a 92% compliance rate with a majority of laws as a success and we would certainly see the benefit in reduced death and injury and social harm.

2. Theory Application

The accepted application of this theory worldwide (Dr. Plecas, University College of Fraser Valley, Canada) is that to change behavior sanctions must be:

- Swift (Immediate)
- Certain (sure, not easily avoided)
- Severe (to a lesser extent)

3. Regulations, Distinctions and Definitions

There is a cultural distinction in China's use of the term regulations. In the developed Nations the general use of the term "regulations":

- Creates a specific offence with a specific fine or sanction attached for non-compliance i.e. disobey red traffic light at intersection

or,

- Requires a specific behavior i.e. Keep right of the road centre line; and
- Requires a specific standard i.e. Minimum tire tread standard.

These regulations are promulgated by a law making body such as State Council, Provincial, City or County Government.

Actual conduct of police traffic enforcement operations is generally done under "policy". Policy is made locally, it takes regulations into account. Policy may have public and Government input, but it is quite easy to change. This is a more flexible approach permitting police to respond quickly to new developments.

A contrasting example of regulations vs. policy is the driver road test requirement. In China the National regulation says the road test must take place over 3 - 5 kilometers at speeds of 30 to 50 km/h. In the developed Nations the road test can be easily changed by policy. Many International jurisdictions have recently introduced graduated licensing thus requiring changes in driver test procedure. What used to be typically a single 30 minute road test in British Columbia, is now two tests, one of 45 minutes, followed up to a year later by one of 60 minutes. No law making body was required to change this. It took just a few months to re-write the policy and procedures to follow then train staff in the new procedures.

A simple solution to rapidly changing road use conditions is for the State Council to delegate law-making authority to a specific organization or jurisdiction and leave it to them. Most of the English speaking jurisdictions have done this to some degree. For example there have been rapid changes in vehicle standards and equipment. Altering vehicle standards regulations is commonly delegated to the vehicle licensing authority. This authority can change the regulations speedily to accommodate new standards and new technology.

4. Traffic Offences

The developed Nations generally have two classifications for traffic offences, which result in different court processes.

4.1 Criminal Offences

- | | |
|---|----------------------|
| - Criminal Negligence Causing death or injury | - Prison and/or fine |
| - Dangerous Driving causing death or injury | - Prison and or fine |
| - Dangerous Driving | - Prison and/or fine |
| - Fail to remain at scene of accident | - Prison and/or fine |
| - Drive whilst Impaired by Drug or Alcohol | - Prison and/or fine |
| - Fail/Refuse to supply breath sample | - Prison and/or fine |
| - Drive whilst prohibited/suspended | - Prison and/or fine |

Criminal road use offences are those offences, which cause such a threat to public safety and are so serious, that the accused can lose his liberty and be sent to jail.

4.2 Civil Offences

(Handout – Typical Traffic offences)

Here is a list of typical moving offences. Traffic offences are generally broken down into three categories:

- Moving offences
- Vehicle equipment offences
- Document offences (Licenses, insurance, number plates)

(Driving without insurance is usually considered a serious civil offence, with a high fine, the possibility of arrest, loss of driving privileges, impoundment of vehicle).

Criminal offences result in an extensive court process and a potentially serious outcome for the accused, such as a lengthy jail term.

Civil offences generally result in a fine. More serious or repetitive civil offences may result in a short jail term, driving prohibition, vehicle impoundment, heavy fines.

4.2.1 Fines

Of course the vast majority of road use offences worldwide are dealt with a simple fine.

The "swift, certain, severe" behavioral change requirement in the fines system in China appears to have deficiencies in all three aspects:

4.2.2 Swiftness

The sanctions are not always swift:

It is understood that only minor fines may be levied at the roadside, more serious offences have to be followed up by a special local division of MPS. If the officer cannot deal with the offence at the roadside this delays swiftness. Some officers or auxiliary officers apparently have no authority to levy a fine.

