

## ELDERLY DRIVERS: THE NEED FOR TAILORED LICENSE RENEWAL PROCEDURES

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*For many elderly people, the ability to drive provides not only a means of transportation, but also a sense of independence. Unfortunately, as the percentage of elderly drivers increases, so too does the number of accidents involving elderly drivers. In her note, Ms. Jennifer Klein analyzes the current status of licensing renewal procedures for elderly drivers and the need for procedures more focused on the elderly. After noting variations among the states, Ms. Klein focuses on the Illinois driver's license renewal statute, the most rigid of its kind. Next, Ms. Klein examines other approaches such as counseling, restricted licenses, and anonymous reporting. Before any kind of safeguards can be adopted to confront the problem of elderly drivers, Ms. Klein recognizes two potential roadblocks: political support and constitutional protections. However, Ms. Klein demonstrates that these obstacles can be overcome by implementing procedures to insure that only incompetent drivers remain off the road. Driver's license renewal procedures should be ability-focused, not age-focused. To protect elderly drivers, Ms. Klein concludes by recommending that states initially pattern their driver's license renewal statutes after the Illinois model. Next, states should implement legislation to insure that further research is instigated to promote safer road conditions for all drivers. Finally, Ms. Klein urges states to consider using technology to develop simulation and sensory perception tests that more accurately gauge elderly driving ability.*

## I. Introduction

One motor vehicle fatality occurs every thirteen minutes in the United States.<sup>1</sup> Furthermore, motor vehicle accidents represent the most frequent types of accidental deaths and injuries in this country.<sup>2</sup> In 1992, automobile collisions accounted for 40,300 fatalities, 2.2 million injuries, and \$156.6 billion in losses.<sup>3</sup> For those Americans under eighty years old, motor vehicle accidents are the most common type of fatal injury.<sup>4</sup> In recent years, the number of older licensed drivers has increased rapidly. Currently, there are approximately 14,477,000 licensed drivers seventy years of age and over, which is a fifty-nine percent increase from 1981.<sup>5</sup> These older drivers make up over eight percent of the total number of licensed drivers.<sup>6</sup> The number of licensed drivers over the age of seventy-five will more than double to 17.5 million by the year 2020.<sup>7</sup> Drivers age eighty-five and over are involved in the highest number of accidents per mile traveled when compared to all other age groups, with the cause of the accidents usually due to the elderly driver's error, misjudgment, or violation of traffic laws.<sup>8</sup>

With the population of elderly people in the United States steadily increasing,<sup>9</sup> there will be more elderly drivers and consequently more accidents per mile driven in the upcoming decades. Furthermore, the next generation of elderly will be much more dependent on their ability to drive than were their predecessors as a result of their current level of high dependence on the automobile. This increase in

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1. NATIONAL SAFETY COUNCIL, ACCIDENT FACTS 25 (1993).

2. *Id.*

3. *Id.*

4. *Id.* at 23.

5. *Id.*

6. *Id.* For purposes of this note, "elderly" is considered to be those persons 75 years of age and older. See *infra* text accompanying note 175 for an explanation. Note that for commercial aviation, pilots must retire at age 60. Patricia F. Waller, Driver Licensing for the Elderly, Presented to Fifth International Conference on Mobility and Transport for Elderly and Disabled Persons 3 (1989) (transcript on file with *The Elder Law Journal*).

7. Joan E. Rigdon, *Older Drivers Pose Growing Risk on Roads as Their Numbers Rise*, WALL ST. J., Oct. 29, 1993, at A1.

8. NATIONAL SAFETY COUNCIL, *supra* note 1, at 23. Driver action, such as error or misjudgment, is more often the cause of motor-vehicle accidents with older drivers than with younger drivers. Younger drivers tend to be in accidents due to reckless driving and alcohol-related causes. *Id.*

9. U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES, THE NATIONAL DATA BOOK 24 (1993). In 1995, approximately 12.8% of the population will be 65 years of age or older, whereas in 2025, approximately 18.7% of the population will be in this age group. *Id.*

miles driven by the elderly drastically affects the accident rate, due to the typical causes of the accidents involving elderly drivers. While younger drivers may be a danger to society because of their reckless and careless behavior behind the wheel,<sup>10</sup> elderly drivers may be far more dangerous because of their deteriorating ability to drive. In other words, although elderly drivers are involved in fewer accidents, elderly drivers are in far more accidents on a per-mile-driven basis. When they are involved in accidents, drivers over age eighty-five are fifteen times more likely to die than drivers in their forties.<sup>11</sup>

Although perhaps the most dangerous mode of transportation, driving "is viewed not merely as a mode of transportation, but as a symbol of independence and freedom."<sup>12</sup> "Just as the young person views the license as a rite of passage into the adult world of independence, so the elderly driver views its loss as a loss of independence and even identity."<sup>13</sup> In order to balance the desire to drive with the need for safe highways, the issuance and renewal of a driver's license is regulated in every state and the District of Columbia.<sup>14</sup> Prospective drivers must satisfy their respective jurisdiction's statutory requirements before being issued a driver's license.<sup>15</sup> Unfortunately, the system is not perfect. Many incompetent drivers<sup>16</sup> continue to remain behind the wheel rather than being denied the renewal of their license or being issued a restricted license.

This note focuses on the need to change the license renewal procedures for elderly drivers. Although not all elderly drivers are poor drivers, there is a statistically proven decline in the general ability of older drivers. Therefore, this note will analyze the current state renewal procedures and the need for more thorough testing methods

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10. Motor-vehicle accidents were the leading cause of accidental death from birth to age 77 in 1989. Those 19 years old experienced the greatest number of motor-vehicle fatalities in 1989. NATIONAL SAFETY COUNCIL, *supra* note 1, at 9.

11. Rigdon, *supra* note 7, at A1.

12. Ellen H. DeMont, Comment, *High-Risk Drivers: The Privilege to Drive Does Not Include a License to Kill*, 93 DICK. L. REV. 819, 819 (1989).

13. Patricia F. Waller, *Renewal Licensing of Older Drivers*, in TRANSPORTATION RESEARCH BD., NATIONAL RESEARCH COUNCIL, SPECIAL REPORT 218, 2 TRANSPORTATION IN AN AGING SOCIETY: IMPROVING MOBILITY AND SAFETY FOR OLDER PERSONS 72 (1988).

14. See *infra* note 61.

15. See *infra* note 61.

16. This note focuses on the elderly driver and the risks that are involved with the aging driver. This note does not address the driver who may be incompetent due to disease or physical disabilities. The terms "incompetent," "high-risk," "unsafe," and "elderly" are used interchangeably. The elderly population is analyzed as a group and is generalized as such, rather than on a case-by-case basis.

for elderly drivers. This note will also recommend that counseling and educational procedures be implemented to allow elderly drivers to remain on the road as long as they are capable of driving safely. Furthermore, new procedures need to be developed and then used by all state licensing examiners to insure that only once a driver becomes a hazard to public safety is his or her driver's license either restricted or denied renewal.

## **II. Background**

### **A. The Increasing Age of America**

Predictions vary slightly among studies, but there is no doubt that the older population is steadily increasing over the decades.<sup>17</sup> Two major influences account for the increasing elderly population: the high birth rate from 1945 to 1970 and the improvements in health care and medicine.<sup>18</sup> These changes in the age structure of our population have been referred to as the "squaring of the pyramid" (Figure 1).<sup>19</sup> Not only is the older population increasing steadily, but the desire of older people to drive more often reflects the changing characteristics of the general population.<sup>20</sup> Most noteworthy is the increasing use of the automobile due to the growing population residing in suburban areas as opposed to the city.<sup>21</sup>

### **B. Accident and Fatality Rates Among Elderly Drivers**

The population and the driving frequency of the elderly generation are increasing, although their sensory, perceptual, cognitive and motor faculties are substantially deteriorating.<sup>22</sup> Consequently, there are not only more accidents per mile driven by elderly drivers (Figure

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17. By the year 2080, 30% of the United States population will be over age 60 and almost 6% of those people will be over age 85. WILLIAM J. SEROW ET AL., *POPULATION AGING IN THE UNITED STATES* 3 (1990). According to a 1990 Transportation Research Board Report, discussed in a Senate report, entitled "Safety Research for a Changing Highway Environment," the aging of the United States population is expected to reach a peak by 2030, when those age 65 and older will represent 22% of the population. S. REP. NO. 199, 103d Cong., 1st Sess. 2-3 (1993).

18. TRANSPORTATION RESEARCH BD., NATIONAL RESEARCH COUNCIL, *SPECIAL REPORT 218, 1 TRANSPORTATION IN AN AGING SOCIETY: IMPROVING MOBILITY AND SAFETY FOR OLDER PERSONS* 21 (1988).

