

Alabama

TROOPER

NEWS

Vol. 19, No. 2 • FALL/WINTER 2012



1957 Ford "Police Interceptor"

ALABAMA TROOPER NEWS



2155 Highway 42 South
McDonough, GA 30252
www.alpba.org

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**YOUR ALABAMA STATE
TROOPER CHAPTER,
ALABAMA PBA
IS WORKING FOR YOU**

**Not sure if
you've had
too many?**

**I'll check
for you.**

**Impaired driving kills nearly
18,000 people each year.**

About 275,000 people are hurt and 1.5 million are arrested. Countless Americans will be affected by this violent crime in their lifetime. You, your friends, your family could be next.

This holiday weekend, law enforcement agencies across the country will stop impaired driving in its tracks. This summer sobriety checkpoints and saturation patrols will help make the roads safer for everyone.

So be prepared. If you drink, don't drive. Call a taxi, designate a sober driver, or plan on spending the night wherever you choose to celebrate.

Remember...

You Drink & Drive. You Lose.



Sponsored by the National Highway Traffic Safety Administration *You Drink & Drive. You Lose.* National Campaign.



Alabama State Trooper Chapter
Alabama Police Benevolent
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Alabama Trooper News is the official publication of the Alabama State Trooper Chapter of the Alabama Police Benevolent Association, Inc., a non-profit organization made up of state troopers dedicated to the improvement of the law enforcement profession in the state of Alabama.

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ON THE COVER

1957 Ford 2-door sedan with the 312 Police Interceptor engine. The 312 cubic inch displacement 'Police Interceptor' engine featured a single 4-barrel carburetor with a 3-speed manual transmission mounted on the steering column. Estimated horsepower from the 312 'Police Interceptor' engine was a then astounding 245 horsepower with an estimated top speed of 120 miles per hour. Also available from Ford in 1957 was the Police Interceptor "E-Code" option which included dual 4-barrels on the Thunderbird 312 cubic inch engine. The twin-four barrel carburetor Thunderbird engine was conservatively rated at 270 horsepower as a result of a high-lift camshaft, different cylinder heads, solid lifters, bigger valves and stronger connecting rods and crankshaft. The special 270 horsepower 'Police Interceptor' engine came as a result of then Ford chief Robert McNamara, who pushed for better NASCAR racing engines to compete with Chevy and Chrysler, thus hurrying the special engine into production.

(The Trooper is unidentified.)

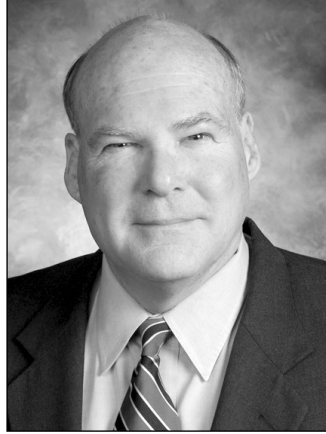
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Editor's Comments

A Crisis in State Funding for Essential Services:

On Tuesday, September 26, 2012, Alabama voters agreed to make changes to the Alabama Trust Fund distribution of revenue to allow the continuation of essential state services. This was a critical step in the funding of state government services over the next three years. After tabulating all votes state-wide, Alabama voters agreed by a 65%-35% margin to transfer more than \$437 million over the next three years from the state's Trust Fund to the state General Fund. The General Fund supports non-educational programs of state government such as courts, prisons, Medicaid, public safety, and other essential state services.

The General Fund is presently budgeted to spend about \$1.7 billion in the 2012/2013 fiscal year, which began on October 1, 2012. A "no" vote by the voters would have required the state to deeply cut budgeted spending, given the strong opposition by Governor Robert Bentley and many Republican party lawmakers to tax increases. Governor Bentley has consistently opposed the increase of any state taxes, including raising "fees" for specific services. Consistent with Governor Bentley's opposition to raising revenue by tax increase and facing the real possibility of another deep proration of state government at the start of fiscal year 2012/2013, the Alabama legislature at the end of the 2012 legislative session drafted a public referendum and placed

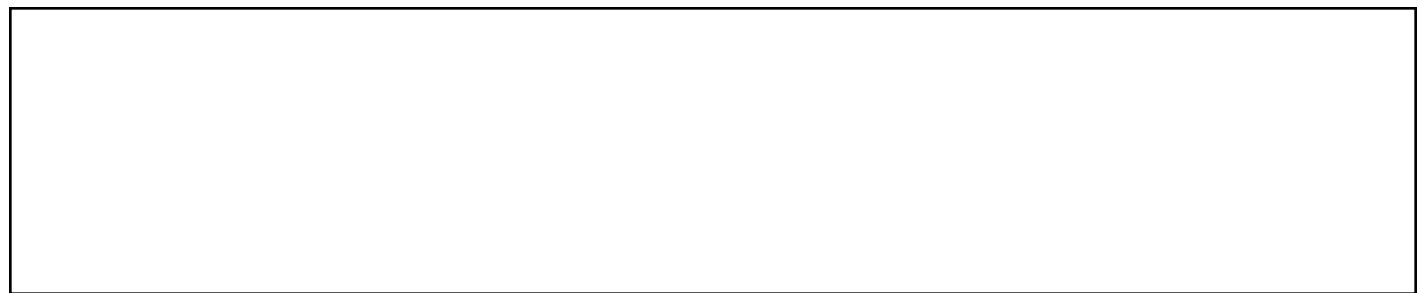


the referendum on a special ballot shortly before the start of the next fiscal year. The purpose of the referendum was to allow a 'one-time' transfer of principal from the Alabama Trust Fund to pay for basic state services. The voters' approval of the referendum will allow the state to plan for uninterrupted essential services over the next three years, although without any increase in state programs or services.