4.2.3 Certainty

Fines may be avoided by a variety of tactics such as:

Driving away from an officer who is on foot

Non-payment

Counterfeit driver's license and identity

Special arrangement with the officer or a superior officer
Knowing someone important

4.2.4 Severity

The fines are completely inadequate. They are clearly insufficient to provide an incentive to change unsafe road user behavior. The fines have not kept up with the recent economic improvement of China and the rapid increase in ability to purchase privately owned vehicles.

The driver license suspension attached to some offences in China is however quite severe. This may be a disincentive to enforcement. Perhaps a 2-month driving suspension to a professional truck driver will cost him his job?

In the developed Nations where officers are allowed to use discretion many police would be reluctant to enforce a minor civil offence that would result in a license suspension or driving prohibition. This is not the practice.

Experience in the developed world (ie. Oregon, USA) indicates that when the penalties are too severe, officers reduce enforcement levels out of sympathy for the road user. In 1996 Oregon State had the highest speeding fines in the USA typically \$350. The State legislature had to reduce the fines because traffic police reduced enforcement sharply.

The application of driver behavioral theory to changing unsafe road user behavior, indicates serious flaws in meeting the tests of swift, certain, severe.

5. Delta City Bylaws – Case Study in Creative Strategy

This is a classic police problem solving exercise that produced benefits to a Canadian City and then later influenced the surrounding Province. The application of driver behavioral theory to changing unsafe behavior in British Columbia also had serious flaws in meeting the test of being swift, certain, and severe.

The objectives for the Delta problem oriented policing project were as follows:

- Improve road Safety in the City
- Improve revenue to the City to maintain police traffic staffing levels.

These objectives were met by providing a citywide alternative to an ineffective Provincial road user sanctions system.

5.1 The philosophical foundation

Traffic policing, where it is done to benefit community interests, carries moral authority to act in the best interests of the community. Integrity, transparency and honesty must back this moral authority.

Having clear moral authority permits creativity in application of laws, rules and regulations, providing this creativity is not in direct conflict with existing law.

Reducing death, injury and property loss is the right thing to do. Existing procedures that obstruct community safety may be bypassed, providing this is done in an ethical and transparent manner.

5.2 Background

The Province of British Columbia, Canada has 4 million citizens of which 3.6 million are licensed drivers. The Provincial Government is responsible for Driver Licensing, driver testing and driver violation records.

The standard sanction for civil traffic offences is a Violation Ticket with fines and sometimes points attached. All police may issue a violation ticket to a road user at the roadside. Fines can reach \$2,000 but are commonly in the range of \$87 to \$345. Up until August 1988 the Violation Ticket was a summons that required the accused person to attend court on a specific date and time. If the accused failed to appear a warrant would be issued for the person's arrest. When the accused is later found he or she is detained until they either paid the fine, get another court date, or are acquitted in court. This system resulted in a 95% fine collection rate.

In terms of applying behavioral theory a 95% fine collection rate is very successful in maintaining lawful and safe road user behavior by most road users. In practice only 1% of offenders had a warrant issued for their arrest. This corresponds exactly with behavioral change theory.

The Provincial Government decided to eliminate arrest upon non-payment of fines in 1988. As a result, the only sanction for not paying a fine was that the driver's license would not be renewed upon its five-year renewal date.

In addition, since about 1980, the Provincial Government refused to pay back any of the fines received from traffic offences, to the Cities who pay for traffic policing. As a result the Cities began to cut back on the number of police assigned to Traffic Law enforcement and re-assigned some to other duties.

Eliminating the arrest warrant system was an Act of stupidity. As a result the Province created an optional fine payment system. This rapidly became more or less an "honor" system for fine payment where only the honest paid. This new system brought the entire road user sanctions system into contempt.

By 1991 thousands of lawbreaking motorists owed unpaid fines and were driving without driver's licenses. The problem became progressively worse. Road user behavior declined in safety, the frequency of crashes increased. Efforts by police to have the law changed were unsuccessful. The only sanction for driving without a license was a moderate fine of

\$100 (equivalent to about five hours pay). This fine also could not be collected. By 1993 there were 140,000 unlicensed drivers in the Province who had unpaid fines and were almost immune from the driver sanctions system.

The amount of unpaid fines increased to over \$100 Million. Provincial fines are supposed to be paid within 30 days. The fine payment rate within 30 days declined to 26%.