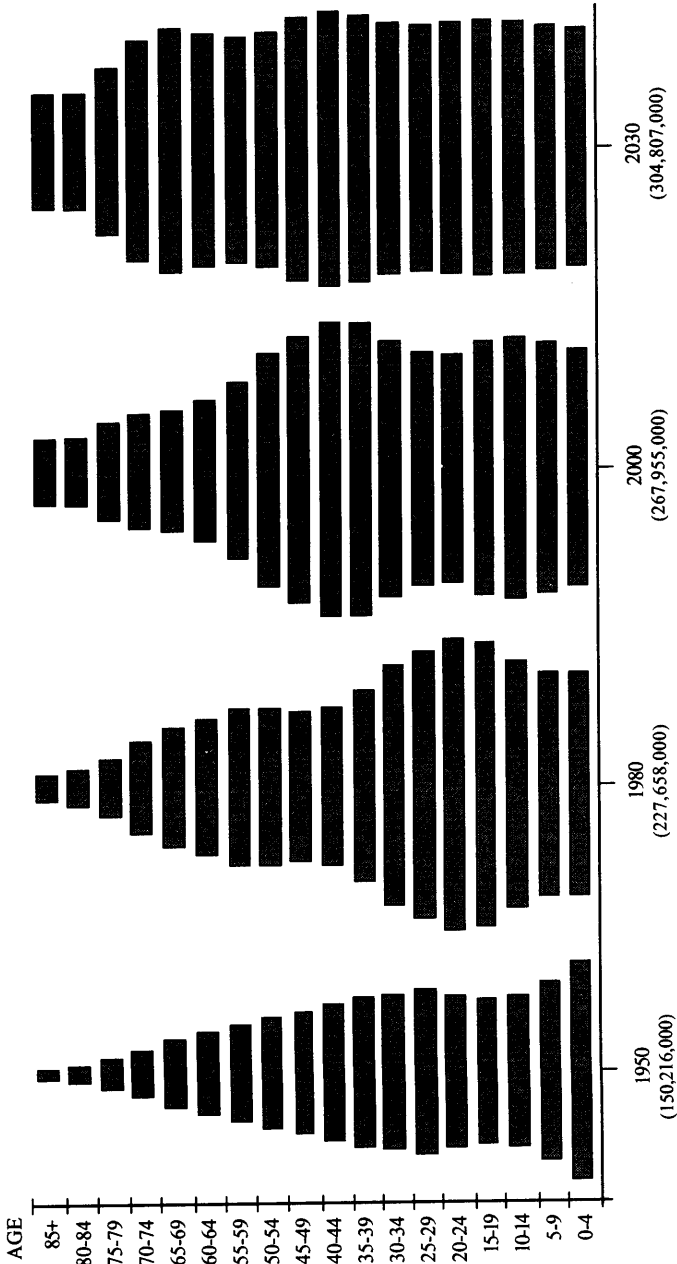
19. *Id.*

20. *Id.* at 22.

21. *Id.*

22. RAHIM F. BENEKOHAL ET AL., *FINAL REPORT: HIGHWAY OPERATIONS PROBLEMS OF ELDERLY DRIVERS IN ILLINOIS* 3 (1992) [hereinafter *FINAL REPORT*].

Figure 1



Reprinted by permission of Transportation Research Board, National Research Council, Washington, D.C., from *Transportation in an Aging Society: Improving Mobility and Safety for Older Persons* 21 (1988) (Special Report 218).

2),<sup>23</sup> but also more fatalities. In 1992, drivers seventy-five years of age and older were involved in 11.5 fatal crashes per 100 million miles driven, whereas drivers thirty-five to fifty-nine years of age were involved in two fatal crashes per 100 million miles driven.<sup>24</sup> Because older drivers are physically more vulnerable and frail than other drivers, they are more likely to be killed or injured in crashes.<sup>25</sup> When elderly drivers remain on the road, the safety of the elderly drivers is actually more of a concern than the safety of the public.<sup>26</sup> The consequences of an accident are more severe for elderly drivers and occupants, than for younger drivers and occupants.<sup>27</sup> Although elderly drivers' per capita involvement in accidents is the lowest of any age group, this is because as a group they tend to drive fewer miles and avoid driving at night.<sup>28</sup> On a mile-for-mile basis, elderly drivers over age eighty-five are involved in accidents more than four times as often as the safest drivers, those who are age fifty to fifty-nine.<sup>29</sup> *Motor vehicle* accidents represent the most common cause of accidental death for the sixty-five to seventy-four-year-old age group and the second most common cause for the age seventy-five or older age group.<sup>30</sup>

### C. Deteriorating Driving Ability in Elderly Drivers

Age alone is not an accurate indicator of driving ability.<sup>31</sup> However, the physical and cognitive changes that accompany aging affect the driving abilities of older drivers in a variety of ways.<sup>32</sup> Although "[t]he relative overinvolvement in crashes per mile driven in the elderly today, while still high, is lessening as more experienced drivers

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23. TRANSPORTATION RESEARCH BD., NATIONAL RESEARCH COUNCIL, SPECIAL REPORT 229, SAFETY RESEARCH FOR A CHANGING HIGHWAY ENVIRONMENT 26 (1990) [hereinafter SPECIAL REPORT].

24. S. REP. NO. 199, 103d Cong., 1st Sess. 3 (1993).

25. *Id.*

26. JOHN W. EBERHARD, U.S. DEP'T OF TRANSPORTATION, NATIONAL HIGHWAY TRAFFIC SAFETY ADMIN., MOBILITY AND SAFETY: THE MATURE DRIVER'S CHALLENGE 2 (1994).

27. *Id.* at 8.

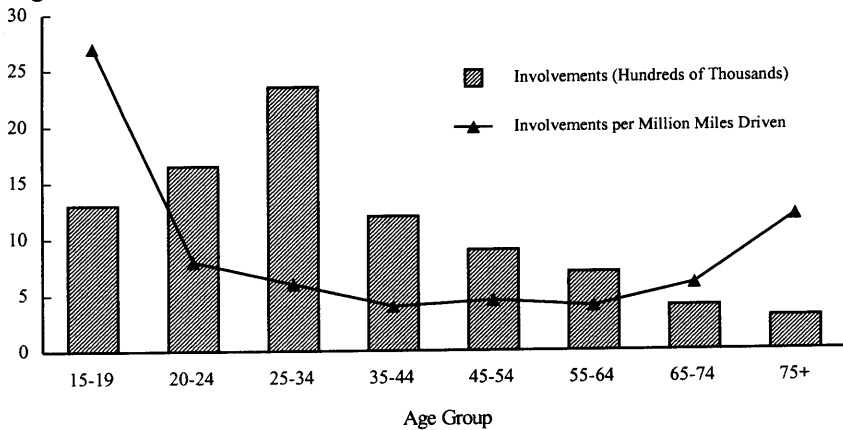
28. S. REP. NO. 199, 103d Cong., 1st Sess. 3 (1993).

29. Rigdon, *supra* note 7, at A1.

30. Arthur R. Copeland, *Traffic Fatalities Among the Elderly Population: The Metro Dade County Experience from 1981 to 1983*, 29 MED. SCI. LAW. 159, 159 (1989).

31. William H. Danne, Jr., Annotation, *Denial, Suspension, or Cancellation of Driver's License Because of Physical Disease or Defect*, 38 A.L.R.3d 452, 471 (1971); 60 C.J.S. *Motor Vehicles* § 164.4 (1969).

32. DeMont, *supra* note 12, at 820.

**Figure 2**

Reprinted, by permission of Transportation Research Board, National Research Council, Washington, D.C., from *Safety Research for a Changing Highway Environment* 26 (1990) (Special Report 229).

reach their older years,”<sup>33</sup> elderly drivers continue to be involved in some tragic accidents. In 1992, a seventy-five-year-old drove into an afternoon crowd in New York City’s Washington Square Park, killing four people and injuring twenty-seven others.<sup>34</sup> In July of 1993, an eighty-three-year-old lost control of his car in a supermarket parking lot, hit a tree, careened through the air, and landed at a bus stop, striking three children and killing one.<sup>35</sup> An eighty-eight-year-old former truck driver had been prescribed nine different medications when he ran down his wife and killed her in a shopping-mall parking lot while trying to pick her up at the door.<sup>36</sup> An eighty-two-year-old continues to drive with a license after driving into three pedestrians in a parking lot, injuring all of them.<sup>37</sup> As a final example, an eighty-seven-year-old was pulling in behind two buses that contained sixty-three third-graders at O’Hare Airport in Chicago, when the car’s accelerator allegedly malfunctioned. One child was killed and the rest were in-

33. Patricia F. Waller, *Aging and Driving Performance*, Presented to Symposium on Aging and Driving, Swedish Medical Society 6 (1994) (transcript on file with *The Elder Law Journal*).

34. Rigdon, *supra* note 7, at A1.

35. *Id.*

36. *Id.*

37. *Id.* at A6.

jured. The police found no evidence that the accelerator actually was defective.<sup>38</sup>

Although these tragic accidents of the elderly represent the subjective impressions of journalists, it is still apparent that the ability of elderly drivers decreases with age, especially in high risk situations.<sup>39</sup> High risk situations are those in which it is more likely that a driver will not be able to avoid an accident.

Driving a modern passenger vehicle on a clear day in light traffic does not overtax any dimension of performance (perceptual, cognitive, or physical). However, in heavy traffic at high speed, at night on poorly marked roads, at a complex intersection, or in a potential accident situation, the demands placed on drivers can exceed their abilities.<sup>40</sup>

Nevertheless, elderly drivers may still be involved in accidents during the daytime or while driving a familiar course.