What is the Alabama Trust Fund? Discovery of natural gas in Mobile Bay in 1978 led to active drilling and development of the large gas reserves below Alabama's coastal waters. In 1981, the state received bids totaling \$449 million for the rights to develop offshore tracts. In 1982, under the administration of then Gov. Fob James, voters approved the creation of the Alabama Heritage Trust Fund (AHTF) with the revenues from this first sale of drilling rights. The AHTF income was then used to finance a \$520 million bond issue for capital outlay projects. In 1984, the state received more than \$347 million from leases awarded on offshore tracts. That revenue was then placed in the existing trust fund.

In 1985, the voters of the state approved Amendment 450 to the state Constitution creating the Alabama Trust Fund as an irrevocable, permanent trust fund. The monies in the Alabama Heritage Trust Fund were then transferred to the Alabama Trust Fund. The Alabama Trust Fund was established to capture future revenues from sales of off-

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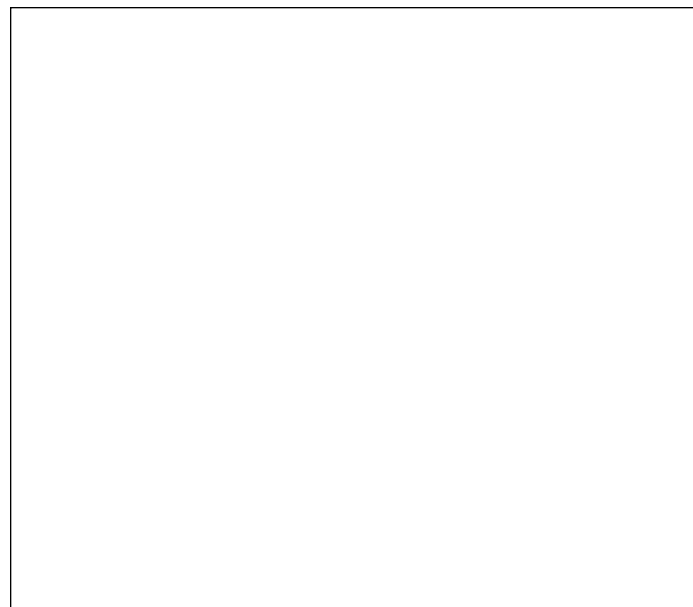
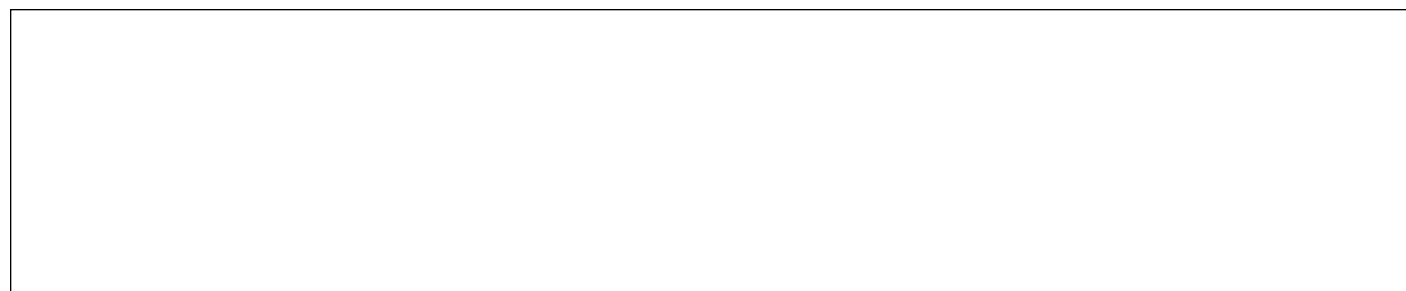
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shore drilling rights and from royalties on the resulting gas production. The trust fund receives as principal ninety-nine percent of all oil and gas capital royalty payments paid to the State with the remaining one-percent provided to the Department of Conservation for land use purchase under Alabama's 'Forever Wild' land conservation program.

In fiscal year 2011, oil and gas royalties paid to the state were \$119.9 million. The current invested assets of the Alabama Trust Fund as of September 30, 2011 was \$2.48 billion (market value) with an asset allocation of 63% invested in fixed income investments, 32% in equities, and 5% in real estate. The September 26th vote allows the state to "temporarily" borrow \$437 million from the principal of the Trust Fund. Whether or not the monies are actually paid back at some time in the future remains to be seen.