5.3 Summary of problem

- Lawless behavior increased,
- Traffic crashes causing injury and property loss increased,
- Police morale declined,
- Police authority declined,
- Traffic police staffing declined.

The only enforcement tools for driving that still worked were those covering extreme criminal behavior, such as driving under the influence of liquor. This is because these criminal offences carried a power of arrest by police and the accused was likely to go to jail. The problem of unlicensed drivers reached a stage where 6% of all persons stopped for traffic offences had no driver's licenses, or were prohibited. Employees of the Licensing authority itself were found to be driving without licenses and had unpaid fines.

5.4 Solution to Problem - at Local Level

The City of Delta has a population of 110, 000 with about 70,000 registered motor vehicles.

It had about 140 police officers with 9 assigned principally to traffic enforcement duties, (although it is the responsibility of all police to carry out traffic enforcement part of the time).

The practice was that if police stopped an unlicensed driver, the driver would receive a violation ticket for the moving offence, a violation ticket for driving without a license and then was permitted to drive away.

As a result collisions and injuries increased (Deaths were still declining due to increased safety belt use). The police were very frustrated. They would stop violators who would tell the officers they had no driver's license and no intention of paying the fine.

In response Sgt. Greenhalgh obtained a legal opinion in writing that police had a duty to prevent the unlicensed driver from driving away and that police may face civil liability if that driver later caused an injury producing collision. This document was widely circulated in 1993 through various police brigades and this successfully changed police practices for dealing with unlicensed drivers throughout British Columbia.

The practice then became that police would not allow the unlicensed driver to proceed. There was at that time no authority to impound his vehicle. However, if the vehicle is

unlawfully parked police can tow it away. It became a common police practice to direct the driver to park in a tow away zone unlawfully, whilst the status of his license was being investigated. Upon confirmation he was unlicensed, police would use the fact the car was unlawfully parked to remove it. If there was another fully licensed driver in the car, they were allowed to drive it away.

The next initiative was to establish a policy that if the accused had two or more convictions for driving without a license the officer would issue a summons requiring the accused to appear in court. This was creative, it was not against the law, but law did not precisely authorize it either. Some court jurisdictions did not permit this procedure.

During this period Sgt. Greenhalgh was aware of two drivers in another city who had over 40 convictions for driving without a driver's license, yet they were still driving.

Many representations to Government from police asking to change the law met with a poor response.

The law was thoroughly researched and it was confirmed that the City had authority to pass its own traffic Bylaw and set up its own ticketing system. Some other cities had experience of this in a small way, using a City Bylaw for parking offences. A committee was struck of the entire Delta Police traffic unit and this unit drafted an aggressive and comprehensive City traffic Bylaw. Front line traffic officers wrote the law. The Bylaw is likened to a mechanics toolbox; a mechanic does not use every tool every day. This Bylaw contained many tools of potential use to a police officer. This Bylaw was the first City Bylaw in the Province to include all the moving offences existing under Provincial Law. Delta City Government in January 1995 promulgated this law. This Bylaw also included creative approaches to age-old problems such as soliciting by Prostitutes, by dealing with it as a traffic matter and public nuisance.

The provincial Government was not pleased with this development for several reasons, and a panel of Government lawyers reviewed the Bylaw over 3 months looking for errors. The lawyers eventually had to concede that it was completely legal.

In the meantime the City set up an alternative violation ticket system and a fines collection database.

The Delta system had a number of benefits:

- The new system incorporated (within limits imposed under law) the best practices possible by law in terms of principles of road user behavioral change that have been articulated previously.
- All fines were payable to the City.
- Officers had a choice of two systems to use, one Provincial, one local.

- If the accused failed to pay the fine and failed to attend court, he or she would be arrested and held in jail. This was necessary in very few cases.
- The fine payment rate for the Bylaw system was 51% within 30 days and 86% overall before civil payment methods were engaged.
- The only drawback is that driving records were not subject to the Provincial points system, as these were not permitted to the City by Provincial Law.
- The decline in road user behavior was stopped; the increase in collisions was capped.

