

U.S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

EXAMINING THE
EFFECTIVENESS
OF UTAH'S LAW
ALLOWING FOR
TELEPHONIC TESTIMONY
AT ALR HEARINGS



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16. Abstract Difficulties associated with conducting administrative license hearings regarding DWI offenses have often resulted in sporadic or ineffective use of administrative license revocation/suspension (ALR/ALS) laws around the United States. This project studied a unique solution, allowing telephonic participation at administrative license hearings in Utah, as a remedy to the problem of law enforcement officers failing to appear at ALR hearings. Methods employed to obtain pertinent information included interviews, focus groups, data analysis from State level driver license record databases (1995-2001), and a survey of law enforcement officers conducted in conjunction with the Utah Department of Public Safety. The evaluation focused on any impact on the number of ALR hearings held, the number of telephonic ALR hearings, the number of hearings where one or more participants failed to appear, and the outcome of all ALR hearings. Major findings of this study include the following. After the initiation of telephonic hearings in Utah, there was a statistically significant reduction (20%, p=0.01) of ALR hearings that resulted in the return of driver licenses due to the absence of the arresting law enforcement officers from administrative license hearings. Although this reduction cannot be entirely attributed to the use of telephonic hearings because the reduction began before the telephone method was implemented, we consider the use of telephonic ALR hearings to be a factor in the continued reduced rate of "no action" findings due to the absence of law enforcement officers. Telephonic ALR hearing capabilities in Utah have not yet been fully implemented throughout the State; thus, further reductions could be seen. Many law enforcement officers surveyed in Utah were not aware of ALR hearing telephonic capabilities. Ongoing training relative to ALR proceedings is important for law enforcement and hearing officers. Usually due to increasingly strained resources, some law enforcement officials do not encourage officers to become proficient in administrative license hearing proceedings, or even to attend ALR hearings. All individuals in law enforcement must understand that time spent in an ALR hearing could reduce or eliminate the amount of time required of the arresting officers during judicial proceedings, if the defendant decides to plead guilty because of strong testimony by the arresting officers during the ALR hearing. But more importantly, the absence of the arresting officers at ALR hearings automatically reinstates driving privileges to the accused, forfeiting the chance to swiftly remove unsafe drivers from roadways.			
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The opinions, findings, conclusions and recommendations contained in this report are those of the authors.

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EXECUTIVE SUMMARY

Administrative license revocations (ALR) and administrative license suspensions (ALS) for driving while impaired (DWI), are actions that are controlled by state driver licensing agencies, and are separate from any court actions. The purpose of ALR/ALS is to allow the suspension or revocation of driving privileges of those drivers at or above the illegal limit for blood or breath alcohol concentration through administrative actions. This is typically a more expeditious route that allows state agencies to remove unsafe drivers from the roadways and to administer licensing actions faster, and with more certainty, than judicial proceedings.

In most instances, the driver license suspension/revocation is imposed administratively based on the arresting officer's report of the breath test result or refusal. However, individuals arrested for DWI may request a hearing to protest the administrative withdrawal of their driving privileges and to try and have their driver licenses reinstated. Procedures associated with conducting these administrative hearings have often presented difficulties in the smooth implementation of ALR/ALS laws, thereby inhibiting the use of such laws.

This project has studied a unique solution, allowing telephonic testimony at administrative license hearings in Utah, as a remedy to the problem of law enforcement officers failing to appear at ALR hearings (a common problem across the United States). This problem and solution, as well as others surrounding ALR implementation within the state of Utah, are documented in this report.

METHOD

Project staff visited Utah and met with state level officials from the Driver Services Bureau, a part of the Utah Department of Public Safety, Driver License Division, to learn about the laws and procedures related to ALR and the associated hearings. In order to learn as much as possible about the ALR process in Utah, project staff talked with all hearing officers and supervisors who handle ALR hearings in Utah, police officers from a variety of law enforcement agencies operating within the State, defense attorneys representing individuals arrested for DUI offenses, persons responsible for maintaining and providing pertinent driver record data, as well as the Utah Governor's Highway Safety Representative, NHTSA regional staff, and the state level officials mentioned above.

Methods employed to obtain pertinent information included interviews, focus groups, data analysis from State level driver license record databases, and a survey conducted in conjunction with the Utah Department of Public Safety. The evaluation focused on any impact on the number of ALR hearings held, the number of telephonic hearings, the number of hearings where one or more participants failed to appear, and the outcome of all ALR hearings. We received data relating to ALR hearings beginning in 1995 throughout the project time period (2001).

BACKGROUND

The Utah Driver License Division, by statute, has 30 days from the date of a DUI-related arrest to comply with a driver's written request for an administrative hearing regarding the driver license action. Due to detailed record keeping, State officials were able to determine that a significant number of law enforcement officers were not appearing at ALR hearings. As a result, no action had been taken against those drivers who had been arrested for DUI-related offenses, and they were permitted to keep their driver licenses pending court actions.

Arresting officers might not appear at an ALR hearing for a variety of reasons. Conflicts could arise with training schedules, work-related duties such as a crash investigation could take priority, and personal reasons could interfere when a hearing is scheduled during the officer's vacation or off-duty hours when officers have other commitments. Also, there were indications that in some law enforcement agencies (LEAs), command officers do not encourage the arresting officers to attend hearings because it takes the officers out of service, and their Departments must pay most of the costs for the officers' time.

During the year 2000 General Session, Utah state legislators enacted Section 53-3-223.5 of the Utah Code to allow telephonic or live audio-visual testimony by law enforcement officers, defendants and attorneys at administrative license hearings. The law states, "In any division hearing authorized under this chapter or Title 41, Chapter 6, Article 5, Driving While Intoxicated and Reckless Driving, the division may permit a party or witness to attend or to testify by telephone or live audio-visual means." While a few unofficial telephonic hearings were held during the summer months of 2000, the actual implementation began in September of that year, with telephonic capabilities increasing throughout the following months.

FINDINGS

Over the seven years (1995-2001) of cumulative data examined during this project, almost half (45%) of the ALR hearings resulted in "no action" (the license was not withdrawn), with 68% of these "no action" findings ruled as a result of the absence of the arresting officer. Although the number of licenses returned due to the absence of the arresting officers at the ALR hearing increased after the use of telephonic hearings began, the number of "no action" hearings increased at an even higher rate. The total number of hearings requested also increased dramatically. So, proportionately, *the hearings resulting in "no action" due to peace officers failing to appear actually fell by about 20%. A time series analysis revealed this reduction to be statistically significant ($p=0.01$)*. Although this reduction cannot be attributed entirely to the use of the telephonic format, as the reduction began before the implementation of telephonic ALR hearings, we consider the use of telephonic ALR hearings to be a factor in the continued reduced rate of "no action" findings due to the absence of law enforcement.

As numbers of DUI-related arrests have been steadily increasing in Utah, the numbers of ALR hearings have been increasing and, therefore, one could assume that the numbers of ALR telephonic hearings will increase naturally. But, in fact, the number of requests for an ALR hearing more than tripled between 1998 and 2001; and while the

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percentages of telephonic ALR hearings are also increasing, up to a monthly high of 20% of all ALR hearings, the rate of telephonic hearings have not yet kept pace with the increase in the standard ALR hearings. It is important to increase the use of the telephonic testimony capabilities by law enforcement, as long as there are ALR hearings where the arresting officers fail to appear.

Telephonic hearing capabilities in Utah have not yet been fully implemented throughout the State. Relatively few of the hearing officers are routinely utilizing the telephonic capability. Many of the law enforcement officers (32%) contacted during this project were not aware of the ALR telephonic law. Almost half (48%) of the LEA officers contacted were not aware of telephonic capabilities in their area for ALR hearings. (In fact, it may be true that many of the officers who responded to the survey are working in areas where telephonic hearings are not yet available due to lack of facilities.)

Discovery of the telephonic capability and growing familiarity with the telephonic ALR process will likely increase its use after a period of time. But *training must play an important role as almost half (46%) of the peace officers that responded to the survey reported they did not feel adequately trained in the standard ALR hearing procedures, much less telephonic hearings.* It is possible that the absences of arresting officers from ALR hearings, both standard and telephonic, could be due to unease or unfamiliarity with the ALR hearing process as well as conflicts with work schedules and regularly scheduled time off, coupled with a lack of directive by command officers. The command staff, as well as the arresting officers, must understand that a strong position with strong testimony during an ALR hearing will enhance law enforcement's position in the judicial process. *Time spent in an ALR hearing could reduce or eliminate the amount of time required of peace officers during the court proceedings, if the defendant pleads guilty after the ALR hearing.*

Defense attorneys are also learning about the benefits of telephonic hearings. This hearing format is more cost effective and less time consuming than having to appear at an ALR hearing, especially if the attorney must travel a significant distance. *There is the possibility that defense attorneys and appellants become so comfortable with the telephonic format that requests for these types of ALR hearings could increase exponentially, as there would be little reason for persons arrested for DUI not to request ALR hearings.* Those arrested for DUI offenses have the option of participating telephonically in the ALR hearing without having to take time to physically appear, and if the arresting officer is absent, their driving privileges are reinstated. The defense attorneys could more easily attempt to gather information pertinent to the judicial proceeding for minimal cost to their clients, because their time spent on the ALR hearing is significantly reduced due to their ability to participate telephonically. *Thus, it would become even more important that the arresting officers participate in all ALR hearings. Otherwise the exact problem that telephonic ALR hearings were meant to reduce or solve, that of the return of driving licenses to appellants due to the absence of law enforcement at the ALR hearings, will actually be compounded.*

CONCLUSIONS AND RECOMMENDATIONS

The law that allows the parties involved in an ALR hearing to participate by telephone has been shown in Utah to be, at least in part, responsible for decreasing the num-

ber of hearings canceled because the arresting officer failed to appear. Thus, more drivers arrested for impaired or intoxicated driving have lost driving privileges (rather than having driving licenses returned due to the absence of the arresting officer from the ALR hearing), fulfilling the intended purpose of the ALR law.

Based on the findings of this project, we offer the following recommendations.

- Appropriate statutes should be adopted to allow telephonic¹ administrative hearings in states where there are problems with law enforcement officers failing to appear at ALR hearings.
- High quality telephonic equipment should be purchased and thoroughly tested before field implementation is initiated to insure high quality audio, with as few problems as possible.
- Hearing officers (or whomever is designated as equipment operators) should be thoroughly trained and monitored to insure they are capable and comfortable with operating the telephonic equipment.
- The importance of telephonic hearings as an option should be stressed to hearing officers and law enforcement officers.
- The option of telephonic hearings should be offered statewide.
- Records should be kept by the driver licensing agency as to the number of telephonic hearings conducted, as well as which parties have participated telephonically (i.e., which law enforcement agencies, appellants, defense attorneys). This type of record keeping, along with tracking which hearings are not held and the reasons, allows the agency to pinpoint areas for improvement.