With the referendum's approval, the General Fund is now budgeted to spend \$1.698 billion in fiscal year 2013, which is a cut of \$36.2 million (2.1 percent) from this past year's General Fund spending. Most of the state's General Fund revenue will go to Medicaid, which provides nursing home and health care for about 940,000 disabled and lower income Alabamians, and to the Department of Corrections, which runs the state prisons. Currently, over 31,000

state prisoners are incarcerated at 29 DOC facilities within the state. Every year, an additional 1,500 to 2,000 prisoners are added to the state inmate population. Within the next three years, the state prison population will exceed 35,000. With the referendum's approval, General Fund spending for Medicaid in fiscal year 2013 is budgeted at \$615.1 million, which is an increase of \$39.7 million from this year. General Fund spending for the Department of Corrections in fiscal year 2013 is budgeted at \$365.5 million, a decrease of \$15.3 million, from this fiscal year. ***In other words, two programs – Medicaid and Corrections – will expend over \$981 million of the overall \$1.7 billion state General Fund or approximately 60% of the entire budget!*** It should be noted that while many commentators say one of the principle uses of the state General Fund is for "public safety" the Department of Public Safety's share of the state General Fund is only \$53.8 million for FY 2012/2013, or approximately 3% of the entire General Fund budget. Overall projected funding for the Department of Public Safety in FY 2012/2013 is \$168.5 million, with significant transfers of monies from the Road and Bridge Fund (\$28.5 million) and the Highway Safety Fund (\$22.5 million) along with specified federal

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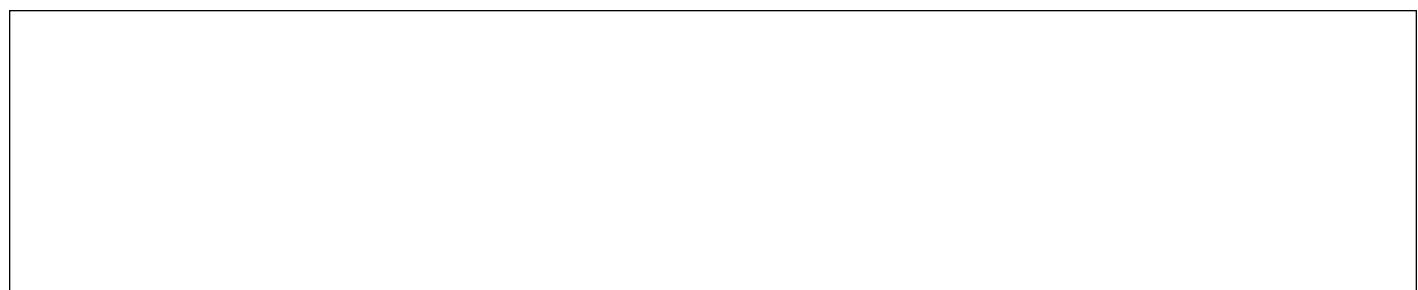
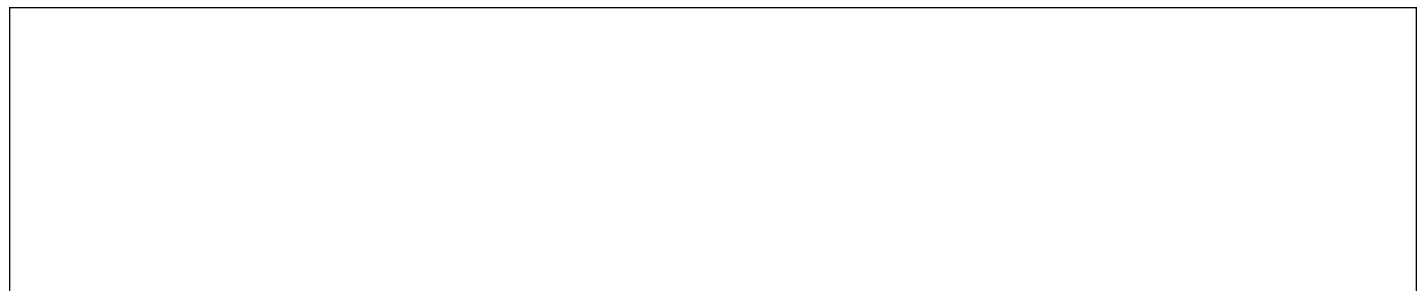
grants. By any reasonable appreciation of the facts, the growth in Medicaid and Corrections is simply not sustainable and additional funding sources must be obtained, otherwise agencies such as the Department of Public Safety will continue to be financially starved for revenue.

As previously noted, the state's support for Medicaid accounts for a full 36% of the state General Fund this year and the need for Medicaid funding is rapidly increasing. Ten years ago, Medicaid accounted for 17% of the state General Fund; this year, it accounts for 36%. State funding for Medicaid has more than doubled in the past ten years and there is no relief in sight. ***It is estimated by the end of the decade, in 2020, Medicaid will account for more than 50% of the state General Fund budget appropriations.*** As the state's elderly population grows, there will be more, and not less, demand for increased Medicaid spending. As just one example of the rising costs to Medicaid, it is reliably estimated that it costs the state \$55,000 per year to house and maintain one nursing home patient – and currently 70% of all nursing home patients are on Medicaid. The number of Medicaid eligible persons will rapidly increase as the "Baby Boomer" population passes into retirement age and moves into their '70s.

Conclusion: Governor Bentley's "quick fix" to the state's funding crisis is just that – a quick fix without a long-term solution. The state is now entering its fourth year of economic recession and there are no indicators that the economy will quickly recover. The state's raid on the corpus of the Alabama Trust Fund – and approved by the voters on September 26 – may well prove to be an illusory solution. In all likelihood, three years from now, the trust fund money will have been spent, but the problem will remain.