5.5 Additional Benefits

Delta has one of the world's largest vehicle Ferry terminals and includes several major Highways. As a result Delta has a high concentration of commercial vehicle traffic. Using the income gained from City Bylaw tickets, Delta Police set up a full time truck enforcement unit. The first priority for this unit is to reduce overweight vehicles because they are unsafe and damage City streets. The second priority is to use the unit to remove unsafe commercial vehicles from Delta Highways. This began as a pilot project in 1996. In it's first year of operation the truck enforcement unit generated gross revenue of \$187,000 for the City using two officers. The reduction in road damage was so impressive that the City Highways engineer has just donated a new \$80,000 custom-made truck for the police truck enforcement operations.

Whilst this system still generates income for the City, the objective was never to raise money. The focus of the City Bylaw is to reduce death, injury and property loss to road users. The revenue from fines in commercial vehicle enforcement pays the wages of two officers to continue to conduct comprehensive roadside safety checks on commercial vehicles.

5.6 Provincial Benefit

Eighteen other Cities in British Columbia made inquiries about the Delta Bylaw system. Most of them adopted similar traffic Bylaws and similar ticket systems. In at least one case the Delta Bylaw was adopted almost completely.

In spring 1996 the Province passed a law that outlawed Delta and other Cities collecting fines for speeding offences only. It viewed this as a threat to the Provincial photo radar speed enforcement system. All the other moving offences were left intact. In the same year the Provincial newspapers and television reported on the City Bylaw initiatives and the failure of the Province to collect fines and deal with unlicensed drivers. There was collaboration between the media and the police to put pressure on the Government. The Government could see there was an alternative in place now competing against it's own incompetent sanctions system.

By May 1997 a whole new range of Provincial road safety enabling legislation was in place. These new regulations consisted of increased sanctions for driving whilst intoxicated, driving prohibitions and 30 to 60 day vehicle impoundments. Included in these sanctions were 30-day vehicle impoundments for unlicensed drivers. British Columbia was the first jurisdiction in North America to introduce vehicle impoundment for unlicensed drivers. Police now had an effective tool to solve the unlicensed driver problem.

In addition the Provincial Government brought online a number of tools to improve the collection of fines.

5.7 Case Study Conclusion

Assuming under behavioral theory, that the swift and effective collection of fines is successful in altering unsafe road user behavior - the Delta Bylaw system was a success.

It is an example of the creative use of regulations in an inflexible regulatory environment.

The project was also a success politically in that it prompted other cities to follow suit. This increased pressure on the Provincial Government to change inadequate regulations governing unlicensed drivers and unpaid fines.

Coincidentally Sgt. Greenhalgh received an award from the Governors office of Washington State USA for this initiative, and he is the only Canadian to have been so honored.

6. Inadequacies of Regulations in China

6.1 Driving Under Influence of Alcohol

China has a national regulation that creates an offence of driving under the influence of alcohol. Unlike the rest of the developed world however it has no objective standard of blood alcohol content. Apparently Shanghai has a city regulation covering driving under the influence, so it appears a law covering this problem may be enacted at a local level.

In the developed Nations there is generally a two-tiered approach to driving under the influence offences.

a) Objective standard of impairment

An objective (scientific) standard recognizes that all persons over a certain Blood Alcohol content are unfit to drive. Typically this is either .08 or .05 milligrams of alcohol per milliliter.

b) Subjective standard of impairment

A subjective (officers opinion) standard observes the deficient driving behavior, coupled with evidence of the physical influence of alcohol and creates an offence of driving whilst intoxicated. This requires no blood alcohol measurement. This is because certain people may be impaired by alcohol, under the .05 or .08 level.

There are three methods for measuring precise blood alcohol content:

- i) Breath tests
- ii) Blood tests
- iii) Urine tests

Of these by far the most common worldwide is breath testing. Breath testing has been available for almost 45 years and is now highly sophisticated. Accurate roadside breath testing devices are available for as little as \$600 US. Devices are available called "sniffers" for about \$1,000. They detect alcohol from the driver's window, without the accused applying his lips to the device.

c) Standard Field sobriety testing

There is one observational method for measuring impairment levels without sophisticated scientific testing devices. This method trains officers to a high standard in terms of observing physical characteristics of the vehicle operator. It is commonly called standard field sobriety testing (SFST) and requires a weeks training. This may qualify the officer to give expert evidence on alcohol impairment levels.