In addition to the recommendations related to ALR telephonic hearings, we make the following recommendations regarding all ALR hearings:

- State officials should stress the importance of administrative license action hearings to command officers at all law enforcement agencies. LEA command officers should encourage officers who have made impaired driving arrests to attend any related ALR hearings.
- Training should always remain an ongoing priority with hearing officers to ensure they are operating uniformly. Refresher courses, and possibly testing, should be routine for topics such as the role of ALR hearing participants, handling difficult personalities, and allowing only pertinent issues to be addressed by all parties.
- Training and refresher written procedural materials relative to ALR hearings, both standard and telephonic, should be prepared and made available to all law enforcement officers. Topics such as the role of the law enforcement officers during a hearing, dealing with defense attorneys, the proper way to object to inappropriate issues during an ALR hearing, and what types of comments are considered to be proper closing remarks should be covered.

¹ Although this study dealt with telephonic capabilities, project staff would encourage any proposed legislation in other states to include audio-visual means as well, to enhance future potential.

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- There should be appropriate channels to handle complaints on the hearing proceedings and/or outcome, and all parties should be made knowledgeable about those channels.
- The arresting officers should either receive notification of the decision of the hearing officer relative to the licensing action, or there should be an easy way for the arresting officers to telephone a designated individual, or query a data system to learn of the outcome of an ALR hearing.

The administrative license revocation capability is an important tool in the arsenal of highway safety authorities and is used in many states in the ongoing battle against drinking and driving behavior. But if the use of this tool is limited, due to an unwieldy or ineffective process, then the tool becomes less effective at best and, at worst, ineffective in serving its intended purpose of expeditiously removing unsafe drivers from our nation's roadways, and in quickly sanctioning impaired drivers.

CHAPTER 1 - INTRODUCTION

Difficulties in implementing administrative driver license revocation and suspension laws are a common problem in many states, which has inhibited the use of such laws. This project studied a unique solution, allowing telephonic testimony at administrative hearings in Utah, as a remedy to a common problem, the failure of law enforcement officers to appear at administrative license hearings. This problem and solution, as well as others surrounding the implementation of the administrative license revocation laws within the state of Utah, are documented in this final report.

BACKGROUND

Administrative license revocation (ALR) or administrative license suspension (ALS) are actions that are controlled by a state driver licensing agency. Usually when states adopt ALR or ALS² laws, provisions are made in the statutes for two separate paths for impaired driving offenses. The first, more traditional, path is through the court system and, in addition to license sanctions, carries other sanctions such as fines, treatment and jail. The second path (ALR/ALS) is administrative in nature and is usually administered by the state driver licensing agency. The purpose of ALR/ALS is to allow the suspension or revocation of driving privileges through administrative actions against those drivers at or above the illegal limit for blood or breath alcohol concentration, or who refuse to submit to a chemical test. This is typically a more expeditious route, allowing state agencies to remove unsafe drivers from the roadways and to administer license sanctions faster, than the judicial proceedings.

As of April 2002, forty states plus the District of Columbia had implemented ALR/ALS laws. Typically following an arrest for a DUI/DWI³-related offense, the driver's license is suspended, revoked or denied for a set period of time that, by state statute, begins a set number of days from the arrest date. Usually the license of the driver arrested for a DUI/DWI offense is taken at the scene, and the driver is given a temporary license for the interim period, or the copy of the citation given to the driver serves as a temporary license until the suspension or revocation period begins. However, the driver may request a hearing to contest the impending loss of license within that interim period of time. In some states, even when the license suspension or revocation is not contested or is upheld, the driver may request a temporary, restricted, or hardship license that will allow the person to drive to and from specific destinations only, such as work or school.

Procedures associated with conducting these administrative hearings have often presented difficulties in the smooth implementation of ALR/ALS laws, thereby inhibiting

² The use of ALR/ALS terminology and acronyms vary from state to state depending on the law, but always refer to the administrative confiscation and suspension of a driver's license. These actions are separate from the licensing actions imposed by the outcome of any judiciary proceedings.

³ The acronyms DUI and DWI in this report refer to the criminal action of driving a motor vehicle while either 1) "illegal per se" or 2) impaired, under the influence or while intoxicated by either alcohol or drugs.

the use of such laws. An example was given in our report to the National Highway Traffic Safety Administration (NHTSA), *Problems and Solutions in DWI Enforcement Systems*,⁴ in which the problems imposed on the enforcement component of the traffic law system in one jurisdiction had become so severe that enforcement of the ALR law had ceased altogether. In that report, we identified three major types of such problems under the general heading *Failure to Uphold Administrative Sanctions*, and also listed several specific “failures” leading to each of these types of problems. These problems were: 1) the law enforcement officer fails to appear at the administrative hearing, or fails to testify effectively; 2) non-pertinent issues are addressed at hearings; and 3) the hearing officer arrives at an erroneous judgment. Several possible solutions were suggested for each failure. That research was used as a point of departure for this project.

During the earlier project, problems were identified in regards to enforcing ALR laws and in suspending or revoking the driver license, such as the following examples.

- Conflicts in scheduling and continuance of hearings that make it difficult for law enforcement officers to attend ALR hearings.
- Short lag time between officer notification of the hearing and its conduct.
- Officers appearing without legal representation and feeling overmatched by the defense attorneys.
- Hearings being used for discovery and thus jeopardizing pursuit of the criminal offense.
- Essentially irrelevant technicalities being used as devices to rescind suspensions.

Discussions were held on successful system approaches to overcome problems in implementing and maintaining ALR.

OBJECTIVE

The general objective of this project was to identify specific problems in implementing ALR in a jurisdiction and then evaluate remedies to those problems that had been developed and implemented. Successful system approaches, identified during the course of this project, were recorded as well as difficulties in enforcing ALR. Specific project objectives were to:

- identify a site with a problem enforcing and implementing its ALR law,
- recruit that site to participate in the study,
- develop strategies or report existing strategies for resolving those problems,
- implement strategies or report on the implementation and maintenance of existing strategies that deal with the problems,
- evaluate the strategies through a process evaluation, and
- present the results of the efforts in a final report that would be useful to practitioners in the field.

⁴ Jones, RK; Lacey, JH; and Wiliszowski, CH. (1998). *Problems and solutions in DWI enforcement systems*. (DOT HS 808 666) Washington, DC: National Highway Traffic Safety Administration.

PROJECT SCOPE AND APPROACH

The state of Utah was identified as a site that was developing specific procedures for dealing with problems resulting from implementing the ALR law. For example, evidence was gathered that a significant number of law enforcement officers were failing to appear at the administrative driver license hearings. This is a problem that is prevalent across the country. The passage of a law allowing parties involved in an ALR hearing to participate by telephone⁵ was implemented in Utah in September 2000 (see Appendix A). This remedy is unique and is one that can readily be replicated by other states that have the same problem.

This problem and solution, as well as others surrounding ALR implementation within the state of Utah, are documented in this report. Project staff visited Utah and met with state level officials from the Driver Services Bureau, a part of the Utah Department of Public Safety, Driver License Division to learn about the laws and procedures related to ALR and the associated hearings. In order to learn as much as possible about the ALR process in Utah, project staff talked with all 22 hearing officers and supervisors who handle ALR hearings in Utah, police officers from a variety of law enforcement agencies operating within the State, defense attorneys representing individuals arrested for DUI offenses, persons responsible for maintaining and providing pertinent driver record data, as well as the Utah Governor's Highway Safety Representative, NHTSA regional staff, and state level officials mentioned above. Methods employed to obtain pertinent information included interviews, focus groups, data from State level driver license record databases, and information from a survey conducted in conjunction with the Utah Department of Public Safety. The evaluation focused on any impact on the number of ALR hearings held, the number of telephonic hearings, the number of hearings where one or more participants failed to appear, and the outcome of all ALR hearings. We received data relating to ALR hearings beginning in 1995 throughout the project time period (2001).

ORGANIZATION OF THE REPORT

The next chapter contains a description of the project site and the problems that Utah state officials faced in implementing ALR. Chapter 3 presents the approach followed while conducting the evaluation. The solution and the results of implementing the solution, as far as this assessment can determine, are provided in Chapter 4 along with our conclusions and recommendations. Pertinent documents referred to in this report appear in the appendices, which are available only in hard copy form.

⁵ The law that was passed in Utah allows for participation in ALR hearings by telephonic, as well as audiovisual means. However, because current implementation in Utah is by telephone only, we describe and refer to the law in this study as pertaining to telephonic capabilities.

CHAPTER 2 - PROGRAM DESCRIPTION

SITE DESCRIPTION

The State of Utah is approximately 82,168 square miles in size. The capital is Salt Lake City, located along the banks of the Great Salt Lake, in the northern part of the State. Utah's main urban areas are located along the Wasatch Mountain Range on the eastern edge of the Salt Lake Valley. The majority of Utah's population is concentrated on this strip of land, which is less than 100 miles long, stretching from Ogden to Provo. The four counties in the Wasatch Front – Salt Lake, Davis, Weber, and Utah – contain more than three-quarters of the State's population.

The U.S. Census Bureau reports a 29.6% population growth rate in Utah from 1990-2000, with the largest increases occurring during the latter part of the decade. The 1990 Census listed the population of Utah at approximately 1,722,850 persons; the 2000 Census lists the Utah population at 2,233,169. The 1996 per capita income for Utah citizens was approximately \$16,100.

DUI-RELATED ALR SANCTIONING POLICY IN UTAH

The administrative driver license sanction, resulting from the arrest of an individual for a DUI-related offense, “allows a peace officer to confiscate your Utah driver license upon arrest for driving under the influence and allows the Division to suspend your license for 90 days or one year on the 30th day after the arrest.”⁶

Section 53-3-222 of the Utah Public Safety Code (see Appendix A) states the purpose of license suspension or revocation for driving under the influence is to protect individuals on the highways by quickly removing persons who have shown they are safety hazards. At the time of arrest for DUI, the individual is provided with a copy of the DUI Summons and Citation (see copy in Appendix B). This form includes a notice of intent to deny, suspend, revoke or disqualify that individual's driving privilege. The right to a hearing is printed on the form and states that, in order to retain driving privileges, the defendant must “prevail both before the court and the Driver License Division (DLD) separately.” The instructions explain that the Driver License Division must receive a written request for a hearing within ten calendar days of arrest. The numbers of individuals requesting a hearing from the DLD as a result of a DUI arrest have increased steadily since 1995 to a current level of approximately 20% of DUI arrestees.

The Driver License Division, by statute, has 30 days from the date of a DUI-related arrest to comply with a driver's request for a hearing. Hearings are conducted in the jurisdiction where the arrest was made. There are 22 hearing officers and managers, employed by the Utah Driver License Division, situated throughout the state who handle driver license related hearings resulting from all types of offenses. However, the alleged

⁶ Utah Department of Public Safety, Driver License Division. (1999.) *Utah Driver Handbook*. Salt Lake City, Utah: State of Utah, Department of Public Safety.

DUI offense is the only offense that has time stipulations attached to the hearing request. These hearings are given priority by the hearing officers.