The fact is the Department of Public Safety is facing yet another very difficult period – probably the most difficult since the mid to late 1930's when the state was in the depth of the Great Depression. Until Governor Bentley and the leadership of the legislature reach agreement to adequately fund state services – and that includes realistically looking at the 'earmarks' tied to current tax revenue and the revision of the abysmally low property tax paid by landowners in the state – the process of "getting by" from year to year will continue.

An often heard comment made by the ill-informed is to simply raise taxes on alcohol products or to establish a state-run lottery as a "quick fix" to state finances. The fact is the state of Alabama could never sell enough alcohol or sell enough lottery tickets to remotely come close to bridging the gap between the needs for efficient and effective state government and current revenue generated. There are, realistically, only three primary sources of state revenue: sales tax, property tax, and income tax. Income tax and sales tax are "earmarked" to the Special Education Trust Fund and provide 86% of the SETF budget of \$5.6 billion. The state's portion of locally assessed property tax is so low as to be negligible. The \$1.7 billion General Fund is a fraction the size of the Special Education Trust Fund. The General Fund itself is pieced together from over 40 different revenue sources deposited into the General Fund, with the largest sources being the insurance company premium tax, interest on the Alabama Trust Fund and state deposits, oil and gas lease and production tax, cigarette tax, ad valorem tax, and Alabama Alcoholic Beverage Control Board profits. It is this piecemeal approach to state government funding that must be solved to avoid another raid on the Alabama Trust Fund.



Alabama Law Enforcement Memorial

Law enforcement officers from across the state and members of an officer's motorcycle club joined state officials and families gathered at the Alabama Capitol to honor their fallen.

The annual ceremony opened Friday, May 11, 2012 with a prayer for the officers who died in the line of duty during the previous year and ended with a 21-gun salute.

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Attorney General Luther Strange.



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continued

Gov. Robert Bentley gave prepared remarks to the assembled officers. Governor Bentley stated communities, businesses and schools depend on the service of law enforcement officers. He thanked those in attendance and the families of those who had died in the last year. Attorney General Luther Strange also delivered an appropriate speech thanking the sacrifices of the fallen officers and remembering their families.

Honored at this year's memorial were Officer Trevor Scott Phillips of the Tuscaloosa Police Department, Officer Donald Joshua Newman of the Jemison Police Department, Officer Justin Sollohub of the Anniston Police Department, and Deputy Marvin Mulder of the Elmore County Sheriff's Office.

Troopers of all ranks – from trooper to colonel – participated in this year's Alabama State Fraternal Order of Police memorial for fallen officers held annually on the South Lawn of Alabama's State Capitol.



Prayer.



Governor Robert Bentley.



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Lt. Col Wright and Colonel McCall.



Assembled officers.





Motor Carrier Safety Unit Conducts



Interstate Truck Inspection On I-10



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Alabama's New Ignition Interlock Statute – Are You Ready?

By Patrick Mahaney
Editor, *The Alabama Trooper*

The Alabama Ignition Interlock statute became effective on **September 1, 2012**. Enacted by the 2011 Alabama legislature, this statute adds significant "after conviction" supervision and control process by the sentencing court over the convicted DUI offender. All DUI convictions entered by an Alabama court on or after September 1, 2012 are subject to the new "ignition interlock" statute.¹

Act 11-613 of the 2011 legislature – the "ignition interlock" act that revised the state's DUI statute – requires the installation of an ignition interlock device on a designated motor vehicle of a person convicted of first offense DUI under certain conditions and *all* second and subsequent convictions within the past five years. Act 11-613 must be read in conjunction with existing 32-5A-191, as amended by Act 11-621. In addition, Act 11-613 added an entirely new section of law, *Code of Alabama*, 1975, section 32-5A-191.4.

Act 11-613 amended the previous 32-5A-191 (e), the "first offense" sub-section, to require the installation of an ignition interlock device for any person convicted of DUI under any of the following conditions:

- The "blood alcohol concentration of 0.15% or greater" *or*
- "any person refusing to provide a blood alcohol concentration" (sic) [breath test refusal] *or*
- "if a child under the age of 14 years was present in the vehicle at the time of the offense" *or*
- "if someone else besides the offender was injured at the time of the offense."

Upon receiving notice of conviction of DUI under any of the four listed conditions, the Director "shall suspend the driving privilege or driver's license of the person convicted for a period of 90 days and the person shall be required to have an ignition interlock device installed for a period of two years" [Note: The period of license removal under Act 11-613 is a 90 day suspension for the first offense, even with a .15% blood alcohol concentration, and *not* the one year's revocation as required under Act 11-621. See, **Attorney General Opinion 2012 – 0011** at the end of this document for more discussion of license suspension/revocation as a result of a DUI conviction with a .15% BrAC result.]

For a second DUI offense within a five year period, the person so convicted shall be required to have an ignition interlock installed for a period of two years from the date

¹ An obvious question is whether or not the ignition interlock statute will apply to offenses that occurred *prior* to September 1st, 2012. The common law of Alabama uniformly holds that the law in effect at the time of the offense is the controlling law for purposes of prosecution and punishment. See, *Bracewell v. State*, 401 So. 2d 123,124 (Ala. 1979): "[a]bsent a clear expression in the Statute to the contrary, we think the law applicable at the time of the offense was intended to govern the offense, the offender, and all proceedings incident thereto, and we so hold." See, also, *Davis v. State*, 571 So. 2d 1287,1289 (Ala. Crim. App. 1990): "A defendant's sentence is determined by the law in effect at the time of the commission of the offense." However, driver license suspension or revocation as a collateral consequence of a conviction DUI is generally viewed as an administrative and civil sanction, and not punishment. See, *Mechur v. Director, Dep't of Public Safety*, 446 So. 2d 48 (Ala. Civ. App. 1984). In the opinion of this writer, an *ex post facto* argument will not prevail if an ignition interlock requirement is imposed for offenses occurring *prior* to September 1st, 2012, but the conviction was entered *after* September 1st, 2012. It has long been the law of Alabama that driver license suspension or revocation after a DUI conviction is deemed "remedial" and not punitive. The new ignition interlock requirement, which runs parallel to driver license reinstatement, will most likely be held on appellate review as "remedial" and not punitive.