Many Police Officers are trained and certified in the administration of Standardized Field Sobriety Testing (SFST). Standardized Field Sobriety Testing is a battery of three tests administered and evaluated in a standardized and objective manner to obtain validated indicators (called "cues") of impairment and to establish probable cause to arrest a DWI suspect. These tests were developed as a result of research sponsored by the National Highway Traffic Safety Administration (NHTSA). Formal training (and certification) in the administration of Standardized Field Sobriety Testing consists of intensive classroom study, at least two controlled drinking sessions testing subjects, and a final written examination.

The three Standardized Field Sobriety tests are: (1) the horizontal gaze nystagmus (HGN), (2) the walk-and-turn, and (3) the one-leg-stand. NHTSA training suggests that SFST is reliable in identifying subjects whose Blood alcohol content is .10% or more. The reliability of SFST is, however, completely contingent upon the tests being administered in a prescribed, standardized manner, standardized indicators ("cues") being used to assess the suspect's performance, and standardized criteria being employed to interpret the performance.

i) Horizontal gaze nystagmus

Horizontal gaze nystagmus is a naturally occurring involuntary jerking of the eyeballs as they gaze side to side. It is theorized that when a person is impaired by alcohol, the nystagmus (the jerking of the eyeballs) is magnified or pronounced.

In the HGN test, the officer is trained to observe the eyes of a suspect as he follows a slowly moving object such as a pen or small flashlight (referred to as a "stimulus") back and forth (horizontally). The stimulus is held 12-15 inches in front of the subject's nose, with the tip slightly above the eyes. As the suspect tracks the stimulus (with his head remaining still), the officer is trained to look for three indicators (or cues) of impairment in each eye:

(1) the eye cannot follow the stimulus smoothly (like marble being rolled across a piece of sandpaper as opposed to a marble being rolled across a glass table), (2) distinct nystagmus when the eye is at maximum deviation (maximum deviation meaning the eyeball moved horizontally as far as it can go), and (3) the angle of onset of nystagmus is prior to 45 degrees from center (45 degrees being approximately when the eye is near the subject's shoulder blade).

Officers are trained that if a suspect exhibits four or more cues, there is a 77% probability that he has a B.A.C. of .10 or more.

ii) Walk and turn

There are two stages in the walk-and-turn test: (1) the instruction stage, and (2) the walking stage. In the instruction stage, the subject is directed to stand on a line with his feet in the heel-to-toe position (left foot in front of right), keep his arms at his sides, and listen to instructions and not begin until being told to do so. The subject is instructed to take nine steps, heel-to-toe, along a straight designated line while counting the steps out loud and watching his feet, and then turn and return in the same manner.

The officer is trained to look for four eight cues of impairment:

During the Instruction Stage:

1. loses balance during the instructions (by breaking away from the heel-to-toe stance),
2. starts walking before the instructions are finished,

During the Walking Stage:

3. stops while walking to steady self,
4. does not touch heel-to-toe (by missing by at least one-half inch),
5. steps off the line,

6. uses arms for balance (by six inches or more),
7. loses balance or turns improperly, and
8. takes the wrong number of steps.

Officers are trained to administer the walk-and-turn test on a hard, dry, and non-slippery surface, and in a well-illuminated area. Officers are also instructed that people more than 60 years old, over 50 pounds overweight, or with physical impairments that affect their balance should not be given the test. Officers are taught that a straight line that the suspect can see must be used, and to remain motionless and stand three to four feet away from the suspect during the test. Last, officers are trained that individuals wearing heels more than two inches high should be given an opportunity to remove their shoes.

Officers are trained that if a suspect exhibits two or more cues, there is a 68% probability that he has a B.A.C. of .10 or more.

iii) One leg stand

There are two stages to the one-leg-stand test: (1) the instruction stage, and (2) the balancing and counting stage.

In the instruction stage, the suspect must stand with his feet together with his arms at their sides. The subject is instructed to stand with one foot of his choice approximately six inches off the ground, toes pointed out, and count aloud by thousands (One thousand-one, one thousand-two, etc.) while looking at the elevated foot until told to put the foot down. The suspect must be told not to hop or sway and not to use his arms for balance.