PROBLEMS WITH ALR LAW IMPLEMENTATION IN UTAH

As with many other states, the Department of Public Safety in Utah has faced problems with fulfilling the intent of the ALR law, that is, to remove hazardous drivers from the State's roadways. Officials in Utah have demonstrated a willingness to actively confront problems with ALR implementation. This project has allowed staff an opportunity to track, evaluate and work with the site to document the problems encountered and solutions devised so that we may provide information to other states that may encounter similar problems when implementing ALR. The problems identified during the project, along with the solutions, are discussed below.

Lack of Awareness – Right to an ALR Hearing

Individuals arrested for DWI-related offenses had complained they were not aware of the right to an ALR hearing, even though notice of that right is printed on the Summons and Citation form (see Appendix B). As a result, new DUI Summons and Citation forms were printed with the "Right To Hearing" title printed in red ink. In addition, the arresting officers have been instructed to verbally inform the driver of the right to a hearing and to note on the DUI Summons and Citation form that this task was completed.

ALR Hearings Used as Discovery Tool

During our work over the years with law enforcement officers from across the United States, we have often heard complaints that defense attorneys inappropriately ask unrelated, discovery type questions at ALR hearings as a means of preparation for the separate judiciary proceedings. Reportedly, this has also been a problem at ALR hearings held in Utah. Most DUI-related cases in Utah are adjudicated in Justice Court, which means there are no preliminary hearings. Therefore it is the complaint of law enforcement officers, as well as some hearing officers, that defense attorneys attempt to use the Driver License Division hearing as a discovery tool. (However, as one law enforcement officer pointed out, this can also work to assure the demise of a challenge if the video or the officer's statement shows an extremely strong case.)

While this complaint will probably always be a problem, especially when defense attorneys are present, hearing officers in Utah receive training on how to handle inappropriate questions that are asked during a hearing session. This type of training is complicated, because some questions that might be considered discovery in nature are appropriate at an ALR hearing. Performance evaluations of the hearing officers are continual, as all hearings are audio taped and a manager randomly reviews these tapes to detect potential problems. When there is a formal complaint made, the manager always reviews the referenced hearing. If necessary, a hearing officer may receive additional training to enable that officer to effectively handle difficult situations surrounding inappropriate discovery type questions.

PROGRAM DESCRIPTION

Closing Statements at an ALR Hearing

Initially, defense attorneys had the last opportunity to sway the decision of the hearing officer because they could make closing statements. The law enforcement officer, whose role in an ALR hearing is that of a witness, was not allowed to make closing statements. Some law enforcement officers believed they, too, should be able to make closing remarks. The result is that now the arresting officers are permitted to make brief closing statements to the hearing officer, although it is not clear that all hearing officers ask LEA officers in all sessions if they wish to make any closing remarks. There is an ongoing evaluation process in place, as a manager is randomly reviewing the audiotapes, but data is not being collected on how many law enforcement officers choose to make closing statements.

Law Enforcement Officers - Costs to Appear

The individual law enforcement agencies (LEAs) must absorb the costs of officers appearing at ALR hearings. For example, depending upon the agency, this might require payment of overtime, or time taken from other scheduled duties. Reportedly, this has caused a problem in the past so that some agencies were not encouraging the arresting officers to attend the ALR hearings. Currently, a nominal fee is paid from a special fund to law enforcement agencies to assist in defraying appearance costs. The Driver License Division reimburses each LEA in the amount of \$18.25 for each ALR hearing an officer attends. However, the fee does not completely cover the costs, and there is speculation that some law enforcement authorities, probably due to personnel time and cost constraints, actually discourage officers from appearing at ALR hearings.

Law Enforcement Officers – Failure to Appear

Due to detailed record keeping, state officials were able to determine that a significant number of law enforcement officers were not appearing at ALR hearings. As a result, those drivers who had been arrested for DUI-related offenses were allowed to keep their driving privileges pending court actions. The intent of the ALR law, to remove unsafe drivers from public roadways, was being thwarted.

Arresting officers might not appear at a hearing for a variety of reasons. Conflicts could arise with LEA-related training schedules, work-related duties such as a crash taking priority, and personal reasons such as a hearing scheduled during the officer's vacation or off-duty hours when other commitments intervened. (An example given was that officers working the night shift often had spouses working during the day, which meant child care responsibilities for the off-duty officers.) Also, as stated above, there were indications that in some LEAs, command officers do not encourage the arresting officers to attend hearings because their Department must pay most of the costs for the officers' time.

During the year 2000 General Session, Utah state legislators voted to enact Section 53-3-223.5 of the Utah Code to allow telephonic or live audio-visual testimony at hearings. The law states, "In any division hearing authorized under this chapter or Title 41, Chapter 6, Article 5, Driving While Intoxicated and Reckless Driving, the division

may permit a party or witness to attend or to testify by telephone or live audio-visual means.” While a few unofficial telephonic hearings were held during the summer months of 2000, the actual implementation began in September of that year, with telephonic capabilities increasing throughout the following months.

Though several ALR issues are discussed above, the adoption of the option of telephonic testimony was selected as the specific measure to be the subject of this evaluation study.

CHAPTER 3 – PROJECT EVALUATION

APPROACH

The focus of this project was to conduct a process or administrative evaluation of the effects of adopting telephonic testimony on the overall hearing process for administrative license suspensions for DUI and, by extension, on the implementation of the total ALR law in Utah. While solutions to all of the problems listed in the previous chapter were reviewed, most were not of a nature that was amenable to a formal evaluation. However, those problems and solutions were discussed during the focus group sessions and during any interviews, and the results are included in those sections.

This evaluation has three primary foci: one is to present a system description detailing how the ALR process works; the second is an examination of objective data descriptive of the ALR process that provides counts of variables such as arrests, hearings, hearings results and form of testimony; the third is the subjective impressions of participants in the process on the effects the changes have had on the system. This was accomplished through surveys of law enforcement officers and hearing officers conducted under the auspices of state government, as well as informal focus groups and discussions with state officials, law enforcement officers, hearing officers, and members of the defense bar.

The results of the process description, data analyses and reflections of participants in the system are provided in this chapter. The results of implementing the solution, as far as this assessment can determine, are provided in the next chapter.

PROCESS DESCRIPTION

Driver License Seizure

Under Utah Public Safety Code Sections 53-3-223.3 and 53-3-223.4, a peace officer must seize the driver's license or permit of a motorist upon determining that the driver has been operating a motor vehicle while intoxicated or impaired. In its place, the officer may issue a temporary license certificate to the driver that is valid for 29 days. The officer shall also furnish the driver with an official form that provides information on how the individual may request a formal hearing before the Driver License Division (DUI Summons and Citation Form, see Appendix B).

This automatic license seizure is handled by a peace officer in Utah at the time of arrest for DUI, and occurs when a driver has violated one or more of three State statutes:

- Administrative Per Se (Section 53-3-223) – The Utah statute that states a driver of a motorized vehicle may not have a blood alcohol concentration (BAC) of .08 percent or higher ($\geq .04$ percent for commercial drivers), and/or that a peace officer may determine that a motorist with a BAC at any level may be incapable of safely operating a vehicle.

- Implied Consent (Section 41-6-44.10) – The Utah law which states that drivers exercising the privilege to operate a vehicle implicitly consent to submit to a lawfully-requested test to determine the alcohol content of their blood, breath, or urine. Therefore, a Utah licensed driver does not have the right to refuse to provide a BAC sample when one is requested by a peace officer.
- Zero Tolerance or “Not A Drop” (Section 53-3-231) – The Utah statute that dictates a person under the age of 21 may not operate a motor vehicle with any detectable alcohol in the body.

Request for an ALR Hearing

Drivers arrested for intoxicated or impaired driving in Utah, having had their driver's licenses or permits removed at the time of arrest, have ten days to request an administrative hearing from the Driver License Division of the Utah Department of Public Safety. As informed by the arresting officer and as stated on the DUI Summons and Citation form (see copy in Appendix B), if they desire a hearing to protest the pending revocation of driving privileges, they must request that hearing in writing. The appropriate address is provided on the form. The form states “failure to properly request a hearing, or to appear for a hearing, may result in loss of driving privileges.”

Within five days of arrest, the arresting officer sends the following to the Driver License Division: the confiscated license or permit; a copy of the citation; a signed report indicating the chemical test results, if any; and other pertinent information such as a videotape or the results of standardized field sobriety tests.

Conditions for an ALR Hearing

Hearings regarding pending revocation of driver's licenses by the Utah Driver License Division are granted when the Division receives a written request within ten days of the arrest. At the discretion of the Driver License Division, the hearings also may be granted to drivers who make a request beyond the ten days allowed by statute. When a hearing request is made in a timely fashion, an ALR hearing must be held within 29 days after the day of arrest. For a late request, as a condition to being granted, an ALR hearing may be held beyond the 29th day limit set by statute, but the driving privileges are still withdrawn on the 30th day after the date of arrest. If a request for an ALR hearing is not received, the driver license is automatically withdrawn.

The hearing is typically held in the county in which the offense occurred, but may be held in another county if agreed upon by all parties. A representative of the Utah Driver License Division, Central Office Driver Control Bureau, must subpoena the arresting officer(s) at their respective law enforcement agencies, and notify the individual arrested for DUI of the hearing date, along with a hearing officer. Subpoenas may also be issued to witnesses and for the production of relevant materials such as arrest reports and videotapes. Costs for the attendance of peace officers and witnesses are partially defrayed with monies from the State's Transportation Fund.

Administrative Hearings On Driver License Actions

Attendees at an ALR hearing include the hearing officer, the pertinent peace officers (e.g., arresting officers, those administering BAC or field sobriety tests), the appellant and, if desired by the appellant, a defense attorney(s). An audio recording is always made of each ALR hearing. The audio equipment is set up and operated by the hearing officer.

If any ALR hearing participants, other than the hearing officer, are not able to physically attend the hearing, now they may participate telephonically, if those capabilities are available.⁷ The hearing officer is responsible for setting up the telephone equipment.

As outlined in the Hearing Officer Training Module #3 (see Appendix C), “while formal rules of evidence and procedure shall not strictly apply, the hearing officer, in conducting the hearing, shall substantially comply with the fundamental rules of due process in legal proceedings. Sworn testimony will be taken, and the driver shall have the privilege of having witnesses present in his behalf. He may offer testimony and may cross examine those who testify against him.” The defense attorney, when present, generally handles the cross-examination. It is not unusual for defense attorneys to attempt to gain information pertinent to the pending judicial case but that is not relevant to the ALR hearing. Hearing officers are trained to limit issues covered during the hearing. The major issues allowed during an ALR hearing are:

- whether the arresting officer(s) had reasonable cause to stop the vehicle;
- if the officer(s) had reasonable grounds to believe the driver was impaired or intoxicated;
- whether the individual refused to submit to a BAC test; and
- the results of any BAC test.

An Alcohol Hearing Checklist (a copy of which appears in Appendix C) was developed to assist hearing officers when preparing for and conducting ALR hearings. Hearing officers are trained to review, prior to the hearing, the arresting officer’s DUI report, all attachments, the chemical test machine maintenance test records and affidavit. These documents are entered into evidence at the start of the hearing session.