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of driver license re-issuance. The requirement to install an ignition interlock after second offense DUI conviction is not contingent on any enumerated factor, such as outlined in sub-section (e).

For a third DUI offense within a five year period, the convicted offender is required to have an ignition interlock installed for a period of three years from the date of driver license re-issuance. For a fourth DUI offense, the convicted offender is required to have an ignition interlock installed for a period of five years from the date of driver license re-issuance.

In sub-section (q) of Act 11-613, now codified at 32-5A-191 (s), the statute imposes additional registration and license issuance fees on all convicted offenders who are required to install an ignition interlock device. A fee of \$75 per month for the first four months the driver license is *suspended* (\$300 total) is required to be paid to the sentencing court, with the distribution of monies to the following entities:

- 40% to the Alabama Interlock Indigent Fund
- 25% to the court having jurisdiction over the case
- 20% to the Department of Public Safety
- 15% to the district attorney having jurisdiction

[Note: On an annual basis, approximately one-half of all DUI convictions are entered at the municipal court level and no appeal is taken to the circuit court. After fourteen days, the conviction becomes a "final conviction" for purposes of license sanctions. A municipal court is a court of limited jurisdiction, and the district attorney does not control prosecutions in the municipal court. The 15% fee to the "district attorney having jurisdiction" is, therefore, inapplicable to municipal court convictions. It is unclear how or where the 15% added fee for the district attorney will be deposited since the sentencing court is the municipal court.]

Attorney General Opinion 2012 – 087 issued September 5, 2012, to the Hon. Alyce M. Spruell, Director of the Administrative Office of Courts, the Attorney General opined that the \$75 fee established under section 32-5A-191(s) does not apply to convicted offenders who are *revoked*, but only to "suspended" licensees. The Attorney General held that the statutory language limits the \$75 fee to be required only during the three month period the license is suspended. As the Attorney General noted, conviction of DUI for second, third, fourth, or subsequent DUI offenses all require a revocation action on part of the Director of Public Safety. The Attorney General stated: "The text of section 32-5A-191 (s) limits its application to the suspension of a license. The Legislature could have stated 'license is suspended *or revoked*.' It did not. Applying the rules of statutory construction, this Office is constrained to conclude that the offender shall pay \$75 per month during the three month period that the license is suspended." (emphasis in original opinion).

Additionally, the Attorney General stated under section 32-5A-191.4 (g)(6), that "the court must order an offender who does not own a vehicle, or fails to comply with an install order, to pay the lower cost of installation charged by any ignition interlock device company approved by Alabama Department of Forensic Sciences, payable in \$75 monthly payments until paid in full." (last full paragraph of opinion)

[Note: The Attorney General's opinion that the non-vehicle owning convicted DUI offender must pay "the lower cost of installation charged by any interlock device company" is problematic. The 2011 legislative act that required the installation of ignition interlock on certain convicted DUI offenders, it was the clear intent of the legislature that ignition interlock services were to be provided in an open-competition,

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free-market economy system, limited only to registration of providers, general oversight and inspection by the Department of Forensic Sciences, and the use of DFS approved interlock devices. The setting of prices for installation and monthly rental was not included in the DFS oversight mandate. There was no statutory language in the ignition interlock act that the legislature intended, and therefore no basis to conclude, that fixed monthly fees or uniform installation and monitoring fees were part of the act. Presumably, an interlock provider may advertise an artificially low price to attract new business, but charge inflated prices for the monthly rental fee. Obviously, this part of the statute is ripe for problems inherent in any private provider, market-driven system.]

In addition, under sub-section (v)(1) of the latest statute, the Department of Public Safety is authorized to set a license issuance fee of \$150 for a special "ignition interlock required" type license to indicate the operator is required to maintain an interlock device. Upon application for re-licensing to obtain a standard Alabama driver license, the Department is authorized to set a license issuance fee of \$75. The \$75 license re-issuance fee is in addition to the presently required \$275 "reinstatement fee" to clear the license status.

Prior to re-licensing, the convicted offender is required to identify to the sentencing court the designated vehicle, by vehicle identification number (VIN), in which the device will be installed. See, *Code of Alabama*, 1975, section 32-5A-191 (t). [Note: There is an apparent 'gap' between the state's primary DUI statute and the Ignition Interlock enforcement statute concerning the necessity of installing the interlock device on *one specific vehicle*, as designated by VIN. The primary DUI statute limits the convicted defendant to the use of one specific vehicle which must be designated by VIN. Under Code section 32-5A-191 (t): "*The defendant shall designate the vehicle to be used by identifying the vehicle by the vehicle identification number to the court.*" However, the ignition interlock compliance and enforcement statute – 32-5A-191.4 – *does not* limit the convicted defendant to only one specific vehicle; it only requires that a vehicle operated by the convicted offender be equipped with an ignition interlock. Code section 32-5A-191.4 (h) states: "*No person who is prohibited from operating a motor vehicle unless it is equipped with an ignition interlock as provided in Section 32-5A-191 shall knowingly: (1) Operate, lease, or borrow a motor vehicle unless that vehicle is equipped with a functioning ignition interlock device. ...*" In other words, under the less restrictive ignition interlock enforcement statute, the convicted offender is not limited to only one vehicle and may utilize any vehicle, provided that vehicle is equipped with a functioning interlock device.]