Driving becomes more difficult with age because of the abilities required to complete the process of driving an automobile. Driving consists of four discrete phases.<sup>41</sup> A driver (1) sees or hears a situation developing, at the visual or auditory level; (2) recognizes it, at the cognitive level; (3) decides how to respond, at the cognitive level; and (4) executes the physical maneuver, at the motor level.<sup>42</sup>

Aging involves cognitive and physiological changes that may affect all four of these phases.<sup>43</sup> For instance, older persons often experience deteriorating eyesight.<sup>44</sup> Vision is one of the most important functional abilities for driving<sup>45</sup> and the most commonly used sense in driving a vehicle.<sup>46</sup> Common visual problems among the elderly include cataracts, glaucoma, increased sensitivity to glare, decreased ability to focus on both static and dynamic objects, and less acute night vision, all of which make performance of the first phase of the driving task more difficult.<sup>47</sup> The ability to hear also decreases with

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38. Ted Gregory, *Sycamore Still Stung by Tragedy*, CHI. TRIB., May 3, 1992, § 2, at 1.

39. Rigdon, *supra* note 7, at A1.

40. TRANSPORTATION RESEARCH BD., *supra* note 18, at 54.

41. *Id.* at 55.

42. *Id.* at 54-55.

43. *Id.*

44. *Id.*

45. *Id.*

46. FINAL REPORT, *supra* note 22, at 4.

47. DeMont, *supra* note 12, at 822; see also Paul L. Olson, *Problems of Nighttime Visibility and Glare for Older Drivers*, in EFFECTS OF AGING ON DRIVER PERFORMANCE, SP-762, at 53 (Engineering Soc'y for Advancing Mobility Land Sea Air & Space ed., 1988) (giving results of a study on the problems of nighttime visibility and glare



age, although the importance of hearing to safe driving has not been definitively established.<sup>48</sup> A person's cognitive capabilities, which are fundamental to recognizing and responding to a stimulus such as an impending accident, also diminish with age.<sup>49</sup> Older persons process information at a slower rate and experience memory loss at a greater rate, which affect the driver's ability to execute a physical maneuver.<sup>50</sup> Drivers must be able to analyze information in order to make decisions about actions while driving.<sup>51</sup> For example, a driver reading a directional sign must not only interpret the message, but also relate that message to the trip destination objective.<sup>52</sup> The speed of simple motor responses also diminishes with age, which affects the execution phase of driving.<sup>53</sup> Due to these deteriorating abilities, the older driver may initiate responses to control the automobile later than younger drivers.<sup>54</sup> Other physiological changes create more vulnerability among elderly people, making the outcome of crashes more severe for elderly drivers than for younger drivers.<sup>55</sup>

Unlike younger drivers, whose traffic violations tend to involve reckless behavior, older drivers tend to get into accidents as a result of failing vision or inattention. More often than not, the elderly driver is at fault.<sup>56</sup> Crashes involving elderly drivers are more likely to result from errors of omission such as failure to yield the right-of-way, running traffic signals, and turning in front of oncoming traffic, rather than errors of commission such as speeding or drunk driving.<sup>57</sup> Thus, the accidents tend to involve more than one vehicle.<sup>58</sup> Studies show that elderly drivers are the cause of an accident over fifty percent of the time when they are involved.<sup>59</sup> Failure to yield caused forty-four

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for older drivers); Douglas Poynter, *The Effects of Aging on Perception of Visual Displays*, in EFFECTS OF AGING ON DRIVER PERFORMANCE, *supra*, at 43 (giving results of a study on the effects of aging on perception of visual displays).

48. TRANSPORTATION RESEARCH BD., *supra* note 18, at 58.

49. *Id.*

50. DeMont, *supra* note 12, at 823.

51. FINAL REPORT, *supra* note 22, at 7.

52. *Id.*

53. DeMont, *supra* note 12, at 823.

54. FINAL REPORT, *supra* note 22, at 9.

55. TRANSPORTATION RESEARCH BD., *supra* note 18, at 61.

56. William E. Schmidt, *Graying of America Prompts New Highway Safety Efforts*, N.Y. TIMES, Apr. 6, 1988, at A1, A17.

57. Waller, *supra* note 6, at 2.

58. *Id.*

59. See Rene Monforton et al., *Accident Experience of Older AAA Drivers in Michigan*, in EFFECTS OF AGING ON DRIVER PERFORMANCE, *supra* note 47, at 3. This

percent of all fatal accidents involving drivers over age eighty-five compared to less than seven percent for drivers under age fifty-five.<sup>60</sup>

The accident and fatality rates of elderly drivers are high. Elderly drivers are in the highest risk group for motor vehicle accidents per mile driven. Furthermore, driving abilities have been shown to decrease with age. Therefore, the driver's license renewal policy, both on the state and federal level, needs to be improved and tailored, not only to protect America's senior citizens, but also to protect the general public.

### **III. Analysis: License Renewal Procedures Do Not Adequately Test Elderly Drivers**

#### **A. Current Attempts to Address the Problems Posed by Elderly Drivers**

##### **1. STATE LAW**

The motor vehicle codes of the fifty states and the District of Columbia offer a variety of approaches to renewing driver's licenses.<sup>61</sup>

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survey of seven accident types showed that drivers over 70 were at fault over 50% of the time in all accident modes except rear-end collisions. *Id.*

60. Rigdon, *supra* note 7, at A6.

61. The following cites represent that part of each state's statute which addresses the expiration period and, if addressed in the same section, the renewal requirements. ALA. CODE § 32-6-1 (Michie Supp. 1994); ALASKA STAT. § 28.15.101 (Michie 1994); ARIZ. REV. STAT. ANN. § 28-426 (West Supp. 1994); ARK. CODE ANN. § 27-16-901 (Michie 1994); CAL. VEH. CODE § 12816 (West Supp. 1995); COLO. REV. STAT. § 42-2-118 (Bradford Supp. 1994); CONN. GEN. STAT. ANN. § 14-41 (West Supp. 1995); DEL. CODE ANN. tit. 21, § 2716 (Michie Supp. 1994); D.C. CODE ANN. § 40-301 (Michie Supp. 1995); FLA. STAT. ANN. § 322.18 (West 1995); GA. CODE ANN. § 40-5-32 (Michie 1994); HAW. REV. STAT. § 286-106 (Michie 1991); IDAHO CODE § 49-319 (Michie 1994); 625 ILL. COMP. STAT. § 5/6-115 (West 1993); IND. CODE ANN. § 9-24-12-1 (West 1992); IOWA CODE ANN. § 321.196 (West Supp. 1995); KAN. STAT. ANN. § 8-247 (Supp. 1994); KY. REV. STAT. ANN. § 186.410 (Michie Supp. 1994); LA. REV. STAT. ANN. § 32:412 (West Supp. 1995); ME. REV. STAT. ANN. tit. 29, § 542 (West Supp. 1994); MD. CODE ANN., TRANSP. § 16-115 (Michie 1992 & Supp. 1994); MASS. ANN. LAWS ch. 90, § 8 (Law. Co-op. 1994); MICH. COMP. LAWS ANN. § 257.314 (West 1990); MINN. STAT. ANN. § 171.27 (West Supp. 1995); MISS. CODE ANN. § 63-1-47 (Law. Co-op. Supp. 1994); MO. ANN. STAT. § 302.177 (Vernon 1994); MONT. CODE ANN. § 61-5-111 (1993); NEB. REV. STAT. § 60-490 (1993); NEV. REV. STAT. ANN. § 483.380 (Michie 1994); N.H. REV. STAT. ANN. § 263:10 (Butterworth 1993); N.J. STAT. ANN. § 39:3-10 (West Supp. 1995); N.M. STAT. ANN. § 66-5-21 (Michie 1995); N.Y. VEH. & TRAF. LAW § 503 (McKinney 1986 & Supp. 1995); N.C. GEN. STAT. § 20-7 (Michie Supp. 1994); N.D. CENT. CODE § 39-06-19 (Michie 1987); OHIO REV. CODE ANN. § 4507.09 (Anderson Supp. 1994); OKLA. STAT. ANN. tit. 47, § 6-115 (West Supp. 1995); OR. REV. STAT. § 807.130 (Michie 1995); 75 PA. CONS. STAT. ANN. § 1514 (West 1977); R.I. GEN. LAWS § 31-10-30 (Michie 1994); S.C. CODE ANN. § 56-1-210 (Law. Co-op. Supp. 1994); S.D. CODIFIED LAWS ANN. § 32-12-42 (Michie Supp. 1994); TENN. CODE ANN. § 55-50-337 (Michie 1993); TEX. REV. CIV. STAT. ANN. art. 6687b (West Supp. 1995); UTAH CODE ANN. § 41-3-206 (Michie

Only a few states have specific licensing statutes which attempt to identify high-risk elderly drivers.<sup>62</sup> Most states roughly follow the Uniform Vehicle Code which states that a driver's license shall not be renewed to any person "[w]hen the commissioner has good cause to believe that such person by reason of physical or mental disability would not be able to operate a motor vehicle with safety upon the highways."<sup>63</sup> This restriction is broad, however, and fails to address the particular problems of elderly drivers. The Code, and therefore many of the states, require applicants to take such additional tests as the state driver's licensing bureau finds reasonably necessary to determine the applicant's incompetency or qualification to drive.<sup>64</sup> However, these tests are not uniformly enforced by state licensing bureaus.