The officer is trained to look for four cues of impairment:

- (1) swaying while balancing (a noticeable sway in a side to side or back and forth motion),
- (2) using arms to balance (arms must raise from sides more than six inches),
- (3) hopping to maintain balance and
- (4) putting the foot down.

Like the walk-and-turn test, officers are trained to administer the one-leg-stand test on a hard, dry, and non-slippery surface, and in a well-illuminated area. Officers are also instructed that people more than 60 years old, over 50 pounds overweight, or with physical impairments that affect their balance should not be given the test. Officers are also instructed to remain motionless during the test and stand three away from the suspect. Last, officers are trained that individuals wearing heels more than two inches high should be given an opportunity to remove their shoes.

Officers are trained that if a suspect exhibits two or more cues, there is a 65% probability that he has a B.A.C. of .10 or more.

iv) Conclusion

Officers are trained that the three Standardized Field Sobriety Tests (HGN, one-leg-stand, and walk-and-turn) are the only field sobriety tests which are scientifically validated in assessing intoxication (at or above .10 B.A.C.) Officers are trained that other sobriety tests (e.g., picking up coins, sway test, counting backwards) have no scientific validity and have a 50% chance of being able to accurately detect intoxication. Officers are, however, instructed (and it is very much emphasized) that the SFSTs are validated only when the tests are administered in the prescribed, standardized manner, and only when the standardized cues are used to assess the suspect's performance, and only when the standardized criteria are employed to interpret that performance. If any of one of the standardized field sobriety test elements is changed, the validity is compromised.

This article does not intend to encompass all of the very specific and rigorous SFST Training, but rather, is merely an overview of the basic tenets of SFST. Any questions regarding the proper administration or scoring of SFSTs can be only be properly answered after a careful and thorough review of all of the relevant facts and circumstances.

d) Worldwide scope of intoxicated driving problem.

Worldwide, persons driving under the influence of alcohol are the primary #1 cause of death on the Highways. In the English speaking Nations it used to be that up to 40% of all traffic deaths were caused by alcohol influenced drivers. Enforcement tactics have often reduced this to less than 30% or even lower depending on the jurisdiction.

It is recommended that an objective standard of BAC content be established by regulation, and that means to enforce the legislation be supplied.

The most common practice worldwide is a BAC of .05mg per cent per 100 Milliliters.

The next highest (and older) standard is .08mg per 100ML. However it increasingly common for probationary drivers to be allowed 0%.

However Traffic and enforcement conditions in China are quite unique. Other consultants have recommended Western approaches to solving traffic problems most of which require money. What is required is a made in China solution that takes into account existing resources. In the developed Nations virtually all traffic police are motorized. This permits police to carry much specialized equipment. This is not currently practicable in China.

A relatively inexpensive device with which to equip police is a portable breath alcohol-sensing device. These cost as little as \$500US.

7. Heilongjiang Province Report

7.1 Introduction

In 1996 an Australian group examined the regulations and practices in the Province of Heilongjiang. As a result of their study the following recommendations were made regarding the problem of alcohol influenced road users:

- (1) Specification of the type of breath analysis equipment to be used for the analysis of breath and blood alcohol content, be made within the regulations.
- (2) A "prima facie" position be included in the regulations which will establish the reading given by the breath analysis instrument to be the actual blood alcohol content of the subject unless it can be shown that the instrument was not operating properly.
- (3) Article 26(6) of the National regulations be altered to specifically spell out that the offence is to "drive a motorized vehicle while under the influence of liquor to such a degree as not to have proper control of that vehicle.
- (4) Article 29(1) of the national regulations, which provides the same provision for drivers of none-powered vehicles, be amended in the same manner as Regulation 26(6).
- (5) Article 77(5) be amended to specifically spell out that there is a total prohibition on driving a motorized vehicle with alcohol in the drivers blood. If this is not the intention, then to set an appropriate level which must not be exceeded. (I.e. .05mg per ml).