Prior to re-licensing, the convicted individual is required to provide proof to the Department of Public Safety that an approved interlock device was installed on the designated vehicle as a condition for re-licensing. Any convicted offender required to utilize ignition interlock who operates a vehicle

without an ignition interlock device shall be subjected to an additional period of six months interlock requirement, in addition to other penalties.

Sub-section (u)(2) is intended to deal with a person previously convicted and required to utilize an ignition interlock. If the person is re-arrested for a DUI offense, and the convicted offender refused to submit to breath testing and was subsequently convicted, or the convicted defendant's blood alcohol concentration was 0.15% percent or greater, "[t]he duration of the time an ignition interlock device is required by this section shall be doubled..." [Note: If a previously convicted DUI defendant is subsequently re-arrested and convicted of another DUI offense, and the defendant either refused to submit to a chemical test or the test result was .15% or greater, the duration of time the ignition interlock is required will be doubled. Since the installation of an interlock device for a first offense conviction is for a period of two years following a conviction with a .15% test result or test refusal, presumably this means a second offense conviction with a test result of .15% or test refusal, the duration period will increase from two years to four years; on third offense, from three years to six years; and on fourth or subsequent offense, from five years to ten years.]

Act 11-613 also added a new statute to enforce the ignition interlock act – section 32-5A-191.4. The new section required the Department of Forensic Sciences to establish and approve rules and regulations governing all aspects of the ignition interlock program, to test and evaluate approved models, and to provide governmental oversight to the private providers. Under the terms of 32-5A-191.4, it is clearly the intent of the act that private "for profit" companies will install, calibrate, service, and maintain the interlock devices. The state of Alabama will not be engaged in the installation and service of the interlock devices. The DFS regulations were adopted in final version on September 8, 2012 as Administrative Regulation 370 -3 -1-.01.

Under the terms of section 32-5A-191.4, a convicted offender *may* apply for indigent status and the sentencing court, upon application and review, may grant indigent status for interlock installation. If granted, the convicted offender will then locate an approved provider and have an ignition interlock installed, provided the convicted person pays one-half (1/2) the costs associated with installation and maintenance. "*This section shall not affect any fees associated with the driver's license of the defendant.*" There is no "indigent status" for driver license application fees or reinstatement fees; all driver license fees must be paid in full to the Department of Public Safety prior to re-licensing.

All approved interlock providers will be required to deposit one and one-half percent of all payments (1.5%) collected to be paid into the Alabama Interlock Indigent Fund as a funding source to underwrite the indigent interlock applications.

If the convicted defendant does not own a vehicle, that

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person shall be required to pay \$75 per month to the clerk of the court for the same period of duration as if an ignition interlock was installed. The clerk of the court shall transmit the monies to the state treasury for use by the Department of Public Safety for "impaired driving education and enforcement." [Note: Whether the \$75 per month fee can be waived or set-aside under authority of Rule 26.11 ARCrP is unstated. Presumably, the sentencing court has the authority to waive this fee upon the defendant's showing of indigent status or inability to pay.]

In sub-section (i)(1) of section 32-5A-191.4, any person who operates a vehicle without an ignition interlock device when required "shall be immediately removed from the vehicle and taken into custody." This section of law authorizes the immediate custodial arrest of any non-complying convicted DUI offender, and the vehicle "shall be impounded" and not released except in accordance with 32-6-19 (c). [Section 32-6-19 (c) is the "tow and impound" statutory authority for law enforcement officers to seize any vehicle where the driver is operating the vehicle with a revoked driver license, or the license or privilege is suspended as a consequence of a DUI offense.]

Any violation of the express terms and conditions of ignition interlock use, such as unlawful modification or disabling the device, or failure to operate an ignition interlock

equipped vehicle when required, upon first conviction is a Class A misdemeanor and the person so convicted shall be required to use the ignition interlock for an additional six month period. Upon second conviction, the court shall impose a mandatory jail sentence of not less than 48 hours and the person so convicted shall be required to use the ignition interlock for an additional six months. Upon third or subsequent conviction, the court shall impose a jail sentence of not less than five days and the defendant shall be required to use an ignition interlock for an additional one year.

Concluding Notes: The new ignition interlock statute imposes substantial compliance requirements upon any convicted DUI offender that is subject to the terms of the statute. Obviously, not every DUI offender will be subjected to the statute, but the majority will due to either test refusal or to test result at or above .15% BrAC, or because of second or subsequent offense. Every violation of the statute is a Class A misdemeanor offense which authorizes the sentencing court to impose significant fines and potential incarceration for each offense and incarceration is mandatory on third offense violation.