The renewal standards in each state vary as to the frequency of testing. Furthermore, the effectiveness of required examinations can be questionable. In evaluating the effectiveness of the examinations, four main areas are usually considered: vision screening,<sup>65</sup> knowledge testing,<sup>66</sup> road testing,<sup>67</sup> and medical and physical evaluations.<sup>68</sup>

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1993); VT. STAT. ANN. tit. 23, § 601 (Equity 1987); VA. CODE ANN. § 46.2-330 (Michie 1994); WASH. REV. CODE ANN. § 46.20.181 (West Supp. 1995); W. VA. CODE § 17B-2-12 (Michie Supp. 1994); WIS. STAT. ANN. § 343.20 (West 1991); WYO. STAT. § 31-7-119 (1994).

62. See sources cited *infra* note 72.

63. UNIF. VEHICLE CODE § 6-103 (1987). Note that when referring to "states," the District of Columbia will be deemed to be included for statistical purposes, making the total number of "states" fifty-one.

64. UNIF. VEHICLE CODE §§ 6-116, -210(a)(4), -212 (1987).

65. A variety of vision functions can be tested. Those commonly tested include: (1) static visual acuity, the ability to discriminate fine, stationary, high-contrast details; (2) dynamic visual acuity, the ability to distinguish detail in moving objects; and (3) visual field, the degree of arc that a person sees when looking straight ahead. TRANSPORTATION RESEARCH BD., *supra* note 18, at 56-57. The primary vision examinations in the United States test only static visual acuity. DeMont, *supra* note 12, at 834.

66. The term *knowledge test* applies to the written part of the examination that tests the driver's knowledge of safe driving practices and the traffic laws of the state, including the ability to read and understand official traffic-control devices such as signs and traffic lights. DeMont, *supra* note 12, at 833 nn.118-19.

67. The term *road test* applies to the part of the examination that tests the driver's ability to exercise ordinary and reasonable control in the operation of an automobile by having the driver demonstrate his or her ability on the road while accompanied by a driver's license examiner. *Id.* at 833 n.120.

68. A medical and physical examination involves an examination performed by a licensed physician for the purpose of determining the driver's potential as a safe driver. *Id.* at 834.

a. *Frequency of Testing* Thirty-one states and the District of Columbia issue a driver's license for a term of four years.<sup>69</sup> The remaining states have driver's license renewal terms ranging from one year to six years, with one state not requiring drivers to renew their licenses until they reach age sixty.<sup>70</sup> Although forty-nine states require periodic reexaminations of all drivers,<sup>71</sup> only eight states require more frequent license renewals by the elderly.<sup>72</sup> Several states even allow mail-in renewals.<sup>73</sup> Florida, which has the nation's largest proportion of seniors, allows drivers to renew by mail for up to twelve years at a time.<sup>74</sup> Delaware allows drivers, regardless of age, to maintain a permanent license if the driver chooses to do so.<sup>75</sup>

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69. These states are Alabama, Arkansas, California, Connecticut, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. See sources cited *supra* note 61.

70. Florida and Maine issue a license for six years. Ten states issue a license for five years, including Alaska, Colorado, Maryland, Massachusetts, North Carolina, Rhode Island, South Carolina, South Dakota, Tennessee, and Virginia. New York issues a driver's license for four and one-half years. Missouri issues driver's licenses for three years. North Dakota has a two-year renewal period. Utah issues driver's licenses for only one year. Iowa allows the drivers to choose whether they want a two- or four-year license. Arizona does not require drivers to renew their licenses until age 60. Finally, Delaware allows citizens to maintain a permanent license. See sources cited *supra* note 61.

71. Only Arizona and Delaware do not require periodic reexaminations of all drivers. ARIZ. REV. STAT. ANN. § 28-426 (West Supp. 1994); DEL. CODE ANN. tit. 21, § 2716 (Michie Supp. 1994).

72. Arizona does not require a periodic renewal until the driver reaches age 60 and then requires renewal every five years. ARIZ. REV. STAT. ANN. § 28-426 (West Supp. 1994). Connecticut and Hawaii require drivers 65-years-old and older to renew every two years, as opposed to every four years. CONN. GEN. STAT. ANN. § 14-41a (West Supp. 1995); HAW. REV. STAT. § 286-106 (Michie 1991). In Illinois, drivers ages 81 to 86 must renew every two years and drivers age 87 and over must renew every year. 625 ILL. COMP. STAT. § 5/6-115 (West 1992). A driver age 75 and over must renew every three years in Indiana. IND. CODE ANN. § 9-24-12-1 (West 1992). In Iowa and Rhode Island, a driver age 70 and over must renew every two years. IOWA CODE ANN. § 321-196 (West Supp. 1995); R.I. GEN. LAWS. § 31-10-30 (Michie 1994). Maine decreases their renewal period from six years to four years once the driver reaches age 65. ME. REV. STAT. ANN. tit. 29, § 542 (West Supp. 1994). New Hampshire critiques their drivers more carefully beginning at age 75. N.H. REV. STAT. ANN. § 263:10 (Butterworth 1993).

73. Rigdon, *supra* note 7, at A6.

74. FLA. STAT. ANN. § 322.18 (West 1995). Florida, however, has recently introduced legislation that would require all drivers over age 75 to complete an eye test for each driver's license renewal and would decrease the renewal period to every four years instead of six years. Bill Moss, *Bill Would Restrict Oldest, Youngest Drivers in Florida*, ST. PETERSBURG TIMES, Mar. 16, 1995, at 11A.

75. DEL. CODE ANN. tit. 21, § 2713 (1985).

Some states have special requirements for elderly drivers. For example, a few states allow driver's licenses to be renewed by mail if the applicant is under a certain age.<sup>76</sup> Some states shorten the renewal term when the applicant reaches a certain age.<sup>77</sup> This shorter renewal term allows the examiner to observe the applicant in person, which facilitates earlier detection and evaluation of potential problems,<sup>78</sup> thereby possibly preventing accidents. Furthermore, it allows more frequent reexamination of elderly drivers' vision.

*b. Effectiveness of Examinations* In addition to determining the required frequency of driver's license renewals, a state must also evaluate the effectiveness of each test. The state must determine whether to require a certain test at a specific age in order to renew a license. Standard, and elderly, renewal procedures vary widely among the states.

States most commonly require drivers to pass a vision examination before their licenses can be renewed.<sup>79</sup> Few states restrict vision examinations to only those applicants over a certain age.<sup>80</sup> The typical standard for static visual acuity is "20/40 vision with both eyes open for licensure without restriction to corrective lenses."<sup>81</sup> Most states do not require testing for visual field, dynamic visual acuity, color perception, depth perception, or other visual proficiency for the renewal of a standard driver's license.<sup>82</sup>

Vision is essential to safe driving. However, it is difficult to show a direct relationship between performance on standard vision tests and driving records.<sup>83</sup> More research is needed in this area, but the importance of routine vision testing for all applicants is demonstrated by the fact that drivers of all ages fail standard tests of visual acuity which demonstrates that vision constantly changes.<sup>84</sup> Often

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76. See, e.g., ALASKA STAT. § 28.15.101 (1994); CAL. VEH. CODE § 12814.5 (West Supp. 1995); LA. REV. STAT. ANN. § 32:412 (West Supp. 1995).

77. See *supra* note 72.

78. Waller, *supra* note 13, at 85.

79. DeMont, *supra* note 12, at 834.

80. For example, Arizona requires a vision examination once the renewal applicant reaches age 60. ARIZ. REV. STAT. ANN. § 28-426.01 (West Supp. 1994). Maine requires a vision examination every third renewal for drivers between the ages of 40 and 65. ME. REV. STAT. ANN. tit. 29, § 545A (West Supp. 1994). For drivers age 65 and above, Maine requires a vision examination every renewal period. *Id.*

81. Waller, *supra* note 13, at 74.

82. *Id.* See *supra* note 65 for a definition of some of these terms.

83. Waller, *supra* note 13, at 75.

84. *Id.*

those who perform best on tests of vision, for other reasons, such as carelessness, may have the worst driving records.<sup>85</sup>

The inaccuracy of vision examinations for the elderly may be caused by the lack of reliable vision testing. For example, the elderly have more vision problems at night than at any other time. Furthermore, studies show that the elderly have a more difficult time finding information from a cluttered field of view than do younger drivers.<sup>86</sup> One of the main problems for elderly drivers is that their vision performance deteriorates so gradually that it is often not detected early enough.<sup>87</sup> "The eye is the only source of driver information about objects on the roadway . . . [and] the only source of information on roadway signs, traffic signals, and vehicle signals,"<sup>88</sup> and therefore it is vital that vision be tested regularly. Although most states do require vision screening with each renewal, several states have eliminated in-person renewal for drivers with safe-driving records.<sup>89</sup> In these states, an eighty-three-year-old driver could avoid at least one in-person renewal, and therefore vision screening, until age ninety-one.<sup>90</sup>

Only a few jurisdictions require applicants to pass a knowledge test in order to renew their licenses.<sup>91</sup> No state specifically requires elderly drivers to take a knowledge test at a certain age.<sup>92</sup> The evidence for the effectiveness of knowledge tests is less available than the evidence for the effectiveness of vision testing.<sup>93</sup> The elimination of routine knowledge testing for older license renewal applicants with

85. Waller, *supra* note 33, at 8. Note that safe-driving records usually mean no violation convictions, rather than no crashes. *Id.*

86. Joanne M. Wood & Rod J. Troutbeck, *Effect of Age and Visual Impairment on Driving and Vision Performance*, in TRANSPORTATION RESEARCH RECORD NO. 1438, SAFETY AND HUMAN PERFORMANCE, RESEARCH ISSUES ON BICYCLING, PEDESTRIANS, AND OLDER DRIVERS 89 (1994).