Outcome of ALR Hearings

Obviously the outcome of the ALR hearing is that either the license revocation is upheld, or it is reversed and driving privileges are reinstated.⁸ There are a number of reasons that determine a finding, such as those listed below.

⁷ In some communities, hearing officers do not have dedicated facilities and use public facilities as available. If a separate telephone line is not available for use by the hearing officer, or the use of a telephone line restricts the business conducted at the public facility, then telephonic hearings may not be conducted.

⁸ The outcome of the ALR hearing is administrative in nature and is independent of any judicial process that may result in loss of driving privileges.

Reasons for UPHOLDING License Revocation

- Appellant or the representing defense attorney does not attend the hearing.
- Probable cause for the stop has been found.
- Probable cause for DUI arrest has been found.
- BAC level found at .08 or greater.
- The driver was otherwise incapable of operating the vehicle safely.

Reasons for REVERSING License Revocation

- Arresting Officer does not attend the hearing.
- Probable cause for the stop has not been proven.
- BAC test results <.08 and probable cause for DUI has not been proven.
- Indication of error from an Intoxilyzer instrument.
- Lack of warning admonition and/or "Baker Rule."⁹

The hearing officer may render a verdict at the end of the ALR hearing, or may elect to deliver the verdict in writing in the days following the hearing. A specific form must be completed by the hearing officer and submitted to the Driver License Division along with the audiotapes. Action is taken by the Driver License Division based on the reports received from the hearing officers.

DUI-related administrative license suspensions in Utah occur for the following types of violations:

Administrative Per Se – For a first offense, license suspension is for 90 days beginning on the 30th day after the date of the arrest. A subsequent suspension is for a period of one year, beginning on the 30th day after the date of the arrest.

Implied Consent Refusal – For a first refusal, the license suspension is for one year. If the person has a previous license sanction or a conviction after July 1, 1993, then the license suspension is for 18 months.

Zero Tolerance – For a first offense, the license suspension is for 90 days. For a second or subsequent offense within three years of a prior denial or suspension, the Driver License Division will suspend the license for one year. An individual without a valid operator's license will be refused a license for one year or until age 17, whichever is longer.

When a driving license is withdrawn by administrative action, there is a \$50 reinstatement fee and a \$150 administrative fee to reinstate that license after the suspension period.

Resolution of Conflicts/Appeals

Both the appellant and/or defense attorney and the arresting officers may protest the conduct and/or findings of the hearing officer. The first step is typically to notify a Manager of the Driver License Division. That Manager will review the audiotape of the session in question and will typically make a determination whether to uphold or dismiss

⁹ A peace officer must warn the driver that the results of the chemical test could lead to loss of the driving privilege. The Baker Rule requires that the person providing a BAC breath sample had no food or drink for at least 15 minutes prior to the test and had nothing in his or her mouth at the time of the test.

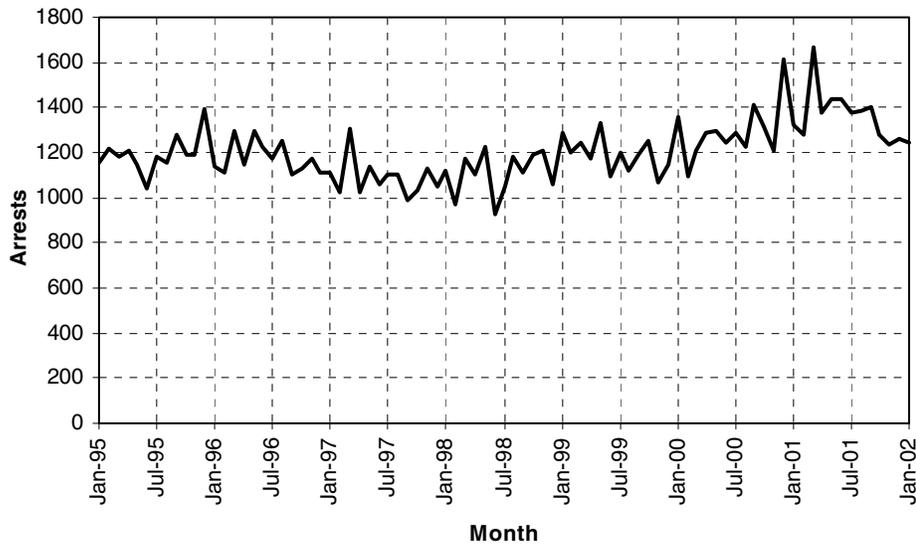
the findings of the hearing officer. A person whose driver's license has been withdrawn by the Utah Driver License Division may seek judicial review. According to State statutes, judicial review of an informal adjudicative proceeding is a trial in the district court in the county where the alleged offense occurred.

DATA ANALYSIS

The Driver License Division in the state of Utah maintains extensive driver history records. We examined pertinent information relating to DUI arrests and administrative hearing actions for the years 1995-2001. Cumulatively over these years, roughly 16% of drivers arrested for DUI-related offenses had been involved in a crash.

Arrests for drinking and driving offenses in Utah were over 14,000 per year in 1995 and 1996, dropped slightly during 1997-1998 (roughly 13,000 per year) and then steadily increased up to 16,455 in 2001. The numbers of monthly DUI arrests statewide are displayed in Figure 3-1 below.

Figure 3-1: DUI Arrests in Utah by Month, January 1995-January 2002



Cumulatively over the years examined (1995-2001), 57% of DUI-related arrests in Utah were handled by municipal law enforcement agencies. The Utah Highway Patrol handled 30% and sheriff departments handled roughly 13% of DUI-related arrests in Utah.

The numbers of administrative license hearings held have increased greatly in recent years, going from about 100 per month prior to 1999 to about 330 per month in early 2001 (Figure 3-2). Such increases occurred for all three of the most frequent alcohol-related violations: DUI per se, refusal to submit to a BAC test, and DUI by a driver under age 21, as well as DUI-related violations as a whole (Figure 3-3).

Figure 3-2: ALR Hearings in Utah by Month, January 1995-January 2002

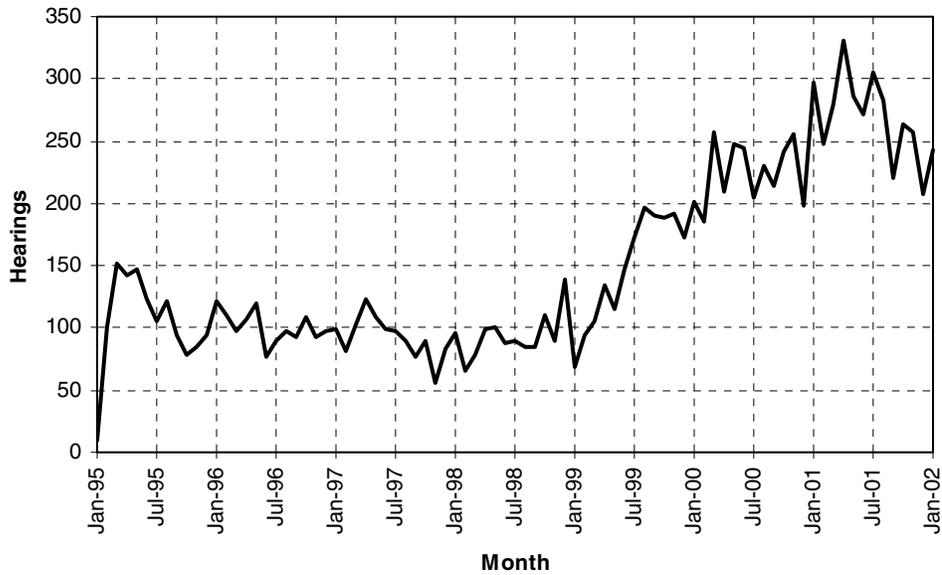
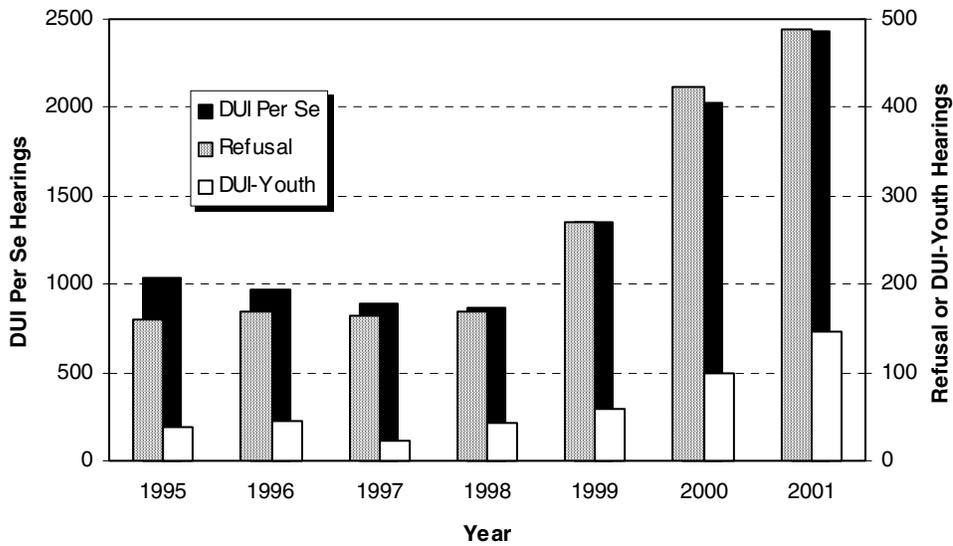


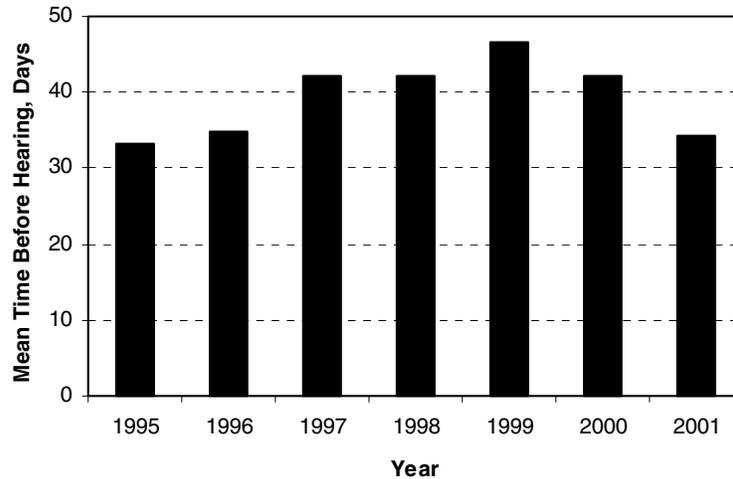
Figure 3-3: ALR Hearings in Utah by Year and Violation Type, 1995-2001



In the seven years we examined, almost half (45%) of the ALR hearings resulted in “no action” (license was not withdrawn), with 68% of these “no action” findings ruled as a result of the absence of the arresting officer.¹⁰

The time from the date of arrest until an ALR hearing was conducted fluctuated over the seven-year period, peaking in 1999 at about 47 days (Figure 3-4). *But the modal time, meaning the time that appeared most frequently, was 29 days.*

Figure 3-4: Mean Time - Arrest Date to ALR Hearing in Utah by Year, 1995-2001



The number of requests for an ALR hearing more than tripled between 1998 and 2001. Telephonic ALR hearings were implemented beginning in September of 2000, although a small number were conducted prior to that time. The numbers of ALR hearings conducted using telephonic equipment as a percentage of all ALR hearings are displayed below (Figure 3-5). Those percentages increased steadily during the year 2001, with the highest monthly percentage to date (20%) occurring in October 2001. (A total of 53 out of the 263 ALR hearings conducted in Utah during that month had one or more persons participating telephonically.)

