



Maegan Elizabeth Spindler

1988-2013

Killed by a drunk driver

Just starting out in life... pursuing her dream as a fisheries biologist in the American West, preserving native species. She cherished all life.

On July 8, while ***standing in a parking lot, 200' off of a highway***, working on a trailered boat, she was killed along with Dr. Robert Klumb, finishing a 13 hour day for the US Fish & Wildlife Service in Pickstown, SD. She was thrown 120' and there were no viewable remains.

Ronald Fischer, 29, killed her. He had a BAC of 0.232 (nearly 3 times legal limit). He is in custody awaiting trial on 2 counts of first degree manslaughter and five other charges.

Maegan Spindler 1988-2013



Kindergarten, 1993



Working on the Missouri River, 2013

In Maegan's Memory we are advocating South Dakota Government reform DUI laws

- 3.5 times as many die **annually** from DUI as did on 9/11/01. There have been over 160,000 DUI deaths since 9/11.
- The United States seriously lags other advanced countries in DUI enforcement, deaths and injuries (why?)
- South Dakota Gov. Daugaard has assured us that his administration will review DUI laws and practices in a “data driven, evidence based” process. The state can lead the nation!
- We advocate South Dakota adopt all the recommendations contained in the May 2013 NTSB report, “Reaching Zero: Actions to Reduce Alcohol-Impaired Driving”
- *We also propose other, equally important, DUI reforms.*

See: www.sgsstat.com/sd_dui_reform

We do not single out South Dakota for “special” criticism; DUI is a nationwide problem. We start here because our daughter lived and died here and loved this state. We also believe the South Dakota government is closer to its citizens.

Disclaimer

- *The ideas and proposals contained herein are solely those of the Spindler Family.*
- We have shared these with the Governor's office, state and local government officials, media and non-governmental organizations.
- The Governor has directed a team to evaluate our ideas and proposals.
- We are hopeful that both the Governor and state legislators will be supportive of these ideas and proposals and will incorporate them into law, policies and procedures.

DUI Reform ≠ Nanny State



- The European Union cut DUI deaths by 53% in a decade in a coordinated EU-wide effort.
 - US deaths down by 19%, but recently flat-lined
 - Canada has implemented EU-type programs
 - Drunk driving penalties in the US are comparatively light-handed by world standards.
 - Compared to the EU, the US coddles drunk drivers as if it was a nanny state
- DUI reform is:
 - High Visibility Enforcement, Deterrence, High risk of being caught
 - Swift, certain penalties
 - Tough laws, no pleas
 - Adequate funding for law enforcement
- DUI reform is not:
 - Prohibition
 - Legislating morality
 - State control of legal behavior



Spindler Family Proposals

Deterrence

based on routine, regular, random, long-term *High Visibility Enforcement (HVE)* throughout the state.

Dedicated alcohol excise tax - a “user fee”

to fund DUI enforcement:

- **Shared** with counties, cities and tribal LE based on risk
- Initially to exclusively fund enforcement, adjudication and education
- After **years** and evidence of much lower DUI incidence, transition to mixed enforcement and alcohol and drug treatment and prevention

Lower BAC

Stricter, lower blood alcohol thresholds in accordance with NTSB recommendations

Increased penalties

- Aggravated DUI, Limit pleas
- Immediate license suspensions, vehicle impoundment and forfeiture
- Certainty of swift, certain and severe consequences, even for first time offenders. Heavier fines. “Some” jail time.

Dram Shop and Social Host Liability

Deterrence

93% of fatal DUI incidents are from *first time offenders*, deterrence is key

Recidivism is extremely important, but strong deterrence will reduce it.