87. *Id.*

88. MERRILL J. ALLEN, VISION AND HIGHWAY SAFETY 5 (1970).

89. Waller, *supra* note 33, at 8.

90. *Id.*

91. DeMont, *supra* note 12, at 834. Those states that do require a knowledge examination for all renewal applicants are Arizona, Hawaii, Kansas, Louisiana, Massachusetts, Virginia, and Washington. ARIZ. REV. STAT. ANN. § 28-426 (West Supp. 1994); HAW. REV. STAT. § 286-107 (Michie 1991); KAN. STAT. ANN. § 8-247 (Supp. 1994); KY. REV. STAT. ANN. § 186.480 (Michie Supp. 1994); LA. REV. STAT. ANN. § 32:408 (West Supp. 1995); MASS. ANN. LAWS ch. 90, § 8 (Law. Co-op. 1994); VA. CODE ANN. § 46.2-330 (Michie 1994); WASH. REV. CODE ANN. § 46.20.120 (West Supp. 1995).

92. Although Hawaii requires drivers age 65 and over to renew every two years, as opposed to every four years, the knowledge test is still only required every four years. HAW. REV. STAT. § 286-107 (Michie 1991).

93. Waller, *supra* note 13, at 75.

no convictions during the prior renewal period appears to have no adverse effect on driving performance.<sup>94</sup> Studies do show, however, that performance on a well-constructed knowledge test is related to driving performance.<sup>95</sup>

States rarely require periodic road tests for driver's license renewal.<sup>96</sup> Although road testing may have some relationship to subsequent driving records, it is time-consuming, expensive, and generally avoided by states.<sup>97</sup> Evidence suggests that the present method of road testing is not useful in renewal testing, even for elderly drivers.<sup>98</sup> Road tests usually test typical daytime driving patterns. However, older drivers most often encounter difficulties when driving at night, driving which involves either sudden changes in driving conditions, or driving a new route. Therefore, road tests may still be useful for testing specific older driver's performances, if the tests could be made more realistic.

Medical and physical examinations are not part of the routine renewal procedure in any state.<sup>99</sup> Arizona requires that applicants pass a medical examination starting at age sixty with each renewal.<sup>100</sup> Some states have Medical Advisory Boards that provide expertise to the licensing authority on medical questions relating to an applicant's ability to drive safely.<sup>101</sup> In-person renewal allows examiners to evaluate applicants and, with proper training, to detect potential medical problems that may interfere with safe driving performance.<sup>102</sup> It is vital for the driver's license examiner to recognize when an applicant should be referred for more extensive professional evaluation.<sup>103</sup> Most states have provisions within their statutes that allow the state to require further examination of the renewal applicant if necessary. The examiner must be aware that the probability of developing medical problems increases with age, but that there is no evidence that age

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94. *Id.* However, younger drivers who were excused from knowledge testing showed worse subsequent performance than their counterparts who were required to take the knowledge test. *Id.*

95. *Id.*

96. Illinois, however, requires a road test at the age of 75. 625 ILL. COMP. STAT. § 5/6-109 (West 1992).

97. Waller, *supra* note 13, at 75.

98. *Id.* at 76.

99. See sources cited *supra* note 61.

100. Arizona requires a renewal applicant that is at least age 60 to pass certain medical standards. ARIZ. REV. STAT. ANN. § 28-426 (West Supp. 1994).

101. DeMont, *supra* note 12, at 834.

102. Waller, *supra* note 13, at 77.

103. *Id.*

alone is associated with poorer driving performance.<sup>104</sup> The examiner at least must be able to detect that an elderly driver has a potential impairment and refer that applicant to a physician before his or her license is renewed.

## 2. FEDERAL LAW

The federal highway safety standard for licensing drivers includes requirements for a reexamination preceding renewal. The re-examination should:

1. Occur at least every four years;
2. Include testing for visual acuity and for knowledge of the rules of the road;
3. Be designed to identify any driver deficiencies and limitations;
4. Provide remedial measures for applicants with any deficiencies and limitations;
5. Include provisions for terminating the driving privileges of those who are unable to meet these safe driving standards; and
6. Provide remedial procedures for improving driver performance by refreshing the driver's knowledge and educating him or her in areas unknown to him or her.<sup>105</sup>

These guidelines are a start, but like many of the state laws, they do not adequately address the needs of elderly drivers.

Congress attempted to pass the High Risk Drivers Act of 1993 but was unable to enact the law before the end of the term.<sup>106</sup> Although the bill focused on younger drivers, the bill would have required extensive research to determine ways to improve traffic records of older drivers and to improve licensing examiners' ability to recognize the physical limitations of older drivers.<sup>107</sup> Unfortunately, bills geared towards more frequent reexamination of elderly drivers receive much opposition. Part of the opposition to any state or federal

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104. *Id.*

105. *Id.* at 73. Item four refers to drivers with deficiencies whereas item six refers to improving all drivers' performances.

106. S. REP. NO. 199, 103d Cong., 1st Sess. (1993). This bill (H.B. 1719 and S.B. 738) was introduced to the House Committee on Public Works and Transportation on April 19, 1993, by Representative Wolf and to the Senate Committee on Commerce, Science and Transportation on April 2, 1993, by Senator Danforth. It passed the Senate as amended on November 20, 1993, and then it went to the House. It never made it through the House or to the President's desk. This measure was combined with an unrelated bill and renamed H.R. 5248. On October 7, 1994, the House passed this new bill by voice vote. The Senate did not consider the House resolution upon passage. As of the spring of 1995, the two versions must now be reconciled in conference. Thus, the bill does not appear to be progressing satisfactorily. If and when the bill does become law, it now has little focus on elderly drivers and would not have the necessary impact on current law.

107. *Id.*



statutory reform is the elderly generation's fear of losing their independence and society's perception that licensing requirements based on age are a form of age discrimination.

### 3. ILLINOIS'S DRIVER'S LICENSE RENEWAL STATUTE

Illinois's Driver's License Renewal Statute provides the most rigid standards of any current law for elderly drivers to renew their licenses.<sup>108</sup> Illinois requires more frequent license renewals by elderly drivers than by younger drivers.<sup>109</sup> Until the age of eighty-one, a driver must renew his or her license every four years.<sup>110</sup> Between the ages of eighty-one and eighty-six, the renewal period is every two years.<sup>111</sup> A driver over the age of eighty-seven must renew his or her license every year.<sup>112</sup> After the age of seventy-five, every Illinois driver must pass a road test in order to renew his or her license.<sup>113</sup> Illinois is also one of the few states to require a complete vision test, which examines acuity, peripheral vision, and depth perception, rather than simply requiring the static visual acuity test.<sup>114</sup>

### 4. OTHER SOLUTIONS

Some states have tried methods other than heightened license renewal requirements to monitor elderly drivers effectively and to help elderly drivers keep their driver's licenses. Some of the more common methods are restricted licenses, anonymous reporting, highway improvements, educational courses, and individual counseling.

Restricted licenses are offered by most states in the form of daylight driver's licenses.<sup>115</sup> A few states offer further restrictions, such as restricting driving to non-rush hours.<sup>116</sup> These restricted license programs have not always been successful.<sup>117</sup> For example, Sun City, Arizona, abandoned its program after an elderly woman with a restricted license ran down and killed a pedestrian in a parking lot.<sup>118</sup> The state also had given a restricted license to an older man even

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108. 625 ILL. COMP. STAT. § 5/6-115 (West 1992).

109. *Id.*

110. *Id.*

111. *Id.* § 5/6-115(g).

112. *Id.*

113. *Id.* § 5/6-109(c).