7.2 Discussion of Recommendations

With respect to these recommendations there is a cultural pre-disposition in developed Nations (except some, see below) to require that such regulations, not be vague, and be spelled out in specified detail and be enacted by the proper legislative authority (i.e. State Council or Provincial Government). However, specific detailed regulations can tie the hands of police officers if an existing less specific regulation can be used more flexibly. China already recognizes the harm done by alcohol abuse and has promulgated regulations to deal with this matter. These regulations appear vague to Western eyes. Is it possible that under the existing regulations a "policy" be established recognizing the worldwide standard of .08 as the level beyond which impairment by alcohol justifies sanctions? Whilst a few jurisdictions permit BAC at .10 a compelling case can be made for .08 as the maximum permissible standard with the trend towards .05.

In some English speaking countries there is a flexible "common law" or "case law" approach. This can apply where there is a vague or none-specific regulation covering obviously unsafe or criminal behavior. A common law approach may be backed by the courts to allow policy and case law to be developed, under the umbrella of a vague National law. This "policy" may amply cover police behavior aimed at reducing unsafe

road user behavior. Case law is established after a person is charged with an offence and the court rules the offence is appropriately charged under the law.

Drinking drivers are a scourge everywhere. Good public policy will equip the police with the enforcement tools to deal with this problem.

7.3 Other Recommendations

The Heilongjiang report also recommends:

- (6) Article 63(1) of the National regulations be altered to require a pedestrian to walk on the side of the road facing traffic where no footpath is available, or, that Provincial regulations be amended to require this.

Comment: This is a worldwide standard, but, one would not normally expect the national assembly (State Council) of a major world power to enact this kind of detail. Perhaps this can be enacted at a local level by the Province, or by the City or County.

- (7) The Provincial regulations be amended to require that that all bicycle riders between the ages of 12 and 18 be required to wear an approved protective helmet.

- (8) Article 26 of the National regulations be amended to require the occupants of motorized vehicles to wear Safety belts where such restraints are fitted. (The Heilongjiang Provincial regulations have been amended to require the wearing of Safety belts).

Comment: This is evidence of the authority of the Provincial assembly to pass a Safety belt law. This is flexible road safety solution.

- (9) The national regulations be amended to require the fitting of Safety belts to all seating positions in passenger cars, station wagons and vans.
- (10) Article 26(9) of the National regulations be amended with respect to the reference to driver fatigue which has been identified as a significant problem. This regulation should be altered to place limits upon "the hours of driving" allowable to the drivers of large, commercial vehicles and buses.
- (11) That the Provincial regulations be amended to adopt the Demerit points system, which is in place and administered at the City level by a number of police Detachments. (eg. Da Quing, Heilongjiang).

7.4 Conclusion

Traffic and enforcement conditions in China are quite unique. Other consultants have recommended Western approaches to solving traffic problems most of which require money. What is required is a made in China solution that takes into account existing

resources, existing culture and traffic conditions that vary widely from wealthy to poor provinces.

Chinese police colleagues have suggested it is quite difficult to get the State Council to enact regulations changes that keep up with the changing times. E.g. The current inadequate schedule of fines.

Examples of local initiative

Shanghai has its own impaired driving law, so apparently does Hong Kong.

Heilongjiang Province enacted a safety belt law.

One province changed the driving test to include an automatic fail for failing to wear a Safety belt. In the same Province there is a small maximum fine for carrying too many bus passengers. This is enforced now by charging the fine for each single extra passenger thus multiplying the effect.

Police enforcement behavior - excessive sanctions

8. Breakout Session (20 Minutes)

Breakout the group into small groups, initiate discussion about the following topics:

- **Impaired Driving:**

Statement of the problem: Alcohol impaired driving is disproportionately responsible for deaths on the Highway.

Question 1

What can be done to improve inadequate existing legislation covering enforcement against persons driving under the influence of liquor?

Question 2

Can enforcement commence under existing legislation using common law or case law tactics?

- **Traffic fines:**

Statement of the problem: The existing fine schedule is not sufficient deterrent to change unsafe road user behavior.

Question 1

What can be done to improve inadequate regulations covering fines?

Question 2

Can fines be increased or multiplied under existing regulations?