Deterrence

- There is ample evidence of proven deterrence methods
- Proven methods will require additional resources and changed laws

Countermeasure	Effectiveness	Use	Cost	Time
1.1 ALR/ALS	★ ★ ★ ★ ★	High	High	Medium
1.2 Open containers	★ ★ ★	High	Low	Short
1.3 High-BAC sanctions	★ ★ ★	Medium	Low	Short
1.4 BAC test refusal penalties	★ ★ ★	Unknown	Low	Short
1.5 Alcohol-impaired driving law review	★ ★	Low	Medium	Medium
2.1 Sobriety checkpoints	★ ★ ★ ★ ★	Medium	High	Short
2.2 Saturation patrols	★ ★ ★ ★	High	Medium	Short
2.3 Preliminary Breath Test devices (PBTs) [†]	★ ★ ★ ★	High	Medium	Short
2.4 Passive alcohol sensors ^{††}	★ ★ ★ ★	Unknown	Medium	Short
2.5 Integrated enforcement	★ ★ ★	Unknown	Low	Short

[†] Proven for increasing arrests

^{††} Proven for detecting impaired drivers

Countermeasures That Work, Sixth Edition (2011) NHTSA
 more at : <http://www.trb.org/Main/Blurbs/165072.aspx>

What might SD HVE Look Like?

- **25 new State Highway Patrol troopers**, dedicated to DUI
 - Highly trained, insure state-wide consistent “best practices”
 - Each DUI trooper works checkpoints 3 days per week with local LE
 - In later years, troopers transition to traditional LE roles
- **More Funding for County, City & Tribal LE**
 - New hires in larger jurisdictions, overtime or retired LE for rural areas
- **DUI training** by the state for all LE, given in Pierre
- **Regular checkpoints**, in every county in the state
 - Frequency determined by DUI incidence and risk, but at least weekly
 - Minimum program of low-staff checkpoints for all jurisdictions
- **Perseverance!**
 - This program is a decade-long effort aimed at cultural change
 - Avoid declaring victory after 2-3 years! No arrests at a checkpoint after year 3 is the goal, but don't reduce the pressure or visibility!

Checkpoint Efficiency & Efficacy

A Controlled Trial:

Law enforcement agencies in two rural West Virginia counties were able to sustain a year-long program of **weekly** low-staff checkpoints.

- Compared to two counties without weekly checkpoints (control group)
- Use of passive alcohol sensors
- Cost ~\$400 per each low manpower checkpoint (2003-2004 cost)

Result:

The proportion of nighttime drivers with BACs of .05 and higher was **70%** lower in these counties compared to drivers in comparison counties that did not operate additional checkpoints.

John H. Lacey , Susan A. Ferguson , Tara Kelley-Baker & Raameses P. Rider (2006) Low-Manpower Checkpoints: Can They Provide Effective DUI Enforcement in Small Communities?, Traffic Injury Prevention, 7:3, 213-218, DOI: 10.1080/15389580600696686

<http://dx.doi.org/10.1080/15389580600696686>

ALS/ALR, Impoundment

(Administrative License Suspension / Revocation)

Actual Implementation:

In 2010, British Columbia introduced **Immediate Roadside Prohibitions** (ALS/ALR plus vehicle impoundment).

- Combined immediate short-term roadside suspensions with vehicle impoundment and monetary penalties upon arrest
- Enhanced the swiftness, certainty and perceived severity of sanctions for drinking and driving

Result:

An examination of previous roadside survey data dating back to 1995 shows that the levels of driving after drinking in 2012 were the **lowest ever recorded**.

- Driving after consuming any alcohol was reduced by 34%
- Driving with a BAC of 50 mg/dL (0.05) or over decreased by 44%

Beirness, Beasley, Traffic Injury Prevention (2013): An Evaluation of Immediate Roadside Prohibitions for Drinking Drivers in British Columbia: Findings from Roadside Surveys, Traffic Injury Prevention, DOI: 10.1080/15389588.2013.813628

<http://dx.doi.org/10.1080/15389588.2013.813628>

Asset Forfeiture

- Not widely applied, but a **very** potent weapon
 - Currently it tends to be county-specific in states where it is applied. Usually a complex civil action, not a criminal penalty.
- Provide a **clear**, **simple** and **expedient** path for asset forfeiture as a penalty for DUI and use it routinely.
 - Aggravated DUI
 - Multiple DUI offenses
 - Apply regardless of vehicle ownership or jurisdiction
- Constructed such that satisfaction of lien holders is never an impediment to asset forfeiture
- The primary purpose of asset forfeiture is for **punishment** for DUI and **not** to generate revenue.
 - May be especially effective for preventing drunks from accessing borrowed or communally owned/used vehicles.