The data indicate the number of administrative license hearings where the license was returned (“no action”) due to the absence of the arresting LEA officers increased after the implementation of telephonic hearings. *However, the number of all no-action ALR hearings increased even more, so the proportion of those hearings resulting in “no action” due to peace officers failing to participate actually fell by about 20% (Figure 3-6).* A time series analysis revealed this reduction to be statistically significant ($p=0.01$). Basically, prior to the passage of the telephonic law, the number of DWI arrests increased substantially and so requests for ALR hearings also increased, but the number of hearings where law enforcement officers did not appear decreased. It is most likely that more command emphasis on DWI actions by law enforcement officials and discussions about

¹⁰ The percentage of officers failing to appear at ALR hearings was essentially the same across all types of law enforcement agencies. The breakdown by agency type showed that between 68% to 70% of these ALR hearings resulted in “no license action,” meaning the license was reinstated because the arresting officer failed to appear.

the passage and implementation of the telephonic law resulted in fewer absences by officers at ALR hearings.

Figure 3-5: Telephone ALR Hearings as a Percent of All ALR Hearings in Utah by Month, January 1998-January 2002

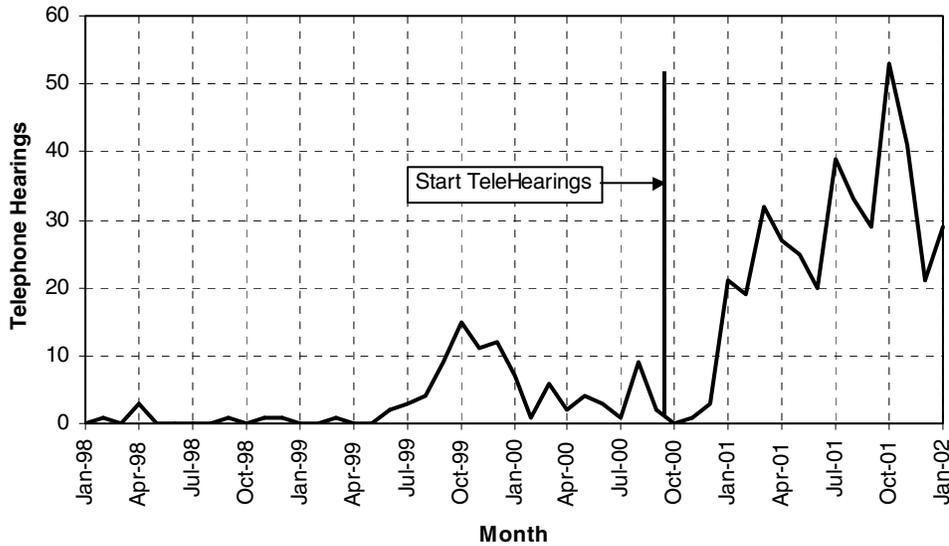
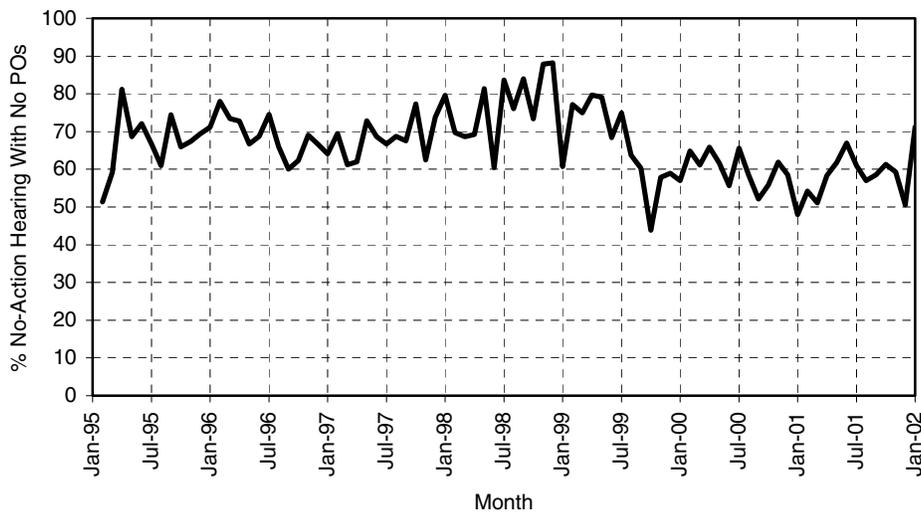


Figure 3-6: No-Action Hearings with no Peace Officers (POs) Present as a Percent of All No-Action Hearings In Utah by Month, January 1995-January 2002



Although this decline cannot be attributed entirely to the use of the telephonic format because the reduction began before the implementation of telephonic ALR hearings, we consider the use of the telephonic format to be a factor in the continued reduced rate of

“no action” findings due to the absence of law enforcement. Telephonic hearings can be a useful tool to law enforcement, especially in those states where officers must cover large rural areas.

REFLECTIONS OF PARTICIPANTS

Besides the objective measures described above, it was important to gather the perceptions of those who actually operate the system. We spoke with state officials and managers, hearing officers, law enforcement personnel, and defense attorneys.

State Officials

Discussions were held with State officials and managers at the Utah Driver License Division. Legislation regarding .08 BAC limits and ALR legislation were adopted in Utah in 1983, and administrative alcohol hearings have been held since that time. It is the policy of the Utah Driver License Division to instruct hearing officers to conduct the ALR hearings in accordance with administrative rule. As listed previously in this report, there are four main elements that ALR hearings are limited to: probable cause for the stop by law enforcement; if there were reasonable grounds to believe the driver was impaired or intoxicated; whether the driver refused to submit to a breath test as required by the implied consent law; and the breath test results, if any.

According to officials, despite this limitation of scope, over the years there have been many issues raised regarding the roles of the participants during these hearings, resulting in ongoing attempts to educate participants. While it is the right of the driver who has been accused of DUI actions to question the arresting officer, defense attorneys have attempted to broaden the scope of the hearing in order to discover facts and concerns relative to their client’s court case, but perhaps not relevant to an administrative driver license hearing. Law enforcement officers may sometimes step outside their role of witness and try to expand their authority. Sometimes the paperwork is not in order and ALR hearings are either not held, or are dismissed on technicalities. Hearing officers may have trouble controlling the scope of the ALR hearings and/or the participants. Training is an ongoing process as issues and policies change. In addition, changes in State statutes and methods that may differ, for example, when personnel changes occur at the State Attorney General’s office, can also provide a need for training updates.

Managers described the procedures following a typical ALR hearing session as follows. The hearing officer, after listening to all of the testimony and reviewing all of the evidence presented at the hearing, will make a finding of facts, conclusions, and render a decision as outlined in the hearing report form.¹¹ Each ALR hearing is audio recorded, and the hearing officer forwards the written report and the tape recording of the proceedings to the Utah Driver Control Administration. There reports are examined, records are updated, and audits of the audiotapes are randomly conducted for quality control. If there is a complaint or a problem with a particular hearing, the manager reviews the report and audiotape and takes appropriate actions.

Reportedly, many hearing officers have been in their positions for many years, and managers and some officials also have experience and background as hearing officers. This has, most likely, contributed to the relatively smooth operation of ALR hearings, and the willingness to examine and change procedures as necessary to insure fair hearings into the future.

¹¹ Utah Department of Public Safety, Driver License Division. (1994) “*Hearing Officer Training Modules*” Salt Lake City, Utah: Department of Public Safety.

There is widespread acceptance and support for ALR telephonic hearings among State officials who worked with lawmakers to draft and pass the ALR telephonic hearing law. Allowing telephonic participation as a means to decrease the numbers of peace officers absent from ALR hearings was viewed as a relatively easy solution to this problem that essentially voids the administrative license action. As stated earlier, when the arresting law enforcement officer does not appear at an ALR hearing, it almost certainly leads to the reversal of the driver license suspension, at least until punitive steps are taken by the courts.

Hearing Officers

We conducted focus groups with all of the current hearing officers in Utah and several managers (22 persons total) during a regularly scheduled day of training. According to data we received from the State, eleven of the hearing officers had conducted at least one ALR hearing where at least one party participated by telephone. The hearing officers reported that telephonic ALR hearings require the same, or less time than conducting the same type of hearing when all parties are physically present. In fact, during the focus group sessions, no one said that an ALR telephonic hearing required significantly more time to conduct than one where all parties were present; nine thought there was no significant difference in the length of time required, and eight thought less time was actually required for a telephonic hearing.

While there were some proponents for the telephonic capability, the majority of the hearing officers did not seem to be overwhelmingly supportive of this method. When asked to describe their reaction to the law allowing parties involved in ALR hearings to participate by telephone, ten described their reaction as “negative,” nine as “neutral” and three as “positive.” (These were the actual words they were asked to choose from to describe their reaction.) When asked directly why they did not favor telephonic hearings, the majority denied that they did not support this method, but then proceeded to offer negative comments about telephonic hearings, albeit many were constructive criticisms. One hurdle, that could not be remedied, was the feeling that *not* having all parties physically present could seem to diminish the importance of ALR hearings and the weight they invoke in the administrative process. When asked how they would rate the professional integrity of the proceedings when held telephonically as opposed to when all parties are physically present, fourteen hearing officers thought telephonic hearings were less effective than when all parties were present, and six thought there was no difference (two did not answer). In Chapter 4, under the section discussing our findings, we discuss this and other possibilities in greater detail.

When the ALR hearing process was implemented in 1983, the initial group of hearing officers reportedly received “superb” training under the auspices of an attorney general who “cared how we learned to handle administrative hearings.” All hearing officers attended a weeklong training course on civil administrative law and on conducting quasi-judicial hearings. Also, there were group meetings held quarterly, and updated training and constructive feedback on the hearings were provided. But in later years, newly hired hearing officers did not have the same training opportunities and often had to rely on more experienced training officers to share their knowledge and experiences.

The telephonic ALR hearing law was announced to hearing officers at a group meeting, but it took time to implement due to the logistics of buying and distributing the equipment to the hearing officers. In fact before the equipment was in place, an attorney who wanted to participate telephonically in a hearing approached one hearing officer, and the hearing officer accom-

modated the attorney by using his regular office telephone with the speaker feature.