One of the more unusual aspects of the Alabama ignition interlock statute is the fact that the state of Alabama, in contrast to each of the contiguous states and most of the

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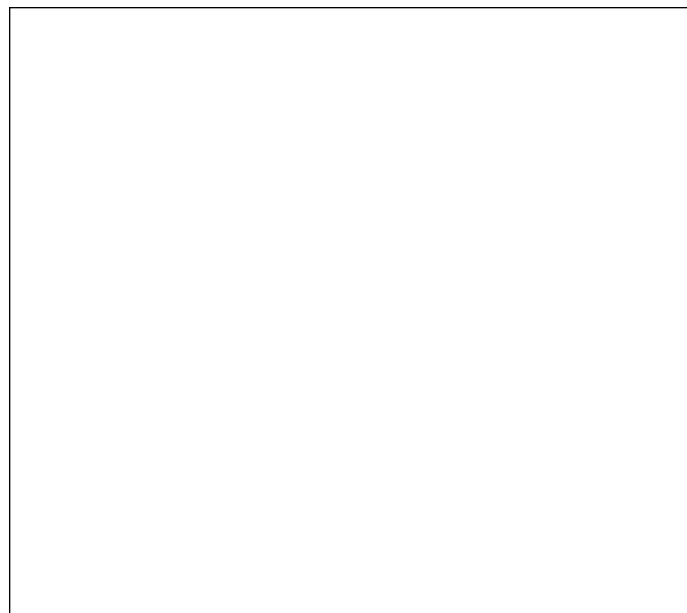
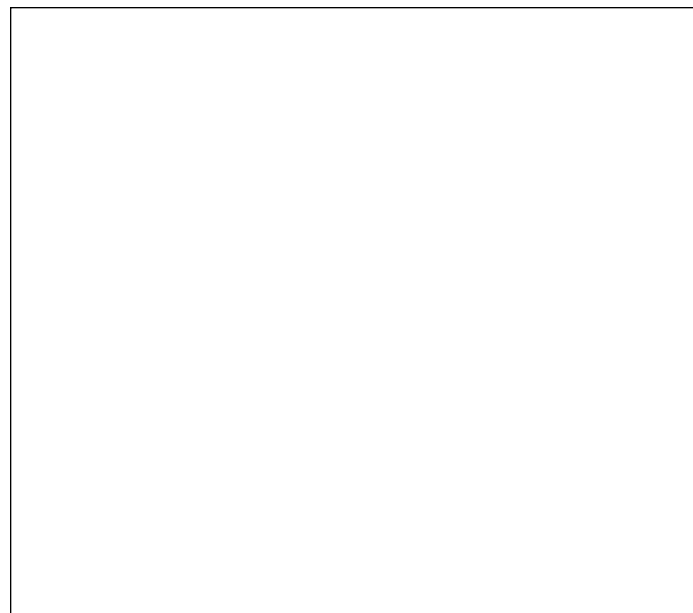
states in the nation, does not offer a 'limited purpose' or 'work permit' or 'limited privilege' driver license for persons convicted of DUI. In each of the surrounding states, ignition interlock acts as an 'electronic probation officer' and is combined with a 'work permit' driver license allowing the individual to retain limited driving privileges for work-related transportation.

Exactly how many Alabama drivers will be required under the new statute to install an interlock device is open to speculation. The total number of DUI cases in 2009 was 21,905, and of that number, 16,912 were convicted (77%). Two years later, the number of DUI arrests and convictions was reported as 17,311 arrests and 12,905 convictions (74%). Of the total number of arrests in any given year, ***an average 34-36% of arrests are reported as refusing the breath test.*** Of the total number that take the breath test, about 64-67% of all cases, ***40-41% of those cases will result in a test result of .15% or greater*** (DFS supplied data). By determining the approximate number of test refusals (+/-35%) and the approximate number of breath test results .15% or greater (+/-40%), to the total number of convictions - 15,000 annually - it is estimated that ***approximately 9,000 to 9,500 Alabama licensees will be subjected to the ignition interlock requirement annually***, assuming the total number of DUI arrests remains in the 20,000 range yearly. That number

is, of course, a rough estimate. Under the express terms of existing statute, only arrested individuals ***convicted*** of DUI will be subjected to the interlock requirement. Breath test refusal, in itself, will not carry the sanction of ignition interlock, and a test refusal that does not result in conviction will continue to be dealt with under the provisions of the Alabama Implied Consent Act and the Administrative License Suspension Act. Further, since "first offense" DUI offenders convicted with a test result of .14% or less will not be subjected to ignition interlock, most likely there will be substantial effort by the defense bar to "reduce" or amend the DUI arrest to a lesser test result, usually in exchange as a plea bargain. Plea agreements will undoubtedly off-set the number of persons ostensibly required to comply with the ignition interlock requirement.