114. Rigdon, *supra* note 7, at A6.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

though he failed his test several times.<sup>119</sup> The man later struck and crippled a child.<sup>120</sup> One study found that fatal accident rates of the elderly are not significantly different in those states that have restricted license programs.<sup>121</sup> Furthermore, many elderly drivers decide not to drive at night.<sup>122</sup> Therefore, restricting their licenses to daytime driving would have little effect. In any event, seventy-nine percent of fatal accidents involving people age sixty-five and older occur during the daytime.<sup>123</sup>

Another proposal is to encourage anonymous reporting of poor drivers.<sup>124</sup> However, few people are willing to turn in a neighbor or a friend and confine that person to his or her home, even for safer highways. Further, when adult children are compelled to report their elderly parents, it may result in trauma within these families. "Children see their parents getting slower, and they become frightened. Parents see their children's horror and either become depressed about their declining abilities or try to reassert the authority they had when their children were young."<sup>125</sup> Therefore, this method is unreliable because many people are hesitant to make the reports.<sup>126</sup>

Improved driving conditions on the roads would eliminate many of the problems that the elderly encounter such as the inability to read signs. Although improving roads can be costly and time-consuming, states can implement several relatively low-cost remedies. For example, elderly drivers would benefit from road signs that were bigger, brighter, and wider.<sup>127</sup> Road signs pose problems for the elderly, not only in terms of visual acuity, but also in relation to the rate at which they process information.<sup>128</sup> Other design features of highways, such as intersection lighting and pavement markings, also warrant attention.<sup>129</sup> These improvements would help older drivers to

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. Janet Elder, *Older Drivers: Just How Safe?*, N.Y. TIMES, Apr. 8, 1987, at C1, C15 (quoting Dr. Thomas Planek, Director of Research and Statistical Services at the National Safety Council in Chicago).

126. Rigdon, *supra* note 7, at A6.

127. Office of the Secretary of State, Driver Servs. Dep't, Ill., Senior Drivers: A Review of Current Issues and Studies 5 (Feb. 1989) (available through the Office of the Secretary of State of Illinois).

128. FINAL REPORT, *supra* note 22, at 69.

129. *Id.* at 70.

perceive changes in the driving environment, as long as the improvements do not involve drastic design changes that could confuse the elderly driver. The improvements in the signs should be geared towards the size and clarity of the message, not their content.

One solution is to educate the elderly about their changing driving needs. Because many elderly drivers have never taken a driver education course, an educational course would be extremely beneficial.<sup>130</sup> One such course is the "55 Alive/Mature Driving" course offered by the American Association of Retired Persons.<sup>131</sup> Many states offer incentives to take the course, such as discounts in insurance or deduction of points on a bad-driving record.<sup>132</sup> The course teaches elderly drivers to take another route when traffic moves too fast on the highway and to take three right turns in order to avoid a left turn.<sup>133</sup> Of course, drivers must be careful not to take certain suggestions, such as no left turns, too literally. As one practicing attorney reported, he had an eighty-year-old client who was having trouble keeping his driver's license.<sup>134</sup> The client complained that he could not understand why "they" wanted to take away his license, as he only made right turns and never turned left. One has visions of this driver making huge loops, always turning right, to arrive at his destination. As this eighty-year-old driver learned, following this advice religiously does not guarantee keeping one's license, as other problems may be associated with one's abilities.

130. Betsy Wade, *Back to School for Older Drivers*, N.Y. TIMES, Apr. 3, 1988, at xx3. No objective scientific evidence proves that these programs are effective. Waller, *supra* note 33, at 12. However, this does not mean that they are ineffective; it simply means that it remains to be determined whether these special courses are helpful. *Id.*

131. 55 ALIVE/Mature Driving is an eight-hour classroom refresher course that is taught by volunteers nationwide. Thirty-two states and the District of Columbia have enacted legislation which requires all automobile insurance companies within the state to provide a multi-year premium discount to graduates of state-approved courses, which includes 55 ALIVE/Mature Driving. The AARP actively lobbies states to pass this legislation in order to combat the problems of the elderly driver. AMERICAN ASS'N OF RETIRED PERSONS, 55 ALIVE, FACT SHEET (1994).

132. Wade, *supra* note 130, at xx3. Of the states that mandate a discount on auto insurance for those who have taken the course, only three—Delaware, New York, and Texas—provide discounts for drivers of all ages. Connecticut provides discounts only for drivers over age 62. The other states have discounts for drivers age 55 and over. These are: Arkansas, California, the District of Columbia, Florida, Kentucky, Illinois, Louisiana, Minnesota, Mississippi, Montana, North Dakota, New Mexico, Oklahoma, Rhode Island, Tennessee, Virginia, Washington, West Virginia, and Wyoming. *Id.*

133. Wade, *supra* note 130, at xx3.

134. Interview with Ronald G. Klein, Attorney at Law, DeKalb, Ill. (Mar. 26, 1995).

Finally, some states offer counseling in order to encourage elderly drivers to evaluate their own driving ability. In 1985, Oregon state highway officials began the first program in the country to screen and privately counsel elderly drivers who may no longer be able to drive.<sup>135</sup> The goal is to keep elderly drivers on the road as long as possible while insuring the safety of the public.<sup>136</sup> These counseling programs, as well as the courses discussed above, will encourage elderly drivers to evaluate their own skills and to recognize their limitations. By recognizing significant changes in their driving abilities, elderly drivers will respond through compensatory behavior and self-imposed restrictions on driving.<sup>137</sup>

Although these self-analysis programs seem to be successful in motivating elderly drivers to drive less at night and to be more cautious, self-analysis alone cannot solve the problems of renewing driver's licenses of the elderly. The "[t]rouble is, seniors can't compensate for problems they may not even be aware of, such as slower reaction times and senility. Nor can they correct for the side effects of medications."<sup>138</sup> Furthermore, "the older driver may develop compensatory attitudes and behaviors, some of which are positive and contribute to safety and some of which are negative and promote unsafe practices."<sup>139</sup> On the positive side, elderly drivers become more responsible, cautious, and courteous drivers. On the negative side, they may practice too much avoidance behavior or deny the existence of any problem with their driving abilities.<sup>140</sup>

## **B. Roadblocks to More Restrictions on Elderly Drivers**

The reason for the lack of state or federal legislation is twofold. First, the elderly are a powerful political group who are fiercely holding onto their independence. Second, the implementation of driver's licensing laws based on age are perceived to violate age discrimination and due process laws.

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135. William E. Schmidt, *Graying of America Raises Road Safety Concern*, N.Y. TIMES, Apr. 6, 1988, at A1, A17.

136. *Id.*

137. FINAL REPORT, *supra* note 22, at 68.

138. Rigdon, *supra* note 7, at A1.

139. Darlene J. Winter, *Older Drivers—Their Perception of Risk*, in EFFECTS OF AGING ON DRIVER PERFORMANCE, *supra* note 47, at 19, 19.

140. *Id.*

## 1. INDEPENDENCE

"[R]estrictions smack of cruelty toward elderly people who might, without cars, become shut-ins."<sup>141</sup> As one eighty-one-year-old said, "I'd rather be pushing up daisies than live without a car."<sup>142</sup> For some elderly drivers, a license represents a "passport to independence—the last stop before a nursing home."<sup>143</sup> Taking away the license from a senior might cause depression and rapid deterioration in the quality of living.<sup>144</sup> Although a driver's license will not be taken away without just cause, "[s]ooner or later many people will have to stop driving. We have to start preparing them for that inevitability."<sup>145</sup> Unfortunately, mobility is a problem. Additionally, the number of elderly drivers is increasing while the number of younger drivers is decreasing.<sup>146</sup> "Thus, as older drivers reach the point at which they can no longer qualify for full or partial licensure, there will not be a younger cohort coming along to provide the necessary transportation."<sup>147</sup> The elderly driver will be forced to rely on inadequate public transportation.

## 2. AGE DISCRIMINATION AND DUE PROCESS ISSUES

Perhaps the most commonly raised argument opposing elderly driver's licensing programs is that of the Fourteenth Amendment. First, the Fourteenth Amendment protects against discrimination by affording equal protection to all citizens. Second, the Fourteenth Amendment protects certain property interests of citizens.

The Fourteenth Amendment to the United States Constitution forbids discrimination by entitling all citizens to the equal protection of the laws.<sup>148</sup> When a court reviews an equal protection claim with no suspect class or fundamental right at issue, it examines whether a

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141. Rigdon, *supra* note 7, at A1.

142. *Id.*

143. *Id.* at A6.

144. Elder, *supra* note 125.

145. *Id.* at C15.

146. Waller, *supra* note 33, at 1.

147. *Id.*

148. "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV. This note only peripherally addresses the age discrimination and due process issues in order to give the reader a clearer understanding of the issues involved in the license renewal procedure of the elderly driver. The writer does not intend to fully address this complicated issue. See generally DeMont, *supra* note 22; Stephen J. Soule, Comment, *Constitutional Law: Due Process Requires No Hearing Before Suspension of Driver's License*, 19 WASHBURN L.J. 338 (1980) (providing a more thorough analysis of due process issues).

rational basis exists for the challenged action.<sup>149</sup> According to the Supreme Court, because age distinctions do not require heightened scrutiny, cases alleging age discrimination are reviewed under the lower rational basis standard.<sup>150</sup> As a result, the challenging party, or the party who is claiming discrimination, bears the burden of proving that the legislation at issue is irrational.<sup>151</sup> The plaintiff "must convince the court that the legislative facts on which the classification apparently is based could not reasonably be conceived to be true by the governmental decision maker."<sup>152</sup> Because this is a difficult burden to meet, age discrimination is a challenging case for the elderly individual to win and has not been attempted in this context.