Hearing officers first watched a demonstration on the use of telephonic equipment at a regularly scheduled meeting. Supervisors watched and listened to a mock telephonic ALR hearing. However, there appeared to be numerous problems initially in the field such as the equipment not working properly and poor audio quality.

Most of the hearing officers did not notice a change in the number of ALR hearings that they conducted since telephonic hearings have been available. They reported that geography and law enforcement command emphasis have both played important roles in which agencies' law enforcement officers attend ALR hearings. Several hearing officers reported that discussing the importance of such hearings with LEA command officers sometimes had helped in the past to remedy the absences of the arresting officers. There may still be problems in rural areas with law enforcement officers not being provided with subpoenas until the day before, or even the day of, the hearing. But due to the process and because of the 29 day statutory restriction, it can be nearly impossible to get subpoenas out to a rural officer with more than one or two days notice.

The majority of the hearing officers, while not objecting to the concept of telephonic hearings, would prefer not to conduct ALR hearings with telephonic participants except in exceptional cases because of the following reasons.

- Visual cues during testimony, not possible to see in telephonic hearings, are very important to many hearing officers. (One focus group participant suggested video teleconferencing, which is allowed by the existing statute, as a better approach.)
- The hearing itself is of great importance to the driver; therefore, the driver should be able to personally confront all parties involved in the hearing process.
- It is not possible to conduct telephonic hearings in all locations across the State (discussed below).
- The telephone equipment is not of the best quality and this causes sporadic technical problems. Also, there are limitations in the number of parties who may be connected telephonically and, while this has not proven to be problematic to date, it could be a problem in the future. (For example, there are times when multiple law enforcement officers may testify.)
- It is not possible to positively identify persons participating telephonically, nor be certain if other unknown parties are present.
- The peace officer can merely read off of the report. (As a witness in the hearing, the officer must testify and is not permitted to read verbatim off of reports.)

Some hearing officers acknowledge that telephonic hearings are a relatively new process and note that some attorneys who originally objected strongly to the method are now requesting this type of hearing.¹² But several hearing officers have heard defense attorneys talking to their clients about joining a class action lawsuit to challenge the constitutionality of telephonic hearings in an apparent attempt to retract the law.

One apparent problem is that in some rural locations that could most benefit from a telephonic type hearing by eliminating extensive travel time, the facilities to permit these types of hearings are either not available or the availability is not certain, so the option of a telephonic hearing can not be offered. (When there is no dedicated office, office space is "borrowed" wher-

¹² We note that it is possible the learning curve is also continuing for the hearing officers.

ever available from the police station, court house, etc. and sometimes telephone lines can not be used because the hearing would tie up a line that is dedicated to other functions.)

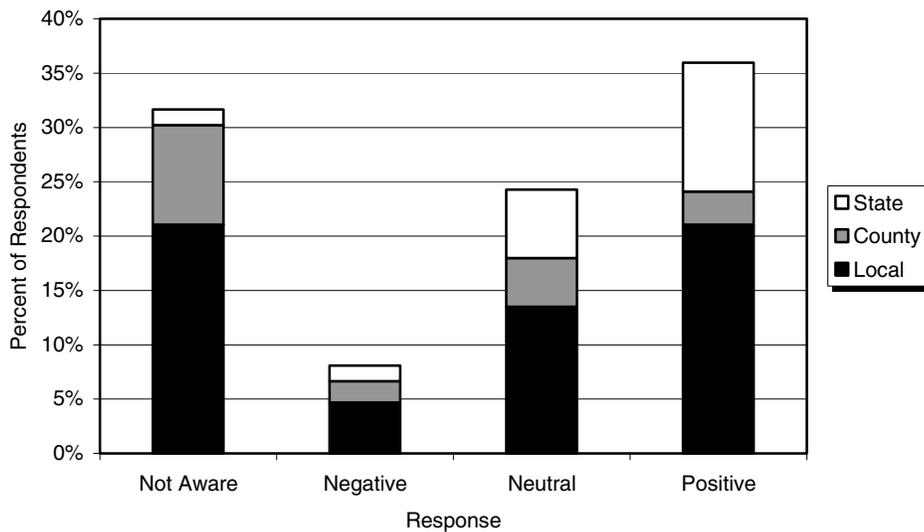
Law Enforcement

During the first site visit, discussions were held with law enforcement officers on the subject of administrative license hearings. The findings from these discussions were covered under the previous LEA section in Chapter 2 when problems with the ALR law implementation in Utah were presented, but are also reiterated below. In addition to these discussions, a survey on this subject was conducted under the auspices of the Utah Department of Public Safety with peace officers from state and local LEAs. Officers at law enforcement agencies across Utah were asked by the Director of the Utah Driver License Division and the Director of the Utah Highway Safety Office to participate in the survey. The purpose of the survey was to gather perceptions of law enforcement officers relative to how the ALR system operates, problems they encounter, and their reaction to the implementation of telephonic testimony in lieu of physical attendance. The major findings of this survey are presented below. A copy of the survey appears in Appendix D.

Surveys went out to 128 local and county law enforcement agencies in Utah and to the 15 Sections of the Utah Highway Patrol. Individuals from 77 local and county LEAs and all 15 Sections of the Utah Highway Patrol responded, providing a well-rounded sampling of Utah law enforcement organizations. Out of the total responses (N=569), sixty percent (N=340) came from local peace officers, 19% (N=110) were submitted from county LEAs, and 21% (N=119) came from the Utah Highway Patrol.

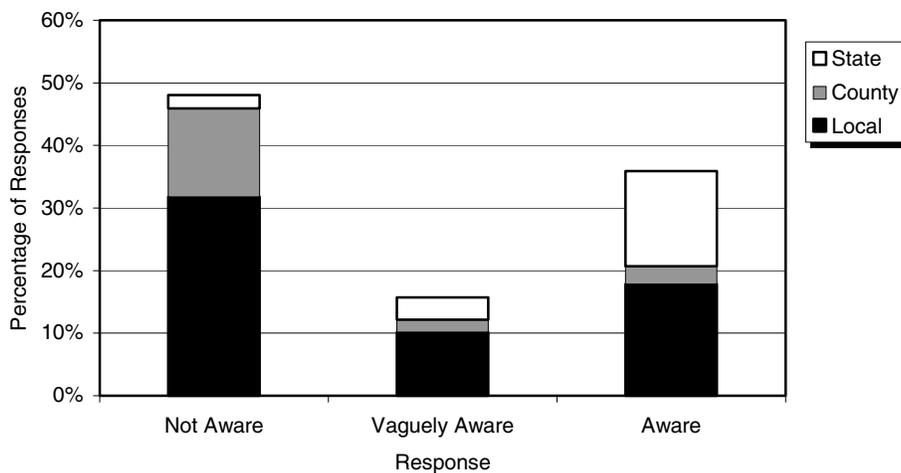
When asked about their reaction to the law allowing parties involved in ALR hearings to participate telephonically, 32% of the respondents reported that they were not aware of this law. Of the 380 LEA officers who were aware of the law, 36% reported a positive reaction to the law that authorized participation by telephone at ALR hearings, 24% were neutral and 8% were negative (Figure 3-7).

Figure 3-7: Police Officers' Responses to the Law Allowing Telephonic Hearings, by Agency Type



The most important survey finding was that almost half (48%) of the LEA officers who responded were not aware of current telephonic capabilities for ALR hearings (Figure 3-8). (Note: This 48% is comprised of the 32% above who were not aware of the law and another 16% who knew of the law, but didn't know the telephonic capabilities were available for use. And, in fact, telephonic equipment is not yet available in all areas of Utah. We do not know how many of these peace officers work in those areas where telephonic hearings are not yet possible due to limited facilities that cannot support the telephone equipment.)

Figure 3-8: Police Officers' Awareness of Current Capabilities for ALR Hearings, by Agency Type



Seventy-six percent (76%) of the survey respondents had not participated telephonically in a hearing, and of these, only 11% indicated that in the future they would not plan to participate by telephone in ALR hearings. Of those who had experienced telephonic participation, 69% said there was no difference in the professional integrity of the proceedings; 12% rated these telephonic hearings more effective; and 17% rated them less effective. When asked about their viewpoints based on their personal experiences, 60% had a positive view of telephonic testimony (80% of these were from the Utah Highway Patrol); 19% said they were neutral; and 6% rated telephonic testimony negatively (the remaining 15% chose “Don’t know”).

The majority (57%) of survey respondents reported that during the past year, all of the drivers they had arrested for DUI-related offenses, and who had requested hearings, appeared at those ALR hearings. Forty percent (40%) of the officers reported that in 1 - 5 cases, the accused individual did not appear at the ALR hearing. The remaining 3% of LEA personnel indicated that individuals failed to appear at ALR hearings more than 6 times in the past twelve months.

LEA respondents reported similar numbers when asked about their own absences from ALR hearings. Fifty-nine percent reported they had not missed any ALR hearings in the past 12 months; 37% reported missing between 1 and 5 ALR hearings; 2% reported missing between 6 and 10 ALR hearings, and 2% reported being absent more than 10

times. Using these percentages and the least number of hearings reportedly missed, we have calculated that officers reported that they had missed 393 ALR hearings. This number is based on:

- 569 LEA survey responses;
- 37% of respondents reported being absent from 1-5 ALR hearings;
- 2% reported being absent from 6-10 ALR hearings; and
- 2% reported being absent from more than 10 ALR hearings.

OR

$$[(569 \times .37) \times 1 \text{ hearing}] + [(569 \times .02) \times 6 \text{ hearings}] + [(569 \times .02) \times 10 \text{ hearings}]$$

OR

$$211 + 68 + 114 = \mathbf{393} \text{ ALR hearings}$$

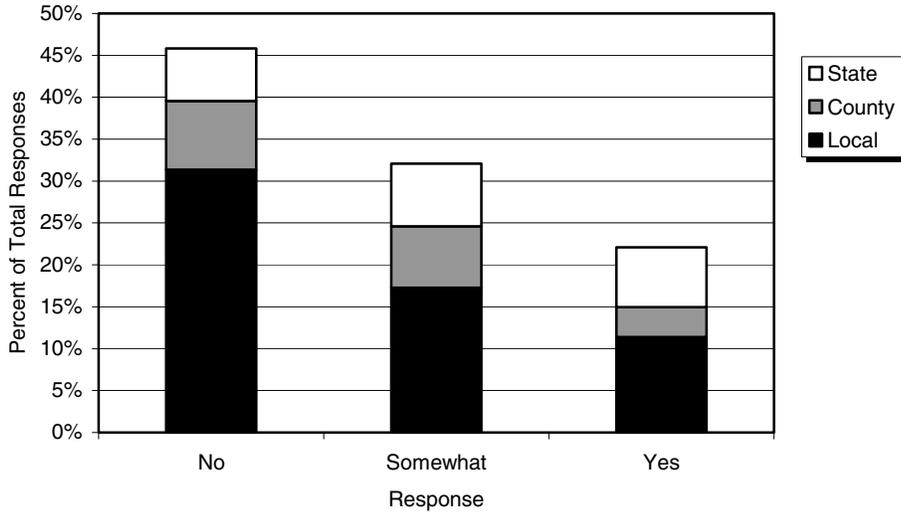
Thus, we can conservatively estimate that during the previous 12 months, these LEA officers reported being absent from 393 ALR hearings. At a minimum, that was roughly 13% of the ALR hearings conducted during the year 2001 (reference Figure 3-3).