Implement DUI Law Reforms

- **Fix defects in Criminal Code**
- **Implement Aggravated DUI**, a felony charge...
 - Any DUI incident involving injury or death
 - BAC in excess of 0.10 for first offenders, 0.02 for repeat offenders
 - Any mix of drugs and alcohol
 - Failure to install ignition interlock, driving a vehicle without an interlock for an offender ordered to use one
 - Failure to comply with 24/7 court orders
 - Operation of a vehicle with children or disabled as passengers
- Mandate **some** jail time, even for first offenders
- **Limit** pleas from DUI to non-DUI convictions or expunging
- **Higher fines:** raise all current fines
- **Strengthen Implied Consent**
 - Test refusal penalties should be equal to a full DUI conviction
 - Possibly mitigate the damage from the SCOTUS McNeely decision?

Blood Alcohol Content

Crash risk increases exponentially with BAC

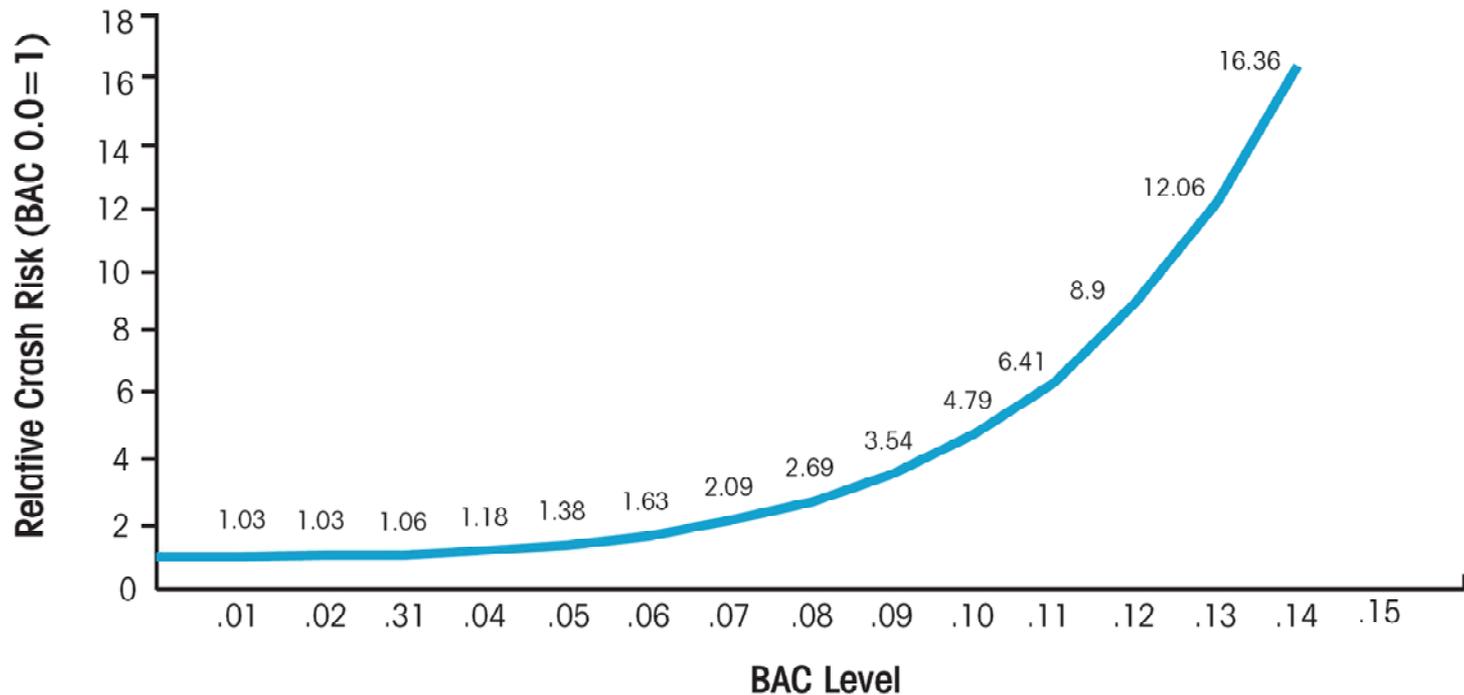


Figure 4 Relative risk of crash involvement as a function of driver's BAC.

SOURCE: Adapted from Blomberg et al. 2009.