A stronger argument for the elderly population is based on the Fourteenth Amendment's entitlement of procedural due process protection of certain property interests.<sup>153</sup> Although most people consider a driver's license to be a privilege, the Supreme Court has determined that a driver's license is a property interest that is entitled to Fourteenth Amendment protection.<sup>154</sup> Courts also have held that the high-risk driver's procedural due process rights outweigh the state's interest in the preservation of safety on its roads.<sup>155</sup> Although these cases show that a driver's license is a property interest entitled to Fourteenth Amendment protection, the cases do not involve elderly drivers and the states' implementation of stricter licensing requirements. Instead, the cases address suspension or revocation of driver's licenses due to a lack of insurance, driving under the influence of alcohol, or other similar violations.<sup>156</sup> Despite the courts' interpretation, the American Association of Retired Persons has not constitutionally challenged existing state restrictions on elderly drivers, although they had earlier lobbied against Florida legislation requiring regular road tests for drivers over age eighty and had advocated mandatory renewal tests for all drivers and not just the elderly.<sup>157</sup>

Although a driver's license is a property interest entitled to Fourteenth Amendment protection, the nature of the procedural due

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149. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

150. *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307 (1976).

151. *Harrah Indep. Sch. Dist. v. Martin*, 440 U.S. 194 (1979).

152. *Vance v. Bradley*, 440 U.S. 93 (1979).

153. No state shall "deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV.

154. *Bell v. Burson*, 402 U.S. 535 (1971).

155. *Jones v. Penny*, 387 F. Supp. 383 (M.D.N.C. 1974).

156. See, e.g., *Bell*, 402 U.S. 535; *Jones*, 387 F. Supp. 383.

157. *Rigdon*, *supra* note 7, at A6.

process that is required to satisfy that protection is still unclear. The guarantee of procedural due process dictates that a citizen be afforded the protections of notice and hearing prior to the deprivation of an important property interest.<sup>158</sup> The court in *Bell v. Burson* held that procedural due process necessitated that a state afford a driver notice and opportunity for a meaningful hearing that is appropriate to the nature of the case, before revocation of the driver's license, unless an emergency situation exists.<sup>159</sup> However, courts have since modified the *Bell* holding with regard to the timing of a revocation hearing.<sup>160</sup> The current standard for procedural due process concerns of state driver's licensing statutes is described by the court in *Mackey v. Montrym*.<sup>161</sup> The *Mackey* court suggested that a summary suspension of a driver's license does not offend procedural due process if the statutory scheme provides for an immediate postsuspension hearing.<sup>162</sup> Furthermore, the court stated that two factors are considered in determining whether to revoke a driver's license: the possibility of retroactive compensation and the length of the deprivation of the driver's license prior to a hearing.<sup>163</sup>

State statutory provisions prescribing the conditions on which the driver's license may be maintained, revoked, or suspended have not been held unconstitutional by the Supreme Court.<sup>164</sup> Furthermore, there is still a debate as to the nature of the constitutional rights involved in a driver's license. For example, it has been held that the refusal to issue a driver's license under a statute fixing the minimum age at sixteen years did not constitute a taking of private property without due process.<sup>165</sup> Furthermore, a state has the undisputed ability to regulate licensing requirements and restrictions as long as it is with just cause.<sup>166</sup>

Current state statutes addressing the revocation of a driver's license vary in their provisions for notice and a hearing prior to the revocation of the driver's license.<sup>167</sup> According to the *Mackey* court,

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158. U.S. CONST. amend. XIV, § 1.

159. *Bell*, 402 U.S. 535.

160. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975).

161. *Mackey v. Montrym*, 443 U.S. 1 (1979).

162. *Id.* at 19.

163. *Id.* at 11-12.

164. 60 C.J.S. *Motor Vehicles* § 164.1 (1969).

165. Wayne F. Foster, Annotation, *Validity, Construction, and Application of Age Requirements for Licensing Drivers*, 86 A.L.R.3d 475, 477 (1978).

166. *Id.*

167. *See* sources cited *supra* note 61.

however, if the statutes allow for an immediate postsuspension hearing, the statutes will not offend procedural due process standards. Nevertheless, these cases, which are interpreting the statutes, address revocation of driver's licenses, not nonrenewal of driver's licenses due to a failure to pass examinations upon the expiration of a driver's license. Whether courts would view this situation differently is unclear. Nonetheless, there does not appear to be any outright Fourteenth Amendment bar to state statutes regulating the renewal of driver's licenses.

### **C. Current Attempts to Address the Dilemma of Elderly Drivers Do Not Remedy the Situation**

Although several attempts have been made to address the dilemma of elderly drivers, the methods used thus far do not remedy the situation. Elderly drivers who are no longer safe drivers remain on the road. Current state license renewal examinations do not adequately test the elderly drivers' abilities. Furthermore, renewal periods are too long in some states. Programs such as counseling and educational courses are helpful, but more adequate renewal procedures must be developed to make the roads safer.

## **IV. Resolution**

Both the state and federal government should focus on safer roads, but not by simply revoking the driver's licenses of the elderly. Renewal should be ability-focused as opposed to age-focused. Furthermore, additional research is necessary in several areas.

The current highway travel environment is not well adapted to the problems of older drivers and pedestrians. Cars and occupant restraints are not designed with the frailty of older persons in mind; highway design standards and roadway signs and markings do not account for the poorer vision of older people and their slower decision-reaction times; and licensing officials lack valid screening procedures to identify those older drivers, or those drivers of any age group, who are at a higher risk of crash involvement.<sup>168</sup>

State licensing renewal procedures need to be changed and further research needs to be conducted in order to create better solutions.

Until better solutions are developed, states should model their driver's license renewal statutes after Illinois's statute. Illinois offers

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168. SPECIAL REPORT, *supra* note 23, at 63.



more rigid requirements for elderly drivers than any other state. This is not a proposal aimed at depriving elderly citizens of their freedom, but a proposal aimed at making the roads safer, both for the elderly driver and for the rest of the public. Studies show that older drivers, in general, experience declining driving abilities as they age. The Illinois statute and other similar state statutes are not based on age discrimination, but instead on insuring that only capable drivers are on the road. It is critical to test elderly drivers more frequently as their driving abilities deteriorate.

Illinois's statute requires that drivers over the age of seventy-five pass certain examinations.<sup>169</sup> The statute mandates that an applicant seventy-five years of age and older must successfully complete a road test.<sup>170</sup> All applicants, regardless of age, must pass a vision test, a knowledge test, and any further physical and mental examination deemed necessary.<sup>171</sup> Anyone who is not age seventy-five and has no traffic convictions needs to take only the vision examination, not the knowledge test or the physical and mental examinations.<sup>172</sup> A restricted license may be issued when appropriate.<sup>173</sup> Finally, a license expires after four years for anyone under age eighty-one, after two years for a driver age eighty-one to eighty-six, and every year for any driver eighty-seven and older.<sup>174</sup>

Illinois's statute is definitely a step in the right direction. The statute requires elderly drivers to renew their licenses more frequently at no additional cost to the driver. Requiring elderly drivers to renew their licenses, in person, at a higher frequency, assures that fewer incompetent drivers will remain on the road. However, the tests that are currently used, even those used by Illinois, are not adequate.

An ideal solution is to develop a simulation test or a sensory perception test that would be given to every driver upon license renewal. Rather than using an arbitrary age that may raise age discrimination issues, this device would not only test for potentially dangerous drivers but also record the driver's score at each renewal. This information would be kept in a federally regulated file, accessible to all states. Presumably, at some point, the driver's ability will no-

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169. 625 ILL. COMP. STAT. § 5/6-109 (West 1992).

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.* § 5/6-113.

174. *Id.* § 5/6-115(a), (g).

ticeably decrease as the driver ages, at which time the driver would undergo more rigorous testing. This would result in either a restricted license or nonrenewal of the license, depending on the degree of score change and the results of subsequent testing. If such a device could be created, renewing elderly driver's licenses would no longer be based on age, but rather on ability. When abilities decrease to a certain level, the driver, regardless of age, would be required to undergo further testing.

Unfortunately, states cannot wait until this type of technology is implemented, as the problems of elderly drivers are current issues. The most often debated issue may be choosing the age at which to require drivers to renew their licenses more frequently. All elderly drivers experience neither the same rate of deterioration nor the same changes in driving ability. However, seventy-five seems to be a likely age when more frequent visits to the license bureau may be needed.

Because of the rapid increase in crash risk after 75, it appears reasonable to increase the frequency of routine reexamination beginning at this age. With in-person renewal at least every two years, the examiner could determine whether a license should be issued for 1 or 2 years. Any arbitrary cutoff age is likely to trigger opposition, but the available data suggest that 75 would be defensible. . . . [I]f states do not implement some special procedures, they may find themselves under attack or even liable for failure to act on the basis of evidence that crash risk increases dramatically at these upper ages.<sup>175</sup>

Although any age may seem somewhat arbitrary to the elderly driver, the majority of studies would support the age of seventy-five as identifying an elderly individual.

Reexamination of elderly drivers is crucial because elderly drivers' abilities have been shown to decline with age. Most states require vision tests with each driver's license renewal for all ages. However, a state should require more rigorous and frequent vision tests once a driver is deemed elderly, in addition to the general examinations. Again, these vision examinations should be studied and improved in order to be geared towards the deteriorating vision of elderly drivers.