During the discussions with law enforcement officers, project staff learned that the arresting officers might not appear at an ALR hearing for a variety of reasons. Conflicts could arise with LEA-related training schedules, work-related duties taking priority (such as a crash investigation), and personal reasons such as a hearing scheduled during the officer's vacation or off-duty hours when other commitments intervened (an example given was that officers working the night shift often had spouses working during the day, which meant child care responsibilities for the off-duty officers). These positions were supported by the survey responses. Of those *officers who failed to appear at ALR hearings during the past 12 months, 23% reported a conflict due to work-related duties and 25% reported a conflict due to scheduled personal time off from work.*

It was also pointed out during the discussions that in some LEAs, command officers do not encourage officers to attend hearings because that law enforcement agency must pay for the officers' time. The Driver License Division reimburses each LEA in the amount of \$18.25 for each appearance an officer makes at a hearing. While this amount does not completely cover the expense, it does help defray some of the cost.

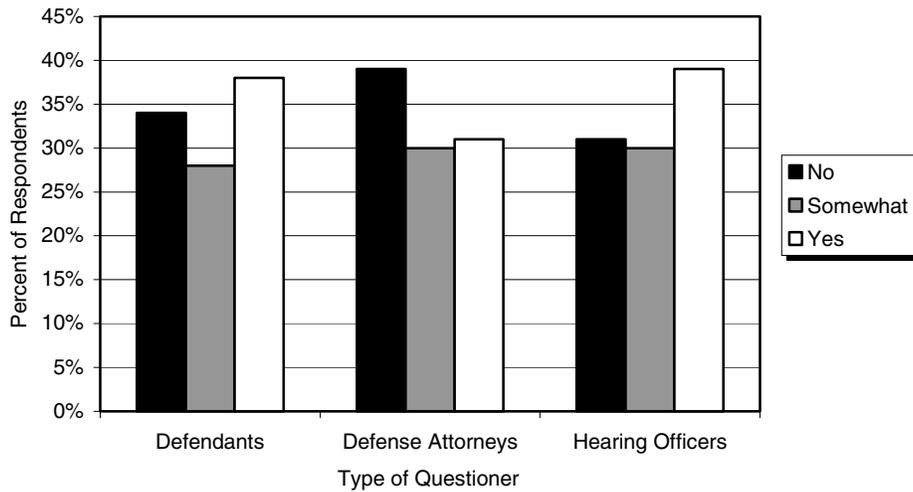
Forty-six percent (46%) of the ALR respondents reported they did not feel adequately trained in ALR hearing procedures (Figure 3-9). (Sixty-eight percent of these responses came from local law enforcement agencies.) Of those responding, 115 officers indicated that they had not received any training regarding ALR hearing procedures. Forty-five individuals reported learning through experience, by attending hearings. Eleven persons stated they had received training at the Academy, but had no further training after leaving the Academy.

Figure 3-9: Police Officers’ Responses to the Question Asking if They Were Adequately Trained in ALR Hearing Procedures, by Agency Type



Survey participants were asked if they thought they had been adequately trained relative to handling questions in ALR hearings posed by the hearing officers, defense attorneys, and the defendants. *On average, one-third of the responses fell into each category: No, Somewhat, or Yes* (Figure 3-10). In addition, fifty officers wrote in comments stating that the questions usually went beyond the bounds of what they believed should be permitted during an ALR hearing. Five persons commented that they would like an opportunity to hear the final results and reasons for the hearing officer’s decision, which doesn’t always happen because the ruling doesn’t have to be given that day.

Figure 3-10: Respondents’ Belief That They Had Been Adequately Trained to Handle Questions by Defendants, Defense Attorneys, and Hearing Officers in ALR Hearings



Most DUI cases in Utah are adjudicated in Justice Court, which means there are no preliminary hearings. Therefore it is the complaint of Utah peace officers, as well as some hearing officers, that defense attorneys often attempt to use the Driver License Division hearing as a discovery process. (However, as one officer pointed out, this can also work to assure the demise of a challenge if the video or the officer's statement during the ALR hearing shows an extremely strong case.) Hearing officers are trained to control the sessions so these occasions are limited, although some law enforcement officers believe there is still a problem. And, as described in the following section, during discussions with the defense attorneys, one attorney in particular admitted that discovery was the reason he always advises clients to request an ALR hearing. It was an opportunity for him to learn more about the case.

When asked on the survey how often they thought inappropriate discovery-type questions were asked during an ALR hearing, and how often they were directed by hearing officers to answer, 37% of peace officers believed that they were asked inappropriate questions (25% regularly and 12% often). Twenty-one percent reported that they were directed by hearing officers to answer these questions (16% regularly and 5% often).

Self-reported numbers of arrests made during the most recent twelve-month period for impaired or intoxicated driving offenses (N=7,743) are displayed below by type of law enforcement agency. While the combined local LEAs reported handling the largest number of DUI-related cases (Figure 3-11), county agencies actually had the largest per officer ratio (Figure 3-12). *Seventy-five percent of the individual officers (from all three agency types) reported handling 15 or fewer DUI-related cases during the past year; the bulk of the officers who individually reported a high volume of these arrests (up to 150 per year) were with the Utah Highway Patrol or county agencies.*

Figure 3-11: Self-Reported Annual Number of DUI Arrests for Impaired or Intoxicated Driving Offenses by Type of Law Enforcement Agency

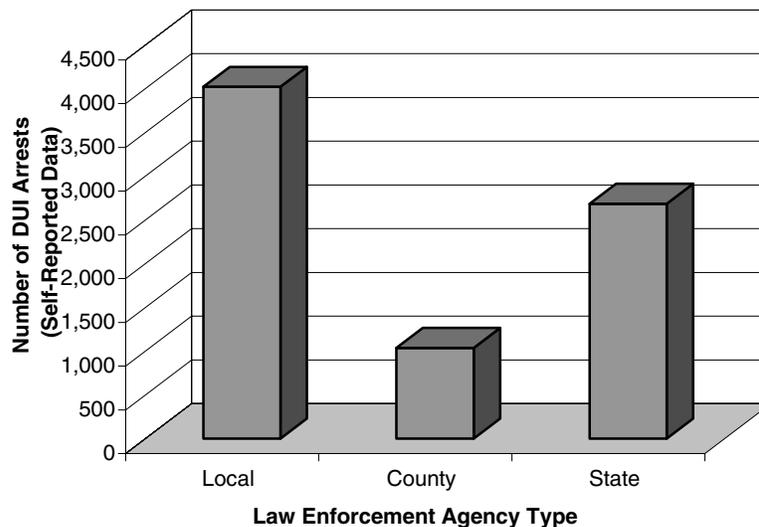
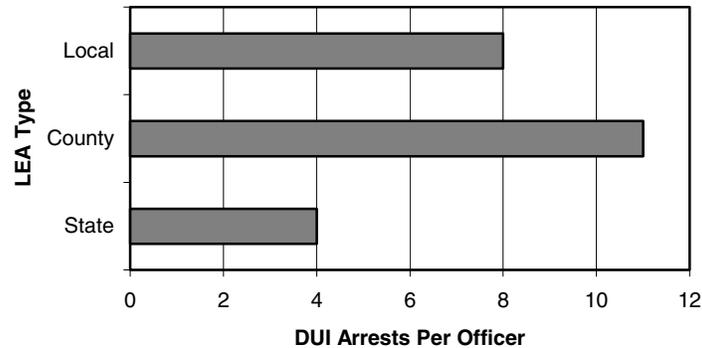


Figure 3-12: Estimated Annual Number of DUI Arrests Per Officer for Impaired or Intoxicated Driving Offenses by Type of Law Enforcement Agency



These self-reported data appear to be fairly accurate based on a comparison with the latest annual statewide DUI arrest number of approximately 16,000. (A reported number of 7,743 DUI arrests by the respondents is plausible. All units of the Highway Patrol and over half of the local and county LEAs responded to the survey, although not every peace officer who had made DUI arrests from each of those agencies participated.)

Defense Attorneys

During a second site visit, a series of unstructured discussions were conducted with three defense attorneys who handle DUI cases. These attorneys provided a variety of personal views regarding ALR telephonic hearings.

The first attorney reportedly has been practicing for thirty years within Utah and is very experienced in conducting ALR hearings. In fact, DUI-related cases comprise a large part of his business and he handles cases from all across the State. He always requests an ALR hearing and believes the administrative hearing system operates better than the judicial system. He thinks highly of the hearing officers and believes they are well trained and fair minded. He favors telephonic hearings for a variety of reasons.

- He charges his clients a flat fee and not having to appear at an ALR hearing lowers his personal costs. Therefore, he has not had to raise rates for his clients.
- Clients who cannot leave work can still participate telephonically.
- He can more easily control difficult clients when not in the presence of the arresting officer and/or hearing officer.
- Reportedly, many of his clients like not having to face the arresting officer and/or the hearing officer.
- He sees no difference between telephonic hearings and those where everyone is physically in attendance as far as how they are conducted, nor the outcome.

He believes that more law enforcement officers are participating since telephonic hearings have been conducted. He basically believes these types of hearings focus on “problem solving” instead of becoming confrontational.

The second attorney reportedly handles 100-150 DUI-related cases each year. He vehemently opposes the ALR process in general and definitely opposes telephonic ALR hearings.

- Administrative hearings are not “a real court” and therefore, according to this attorney, arresting officers can lie. It is easier when one can observe the candor of a person visually when listening to his or her testimony.
- In a traditional hearing, arresting officers are not allowed to sit and read a report; they must testify. If the officers are not physically present, it is impossible to tell if they are reading from their report.
- There is “no control” over hearings conducted telephonically. (Note: The hearing officers who control the hearings did not report a lack of control due to telephonic hearings. However, this attorney seemed to believe he lost some control if all parties were not physically present.)

He believes there is a bias in the system and claims that the hearing officers “will suspend (the driver’s license) if they have a warm body.” He routinely petitions the Driver License Division for reconsideration and, after exhausting all administrative remedies, has petitioned the court. In the past he has sued individual hearing officers and the managers at the Driver License Division.

The third attorney is a partner in a large firm that specializes in criminal defense law. His clients are typically better off economically than the clients of the first two attorneys. He estimated that, before telephonic hearings, 30% of his clients retained their licenses after the administrative hearing, usually due to technicalities or the absence of the arresting officers, even though half of those clients would eventually lose their licenses as a result of the criminal case. He was very forthright and said *he routinely requests ALR hearings in the hopes of discovering details important to the judicial case. He reports that the ALR hearing is the only real opportunity to straighten out factual issues before the case goes to court.* While he does not strenuously object to telephonic hearings for routine cases, if there are any complexities to the case, he believes all parties to the hearing should be physically present.