Blood Alcohol Content

0.10 BAC **379%** increased crash risk

0.08 BAC **169%** increased crash risk

0.05 BAC Still Impaired! **38%** increased crash risk

*How much **additional risk** is acceptable?*

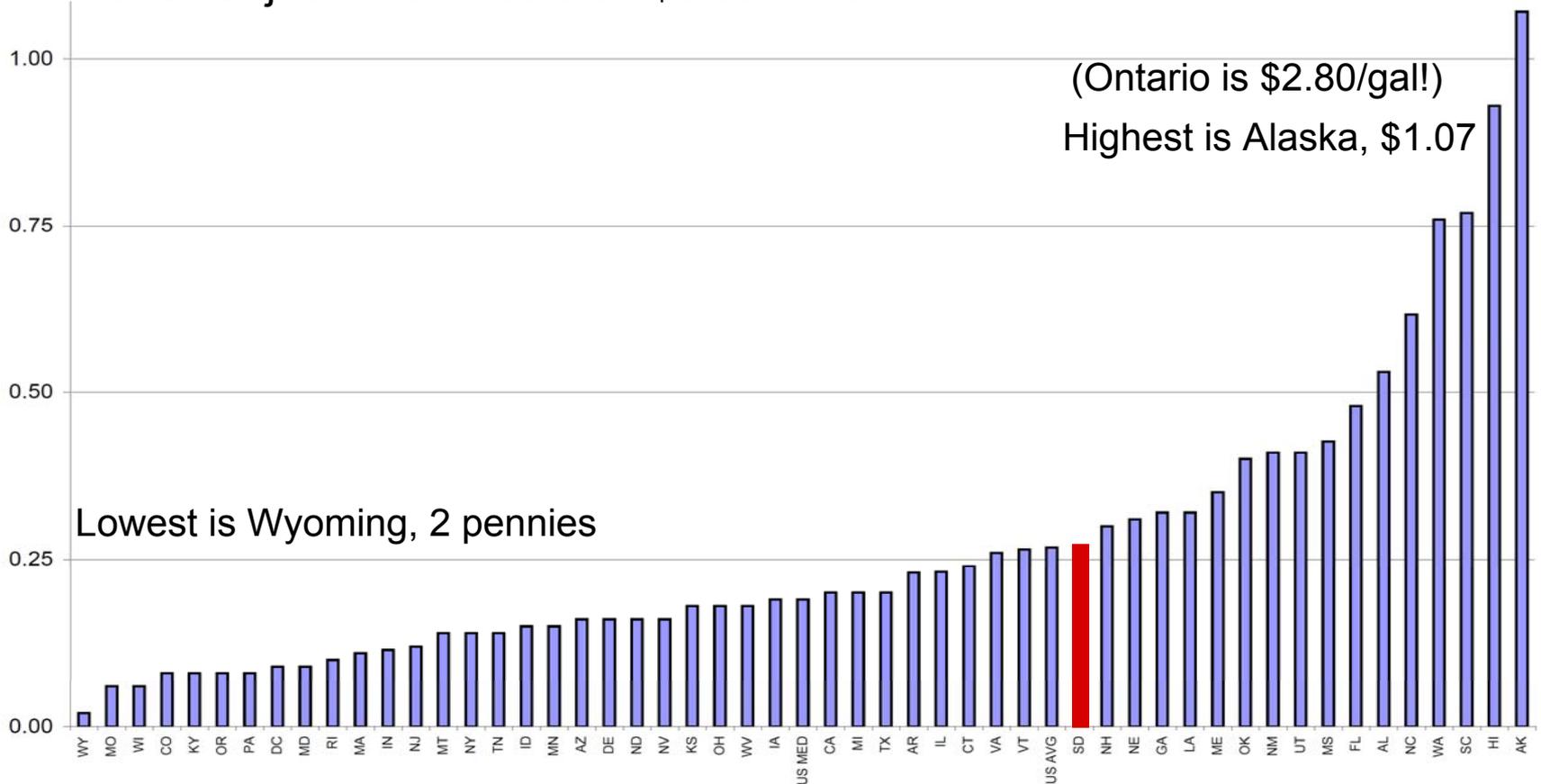
- Commercial Licenses have 0.04 DUI threshold...
 - If a truck driver is dangerous at 0.04, *why is an automobile driver different?*
- American Medical Association calls for 0.04 threshold.
- Many European countries use a 0.02 threshold.
- Some other advanced countries use **zero** tolerance.
 - If it is measurable, you are in much trouble!
 - Zero tolerance removes virtually any dispute about measurement accuracy or timing
- Lowering BAC from 0.10 to 0.08 resulted in less DUI in US
 - Proven with experience in other countries