States need to create examinations which are geared towards elderly drivers. It already has been established that the current tests, although not useless, are inadequate in predicting incompetent drivers. The road tests, for example, focus on whether a driver is capable

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175. Waller, *supra* note 13, at 86.

of operating a vehicle. The tests are not designed to determine which drivers will fail under unusual or high-risk circumstances.

States should require more accurate road tests than are currently offered for elderly drivers attempting to renew their licenses. Road tests seem to be the best option currently available to determine the driver's ability. However, these road tests need to be dramatically improved in order to focus on elderly drivers' abilities. To improve these tests, an area that should be pursued vigorously is that of driving simulators. Research should be done to make this type of technology available for state driver's license examination bureaus. Although road tests are more predictive of a driver's ability than a written examination or a vision test, they certainly do not test the driver's ability, with any regularity, to deal with unusual situations. Surprises, such as cars unexpectedly pulling out in front of them, and harsh driving conditions, are the types of situations that elderly drivers find difficult. Simulators would be able to test these abilities more accurately. Although some work in this area has been done, those simulations that have been developed have yet to solve the problem adequately.<sup>176</sup> With the current rage in virtual reality, a realistic driving simulator would seem to be attainable.

To further the necessary research, the federal government should pass legislation, such as the High Risk Drivers' Act, to promote research aimed at elderly drivers and to encourage adaptation of the highway system to elderly drivers' needs. Congress should also pass legislation that requires states to study their elderly drivers' needs. These actions should be geared towards keeping elderly drivers on the road as long as neither the public nor the elderly drivers are in danger. Furthermore, the federal government should implement legislation that will insure uniformity among states. It will do little good if two bordering states have entirely different restrictions on high-risk drivers.

In addition to research, state governments should promote guidelines and incentives for programs to educate drivers over age fifty-five,<sup>177</sup> including specially designed courses on traffic and driv-

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176. See generally Mary K. Janke, *Age-Related Disabilities that May Impair Driving and Their Assessment*, at 3-1 to 3-115 (June 1994) (unpublished manuscript, on file with *The Elder Law Journal*).

177. Although 75 is arguably the age when most people can be considered elderly, drivers should begin to take the courses at age 55 in order to be informed of the possibility of their declining abilities before the changes begin. Therefore,

ing, which promote more educated self-analysis and behavior adapted to changing abilities. "Drivers who understand their own limitations tend to change their behavior to accommodate declining capabilities. Those unaware of limitations tend not to take corrective action, placing them at higher risk of crashes."<sup>178</sup> The program offered by the AARP, 55 Alive/Mature Driving, is a good example of a successful course. The states should insure that more of these courses are available to all drivers.

We are never too old to learn. Most people of average health continue to learn throughout life and can expect to maintain or even increase their level of performance with advancing age. While the sharpest decline in intelligence seems to occur about age 62, the adult student enters the learning environment with a great deal of internal motivation, especially if what he is to learn is immediately useful.<sup>179</sup>

Elderly drivers are not bad drivers by definition. Studies have simply shown that elderly drivers, in general, are high-risk drivers. These studies indicate that education should focus on how to improve elderly drivers' abilities.

To encourage elderly drivers to participate in educational programs, states should offer insurance incentives to take the courses. Illinois, for example, has approved a Defensive Driving Credit on Private Passenger Vehicles that is applied towards insurance premiums.<sup>180</sup> The discount applies when the driver is at least fifty-five years old and has successfully completed an approved Motor Vehicle Accident Prevention Course.<sup>181</sup> To continue the discount, the course must be repeated every three years.<sup>182</sup> If an elderly driver does not perceive himself or herself as a challenged driver, he or she will probably opt against spending time at this type of course. Therefore, by offering a financial incentive to take the course, the elderly driver will be more apt to take this course and to restrict their driving as it becomes ap-

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there would be a better chance of coping with and learning to adapt to different driving habits.

178. EBERHARD, *supra* note 26, at 1.

179. Adele M. Milone, *Training and Retraining the Older Driver*, in *DRIVERS 55+*, at 39 (James L. Malfetti ed., 1985).

180. 215 ILL. COMP. STAT. § 5/143.29 (West 1992). However, studies have shown that there is no correlation between course completion and a reduction in motor vehicle accidents. Mary K. Janke, *Mature Driver Improvement Program in California*, in *TRANSPORTATION RESEARCH RECORD NO. 1438, SAFETY AND HUMAN PERFORMANCE, RESEARCH ISSUES ON BICYCLING, PEDESTRIANS, AND OLDER DRIVERS 77*, 83 (1994). Further research needs to be conducted.

181. 215 ILL. COMP. STAT. § 5/143.29 (West 1992).

182. *Id.*

propriate. Furthermore, these courses, and incentives, should be offered to all age groups. By starting early, drivers are more apt to be safe drivers longer.

Unfortunately, changing the behavior of elderly drivers is not always easy. "Trying to change the behavior of the elderly is not just a problem of conveying information and training for defensive skills. Behavior is strongly influenced by stereotypes held by contemporary society, as well as the society from which the elderly . . . acquired some predominant views on aging."<sup>183</sup> By offering specific, comprehensive, and unambiguous messages, some of these problems can be overcome.<sup>184</sup>

Education also should be offered on an individual basis. Oregon's counseling program is a good example. This program counsels those individuals who show signs of declining ability but who have not yet reached the level at which their licenses should be denied. States should implement this type of program for elderly drivers who have questionable driving skills but have not deteriorated to the level at which a license should be denied. Individual counseling and driver training of elderly drivers also allow the examiners to develop a better understanding of the abilities of each driver.

Many elderly drivers learn to evaluate themselves and personally restrict their driving. States should acknowledge the restrictions to which elderly drivers have already adapted. Furthermore, some states restrict driving privileges to non-rush hours or daylight only, a concept known as a "graduated license."<sup>185</sup> However, graduated licenses must be exercised with "the greatest caution in imposing formal restrictions on drivers who have already adapted their driving habits to fit their changing capabilities."<sup>186</sup> Elderly drivers should be allowed to restrict themselves, preferably encouraged through educational courses and counseling.

In addition to the research to develop more accurate reexamination procedures for elderly drivers, programs also must be developed to improve the training of licensing bureau employees. Even if more reliable tests are developed, these tests will probably not reveal all potentially dangerous drivers. The employees who administer the tests and approve the renewal of licenses must be knowledgeable

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183. J. PETER ROTHE, *THE SAFETY OF ELDERLY DRIVERS* 51 (1990).

184. *Id.* at 52.

185. EBERHARD, *supra* note 26, at 2.

186. *Id.*

about the characteristics of high-risk drivers. If these characteristics are demonstrated by the elderly driver, then further testing or medical examinations should be required of the elderly driver.

States should not only require stricter standards for elderly drivers and encourage research to determine more reliable techniques for testing elderly drivers, but they should also initiate research on road conditions. Road conditions, such as signs and pavement markings, are not always conducive to older drivers. For example, signs are not always large and clear enough for the elderly driver to perceive and pavement markings lack clarity. These road conditions should be corrected rather than deny a driver his or her license.

Furthermore, although researching programs to better examine elderly drivers is crucial, research also must be conducted to determine both the elderly drivers' safety and transportation needs.<sup>187</sup> As elderly drivers become more frail with age, vehicles should be designed to better protect elderly drivers. If elderly drivers reach the level where it is better that they do not drive, then alternative modes of transportation need to be provided. Simply because an elderly individual is deemed unsafe on the roads, that person should not be denied their independence.

Numerous studies have revealed the decreasing ability of elderly drivers due to the natural process of aging. Although a great deal of sympathy exists for the elderly driver, enormous concern exists not only for public safety, but also for the safety of the elderly drivers themselves. Asking elderly drivers to undergo more tests with each driver's license renewal and more frequent renewals is not asking for too much, considering the lives, including the elderly drivers' lives, saved on the roads.

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187. Some research has begun to develop new technology to facilitate the driving task in order to allow elderly drivers to continue to meet their own mobility needs. Waller, *supra* note 33, at 10. Although these systems may mean information overload and lead to driver confusion, they may prove helpful once they become familiar to the elderly driver. New developments include adaptive cruise control, near object detection system, run-off-the-road warning, cooperative intersection, collision warning/avoidance, night vision enhancement, call for help, driver impairment warning, and platooning (a way to increase the capacity of existing highways in order to avoid paving more real estate). *Id.*

## V. Conclusion

Elderly drivers are at a higher risk than other drivers behind the wheel. Nobody likes to admit that they are getting older and cannot function as well as they did in the past, but it is an inevitable fact of life. The states and the federal legislature must recognize this change and act to protect society. Congress and the states should offer insurance incentives to all drivers to take continuing driver education courses, implement counseling and educational programs for questionably competent drivers, enforce more frequent and more rigorous renewal procedures for elderly drivers, and initiate research into more accurate testing technology. Developing tests to determine at what age each individual should be deemed an unsafe driver should be the highest priority. States should also reexamine their road conditions in order to determine how to serve the needs of their elderly residents. These suggestions for stricter standards are not proposals to take away all driver's licenses at a certain age, but instead represent proposals to monitor more closely those drivers who pose a significantly higher risk to the safety of society. Another hour at the driver's licensing bureau for the elderly, but otherwise capable, driver is not much to require, when the end result could save a life.