- While he understands the practicalities of allowing telephonic hearings, he laments that in far, remote parts of the State where this method of hearings would most benefit the parties involved, telephonic hearings are often not available.
- He believes that both sides should be able to stipulate if special needs exist, or if either side objects, then a telephonic hearing ought not to be allowed.
- He notes that the loss of a driver’s license is very important in today’s society, and everyone should be present for such an important decision if at all possible.

CHAPTER 4 – RESULTS

FINDINGS

Utah state officials identified a specific problem within the ALR process (driver license reinstatement due to the absence of arresting officers at ALR hearings) and implemented a specific solution. Through the support of lawmakers, an elegantly simple statute was proposed and passed that allows participation in ALR hearings through telephonic or audio-visual means. The following factors contributed to the successful implementation of this strategy.

- *Cooperation.* Identifying and solving problems related to ALR hearings are part of an ongoing process in Utah. This is a commendable attitude; the willingness of State agencies to work together is a healthy approach that will continue to improve the administrative license revocation process.
- *Complete and accessible records.* The state of Utah maintains an extensive driver license record system. The data processing and acquisition staff of the Utah Driver License Division, Department of Public Safety, were able to access the records and raw data necessary to perform an evaluation.
- *Willingness to evaluate results.* State officials welcomed an independent evaluation to explore any impact of the telephonic law.

Telephonic testimony was made available because there were problems with Utah peace officers failing to appear at ALR hearings due to a variety of reasons: short lag time of notices/subpoenas, long travel distances to attend the ALR hearing, conflicts with regularly scheduled personal time off but no ability for law enforcement to reschedule, and lack of support by LEA command due to cost/scheduling issues.

Problems remain with tight scheduling due to the statutory 30 day (from date of arrest) ALR hearing requirement. Administratively, it is difficult to schedule and notify all parties of the selected ALR hearing date within a 20-30 day window (appellants have 10 days from date of arrest to submit a written request for an ALR hearing). But the time from arrest to hearing date has improved with the mode currently at 29 days, just within the 30-day legal limit. It is possible that scheduling and notification problems can be addressed further and solutions found, especially if access to computer systems (even email) can be utilized in the future.

Problems with the attempted use of ALR hearings for discovery by appellants and their defense attorneys will most likely always be an issue. Continued training of hearing officers to handle these often delicate and difficult situations, and continued monitoring by supervisors through the audit of hearing tapes and the investigation of sessions where such information was handled inappropriately will keep these attempts to a minimum. This system, which was set up by Utah state officials, appears to work well. As a number of peace officers voiced objections as to the line of questioning permitted at ALR hearings, there should be clear procedures for all ALR hearing participants to protest the conduct, as well as the outcome, of the proceedings.

The implementation phase of telephonic ALR capabilities in Utah is not yet complete. Only a small number of hearing officers are routinely using the telephonic capability and they perform the bulk of the ALR telephonic hearings. Many of the peace officers (32%) who responded to the survey (see Appendix D) were not aware of the ALR telephonic law. Forty-eight percent of all the peace officers contacted were not aware of current telephonic capabilities for ALR hearings in their area, although some (16%) were aware of the law. (Note: We do not know how many of these officers are working in areas where telephonic hearings are not yet available due to lack of facilities.)

As numbers of DUI-related arrests have been steadily increasing in Utah, the numbers of ALR hearings have been increasing and, therefore, one could assume that the numbers of ALR telephonic hearings will increase naturally. But, in fact, the number of requests for an ALR hearing more than tripled between 1998 and 2001; and while the percentages of telephonic ALR hearings are also increasing, up to a monthly high of 20% of all ALR hearings, the rate of requests for telephonic hearings have not yet kept pace with the increase in the standard ALR hearing requests. It is important to increase the use of the telephonic capabilities by law enforcement officers, as long as there are ALR hearings where the arresting officers fail to appear. Discovery of the telephonic capability and familiarity with the telephonic ALR process will likely increase its use after a period of time.

Training must play an important role as almost half (46%) of the peace officers who responded to the survey reported they did not feel adequately trained in the standard ALR hearing procedures (68% of these came from local LEAs), much less telephonic hearings. It is possible that the absences of arresting officers from ALR hearings, both standard and telephonic, could be due to unease or unfamiliarity with the ALR hearing process, as well as conflicts with work schedules and regularly scheduled time off, coupled with a lack of directive by command officers. The command staff, as well as the arresting officers, must understand that a strong position with strong testimony during an ALR hearing will enhance law enforcement's position in the judicial process. Time spent in an ALR hearing could reduce or eliminate the amount of time required of peace officers during the court proceedings, if the defendant pleads guilty after the ALR hearing.

Defense attorneys are also learning about the benefits of telephonic hearings. They are more cost effective and less time consuming than having to appear at an ALR hearing, especially if the attorney must travel a significant distance. *There is the possibility that defense attorneys and appellants become so comfortable with the telephonic format that requests for these types of ALR hearings could increase exponentially, as there would be little reason for persons arrested for DUI not to request ALR hearings.* Those arrested for DUI offenses have the option of participating telephonically in the ALR hearing without having to take time to physically appear, and if the arresting officer is absent, their driving licenses are returned. The defense attorneys could more easily attempt to gather information pertinent to the judicial proceeding for minimal cost to their clients, because their time spent on the ALR hearing is significantly reduced due to their ability to participate telephonically. *Thus, it would become even more important that the arresting officers participate in all ALR hearings. Otherwise the exact problem that telephonic ALR hearings were meant to reduce or solve, that of the return of driving licenses to appellants due to the absence of law enforcement at the ALR hearings, will actually be compounded.*

PROGRAM IMPACT

ALR hearings as a percentage of arrests more than doubled between 1998 and 2001 (from <10 to 20% of DUI arrests result in an ALR hearing). Sixty-one percent (61%) of the appellants have legal representation. It is possible that they are being counseled that if the arresting officer is absent, their driving licenses will be returned. It is also probable that defense attorneys direct clients to request ALR hearings to give them an opportunity to discover information pertinent to upcoming judicial proceedings.

Over the seven years (1995-2001) of cumulative data examined during this project, almost half (45%) of the ALR hearings resulted in “no action” (the license was not withdrawn), with 68% of these “no action” findings ruled as a result of the absence of the arresting officer. Although the number of licenses returned due to the absence of the arresting officers at the ALR hearing increased after the use of telephonic hearings began, the number of all of these “no action” hearings increased at an even higher rate. So, proportionately, *the hearings resulting in “no action” due to peace officers failing to appear actually fell by about 20%. A time series analysis revealed this reduction to be statistically significant (p=0.01).*

With an increasing volume of ALR hearings each year in Utah (approximately 3,500 at the time of this report), a reduction of this magnitude is significant. Although this reduction cannot be contributed entirely to the use of the telephonic format, as the reduction began before the implementation of telephonic ALR hearings, we consider the use of telephonic ALR hearings to be a factor in the continued reduced rate of “no action” findings due to the absence of law enforcement.

CONCLUSIONS AND RECOMMENDATIONS

Frequently, problematic logistical and/or cost issues have contributed to the absence of LEA officers at ALR hearings in many jurisdictions nationwide. These absences can jeopardize the outcome of these hearings if, as in Utah, the absence of the arresting officer automatically results in the return of the driving license to the appellant. This situation allows potentially dangerous drivers to continue to operate motor vehicles, at least until the outcome of the separate judicial review process. The law that allows the parties involved in an ALR hearing to participate by telephone has been shown during this project to be, at least in part, responsible for increasing the proportion of hearings conducted. Thus, more drivers arrested for impaired or intoxicated driving have lost driving privileges (rather than keeping the license due to the absence of the arresting officer), fulfilling the intended purpose of the ALR law.

Based on the findings of this project, we offer the following recommendations.

- Appropriate statutes should be adopted to allow telephonic¹³ administrative hearings in states where there are problems with law enforcement officers failing to appear at ALR hearings.

¹³ Although this study dealt with telephonic capabilities, project staff would encourage any proposed legislation in other states to include audio-visual means as well, to enhance future potential.

- High quality telephonic equipment should be purchased and thoroughly tested before field implementation is initiated to insure high quality audio with as few problems as possible.
- Hearing officers (or whomever is designated as equipment operators) should be thoroughly trained and monitored to insure they are capable and comfortable with operating the telephonic equipment.
- The importance of telephonic hearings as an option should be stressed to hearing officers and law enforcement officers.
- The option of telephonic hearings should be offered statewide.
- Steps should be taken to make sure law enforcement officers are aware of the option of testifying telephonically and how to do so.
- Records should be kept by the driver licensing agency as to the number of telephonic hearings conducted, as well as which parties have participated telephonically (i.e., law enforcement agencies, appellants, defense attorneys). This type of record keeping, along with tracking which hearings are not held and the reasons, allows the agency to pinpoint areas for improvement.

In addition to the recommendations related to ALR telephonic hearings, we make the following recommendations regarding all ALR hearings:

- The importance of administrative license action hearings should be stressed to command officers at all law enforcement agencies. State officials should encourage LEA command officers to encourage arresting officers to attend ALR hearings.
- Training should always remain an ongoing priority with hearing officers to ensure they are operating uniformly. Refresher courses, and possibly testing, should be routine for topics such as the role of ALR hearing participants, handling difficult personalities, and allowing only pertinent issues to be addressed by all parties.
- Training and refresher written procedural materials relative to ALR hearings, both standard and telephonic, should be prepared and made available to all law enforcement officers. Topics such as the role of the officers during a hearing, dealing with defense attorneys, the proper way to object to inappropriate questions during an ALR hearing, and what types of comments are considered to be proper closing remarks should be covered.
- There should be appropriate channels to handle complaints on the hearing proceedings and/or outcome, and all parties should be knowledgeable about those channels.
- The arresting officers should either receive notification of the decision of the hearing officer relative to the licensing action, or there should be an easy way for the arresting officers to telephone a designated individual, or query a data system to learn of the outcome of a hearing.

The administrative license revocation capability is an important tool in the arsenal of highway safety authorities and is used in many states in the ongoing battle against drinking and driving behavior. But if the use of this tool is limited due to an unwieldy or ineffective process, then the tool becomes less effective at best and, at worst, ineffective

RESULTS

in serving its intended purpose of expeditiously removing unsafe drivers from our nation's roadways, and in quickly sanctioning impaired drivers.

This project has studied one solution, allowing telephonic testimony at administrative hearings, as a remedy to the problem of law enforcement officers failing to appear at ALR hearings. Through this study of the experiences encountered in Utah, we hope to have illuminated the difficulties encountered and the possibilities uncovered by the use of telephonic capabilities during the administrative hearings on licensing actions. As a result of this project, we conclude that telephonic hearings are a unique, relatively simple solution to a vexing problem that can be readily replicated by other jurisdictions.

APPENDICES

--Available in hard copy only on request--