Implement Dram Shop, Social Host Laws

- **No Dram Shop Law... *why does this condition exist?***
 - SD ST § 35-4-78; SD ST § 35-11-1
 - Case law providing for dram shop liability has been abrogated by statutory law. SD ST § 35-11-1
- **No Social Host Liability**
 - Liability is prohibited via statutory law. SD ST § 35-9-1.1; SD ST § 35-11-2.
- The **immorality** of statutorily abrogating dram shop and social host liability is painfully obvious to hundreds of victims since implementing it 1985.
 - Lack of Dram Shop and Social Host liability is **indefensible**.
 - Not about personal freedom and responsibility, it is public safety!
 - Could this have applied to Ronald Fischer's suppliers?

Beer Excise Taxes by State

- Current SD excise tax is same as US average, \$0.27 per gallon
 - Last changed in 1987
 - Inflation adjusted tax would be \$0.56 in 2013



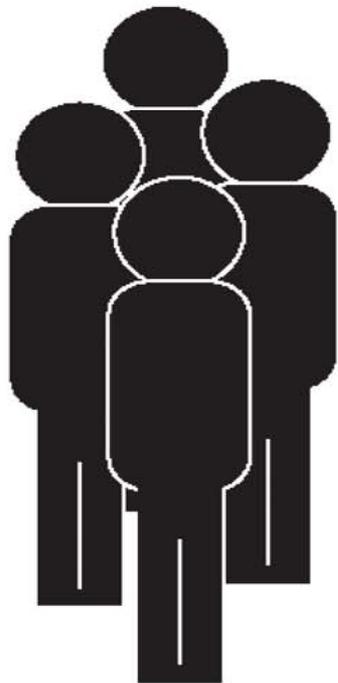
Why a Dedicated Excise Tax?

(a “user fee” on alcohol)

- **It assigns DUI costs exactly where they belong!**
 - Avoids **socializing** DUI costs across all taxpayers
 - Paid mostly by those who are most likely to cause problems (binge drinkers, chronic alcoholics: the 5% that consume 48% of all alcohol)
- **High Visibility Enforcement is not cheap**
 - Rural counties, especially, simply lack resources
- General budget priorities may change over time
 - Another recession
 - Changed Executive Leadership, new priorities & mindset
 - Temptation to “declare victory” prematurely
- Additional arrests (in early years) will lead to additional costs
 - Fines do not cover total costs, especially corrections
 - Counties and cities already burdened with SB 70 DUI costs

