

**Federalism and Drunk Driving Deaths:  
A Comparison Between State *Per Se* Laws and Fatalities**

Driving under the influence became a crime in the United States in 1910 when New York passed the first laws against operating a motor vehicle under the influence of alcohol.<sup>1</sup> The rest of the nation, however, did not soon follow. It was not until the 1980s that dangers of driving under the influence became a more exigent issue to the public, and legislation at the federal level began to respond.

Congress began encouraging the states to enact stricter impaired driving laws throughout the 1980s and 1990s—but states nevertheless took over twenty years to follow the federal recommendations.<sup>2</sup> Though states have the freedom and control to regulate traffic laws, many states that continue to stray from the national standard suffer higher DUI fatalities overall.

Beginning in 1982, Congress enacted several acts which provided grants to states which enacted “.08 *Per Se* Laws”, requiring to states to set the illegal limit at .08 BAC in order to receive federal grant funding.<sup>3</sup> However, only 3 states took the opportunity. Congress created the Transportation Equity Act in 1998, increasing their grant incentive, but still did not reach all 50 states. At that time, alcohol-related fatalities accounted for a formidable 38% of all traffic fatalities in the

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<sup>1</sup> “First Drunk Driving Arrest.” History.com, A&E Television Networks, 24 Nov. 2009, <https://www.history.com/this-day-in-history/first-drunk-driving-arrest>.

<sup>2</sup> “Legislative History of .08 Per Se Laws.” NHTSA, [https://one.nhtsa.gov/people/injury/research/pub/alcohol-laws/08History/1\\_introduction.htm](https://one.nhtsa.gov/people/injury/research/pub/alcohol-laws/08History/1_introduction.htm).

<sup>3</sup> *Id.*

nation.<sup>4</sup> Finally, Congress brought down the hammer in 2001 and threatened to defund federal highway funds if states did not comply with .08 *Per Se* Laws, to which the late state followed in 2004—22 years after the first Act of Congress.<sup>5</sup>

However, the percentage of alcohol-related traffic deaths to all traffic fatalities was still 30% in 2020. Though all states now have at least a .08 BAC limit, do we need Congress to incentivize the states once more?

Utah was the first state to adopt *per se* laws in 1983 and is still the only state with a .05 BAC limit.<sup>6</sup> Utah had 39 total alcohol-impaired fatalities in 2019, with just 3 under 21 deaths. Utah and many other states with substantial decreases in DUI deaths also enforce sobriety checkpoints for enhanced deterrence. Texas, one of the last to enact *per se* laws, remains at a .08 legal limit with a strict prohibition on sobriety checkpoints. Fatalities follow. Texas had almost 1,500 alcohol-related traffic deaths in 2019, and one of the highest numbers of under 21 related fatalities at 158, with a rate 33 times higher than the national average.<sup>7</sup>

This nation is suffering from alcohol-related traffic fatalities at a growing rate. The federal government required states to act and those who did have benefitted exponentially. Those who follow lenient guidelines and are slow to change unfortunately still suffer.

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<sup>4</sup> “Drunk Driving.” NHTSA, <https://www.nhtsa.gov/risky-driving/drunk-driving>.

<sup>5</sup> “Legislative History of .08 Per Se Laws.” NHTSA, [https://one.nhtsa.gov/people/injury/research/pub/alcohol-laws/08History/1\\_introduction.htm](https://one.nhtsa.gov/people/injury/research/pub/alcohol-laws/08History/1_introduction.htm).

<sup>6</sup> “National Drunk Driving Statistics Map.” Responsibility.org, 1 Apr. 2022, <https://www.responsibility.org/alcohol-statistics/state-map/state/texas/issue/alcohol-per-se-laws/>.

<sup>7</sup> *Id.*

The question of whether Congress must pass another Act to guide the states and reduce alcohol-related fatalities must be addressed. The states have the power to protect the public good. As James Madison stated, “the choice must always be made, if not of the lesser evil, at least of the greater, not the perfect good”.<sup>8</sup>

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<sup>8</sup> Hamilton, Alexander. *The Federalist Papers*. Dutton/Signet, 2012.