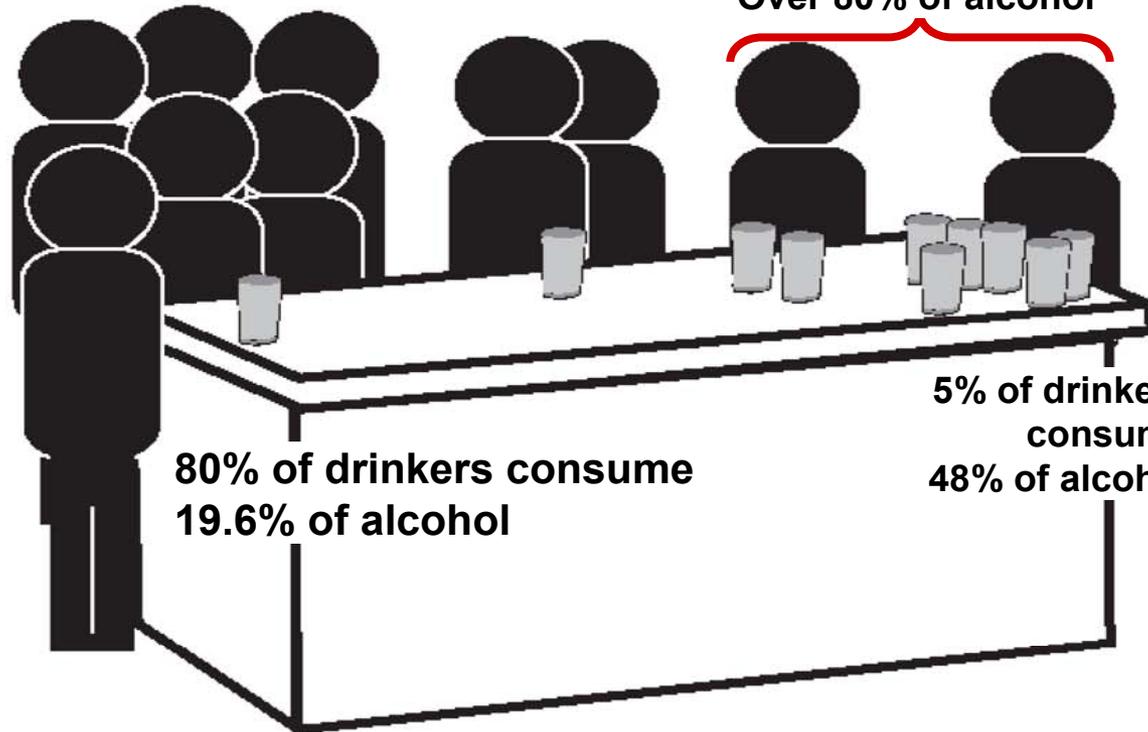
Who Pays Alcohol Excise Taxes?

(Only the Users pay a User Fee)



35% do not drink

This illustration approximates how consumers would share 10 drinks and the tax on those drinks.



Current Socializing of DUI Costs

- Current practice is to **socialize** costs across all taxpayers and on victims and their families
- MADD estimates SD DUI costs average \$200M/year
 - Reasonable estimate, given 40 deaths and estimated 120 debilitating injuries and 1200 total injuries.
 - Prosecution, supervision and incarceration costs are non-trivial
- Current Excise Tax goes into general fund
 - Receipts are fairly modest, ~\$13M/year
- Do DUI financial penalties cover fully-allocated all costs of those arrested and enforcement?
- Counties and cities assume most DUI enforcement cost
- Counties assume huge court and adjudication cost burdens

What might a “User Fee” look like?

- Sufficient to fund all DUI costs, plus education & prevention
- Should be based on a **percentage** of wholesale sales, **not** a fixed per-gallon amount
 - Eliminates problem of inflation adjustments
 - Largely transparent to consumers, not a line item on a sales receipt
 - Does not “penalize” the hospitality or restaurant industry the way a sales tax would
- We suggest different rates, dependent on use/abuse potential
 - Low rate for in-state craft microbrews, hard cider and wineries
 - 10% rate, beer <= 5% alcohol, “fine wines”
 - 25% rate for liquor, malt liquor/high alcohol beers, jug & fortified wines
- ***Must be shared with counties and cities for enforcement, based on DUI risk and incidence measures and County adjudication costs.***

SD: the Leading Edge of DUI Reform

- NTSB has called for sweeping changes in DUI laws and methods:
 - Issued new recommendations, Reiterates previous recommendations
 - NTSB has no statutory authority for enforcement or incentives
 - Calls on NHSTA to provide incentive grants for lower BAC, HVE, ignition interlocks, etc.
- If South Dakota DUI reform precedes federal action:
 - Call for federal legislation which will **retroactively** recognizes adoption of NTSB recommendations for NHSTA grants.
- But recognize that federal action on this issue is probably years away (if ever)...
 - Unfortunately, DC = Dysfunctional City

How many lives will be lost if South Dakota waits for DC to act?

Concluding Thoughts

- South Dakota is bottom quartile for DUI deaths
 - Let's begin to improve!
 - Comparisons versus other US states will not guide any state to best-in-class performance
 - Foreign countries provide exemplary best-in-class practices
 - True reform in SD will make it easier for all states!
- We do not single out South Dakota for criticism
 - We now have a tragic blood tie to the state
 - We do this for Maegan, as the most fitting memorial for her life
 - We feel DUI reform is “do-able” in South Dakota

Thank you!

Gregg & Susan Spindler

www.sgsstat.com/sd_ DUI _reform