Attorney General Opinion 2012 - 0011: On November 8, 2011, the Attorney General issued a formal opinion at the request of the Department of Public Safety in regard to the conflict between the Alabama Administrative License Suspension Act, located at Code section 32-5A-300 et. seq., and the newly enacted "double minimum punishment" statute - section 32-5A-191 (i) - that took effect on September 1, 2011. The Attorney General stated:

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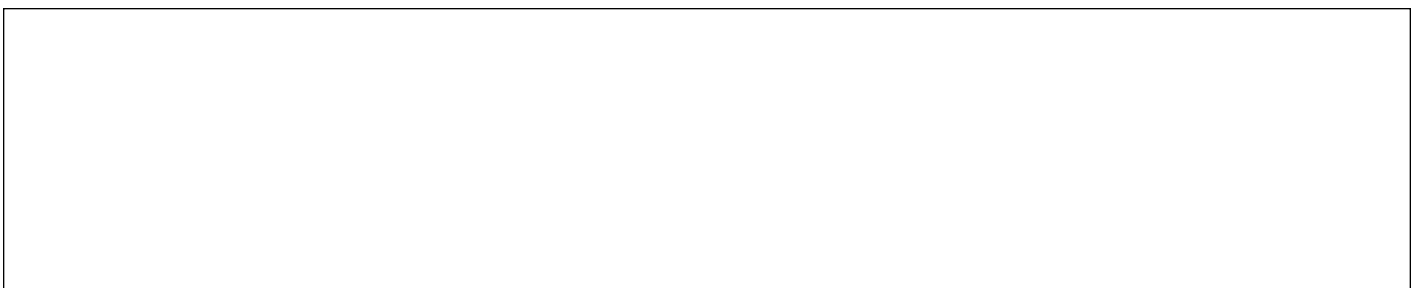
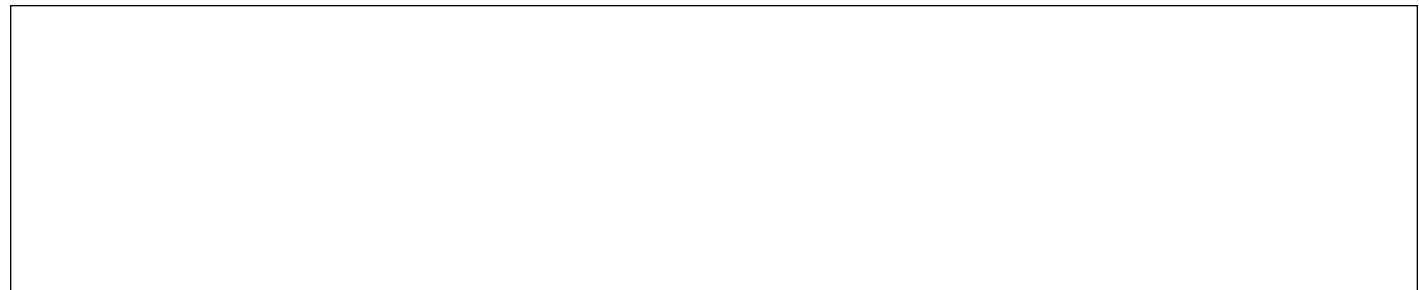
- If the license or privilege is suspended administratively under the Administrative License Suspension Act, there is no additional period of suspension or revocation if subsequently convicted of DUI.
- If the license or privilege is not suspended administratively (AST-60 was not submitted timely; affidavit was defective, etc.), the Director is required to impose the full one year revocation for first offense conviction as required by statute for any conviction with a breath test result of .15% or greater; otherwise the standard 90 day suspension will apply if not subject to "double minimum punishment."
- The Director of Public Safety should not impose the one year period of revocation specified under Code section 32-5A-191(i) for a DUI conviction with a test

result of .15% or greater if the administrative license sanction has already been ordered.

In addition, the Department legal staff offered this guidance with respect to out of state DUI convictions as well as in-state convictions while holding an out of state license:

- An Alabama licensee with an out of state DUI conviction will not be held to an increased period of license removal; the Department will not inquire into the circumstances of an out of state conviction, but will treat all out of state convictions equally.
- An out of state licensee that obtains an in-state conviction will not be subject to revocation of "privilege" to operate in this state.

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State Law Enforcement Reorganization Plan

*By Patrick Mahaney
Editor, The Alabama Trooper*

On Friday, June 22, 2012, Alabama state senator Del Marsh, President Pro Tem of the Senate, released the results of a three month study on the consolidation of state law enforcement services, with the specific

emphasis to end duplication of services and save state general fund revenue. Senator March stated: "Making state government more efficient will be the top legislative priority in the 2013 session, and we will be pre-filing legislation to ensure this public safety effort is addressed."

The study recommended combining or consolidating 20 state agencies with law enforcement authority into seven

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departments. Senator Marsh's office estimated the plan once fully implemented would save more than \$25 million dollars per year, and over \$260 million in total savings in ten years.

The study was produced by the Initiative to Streamline Government. Among the more important recommendations were:

- Combine most state law enforcement functions into four primary agencies
- Create an "umbrella" state agency termed "Public Safety Agency" with an appointed Secretary of Public Safety to oversee and manage for large departments: Investigations, Public Safety, Forensic Sciences, and Public Safety Training
- Merge the functions of the current Alabama Criminal Justice Information System (ACJIS) into the Department of Investigations
- Merge the functions of the current Department of Homeland Security into the Attorney General's Office

The overall concept of the reorganization plan is to align all state law enforcement into four functional areas: investigative, uniform enforcement, forensics, and training. [See diagrams of the current and proposed organizations – next page.] The study did not address exactly how the transfer

of functions and the statutory authority to enforce the existing law will be undertaken. The core functions of the current Department of Public Safety – highway patrol and driver license – will remain in the new Public Safety Department, with marine police and conservation enforcement added. The current Alabama Bureau of Investigation is moved from the existing Department of Public Safety to the new Investigations Department, and aligned with ACJIS, the enforcement division of the current ABC Board, and other state investigative units.

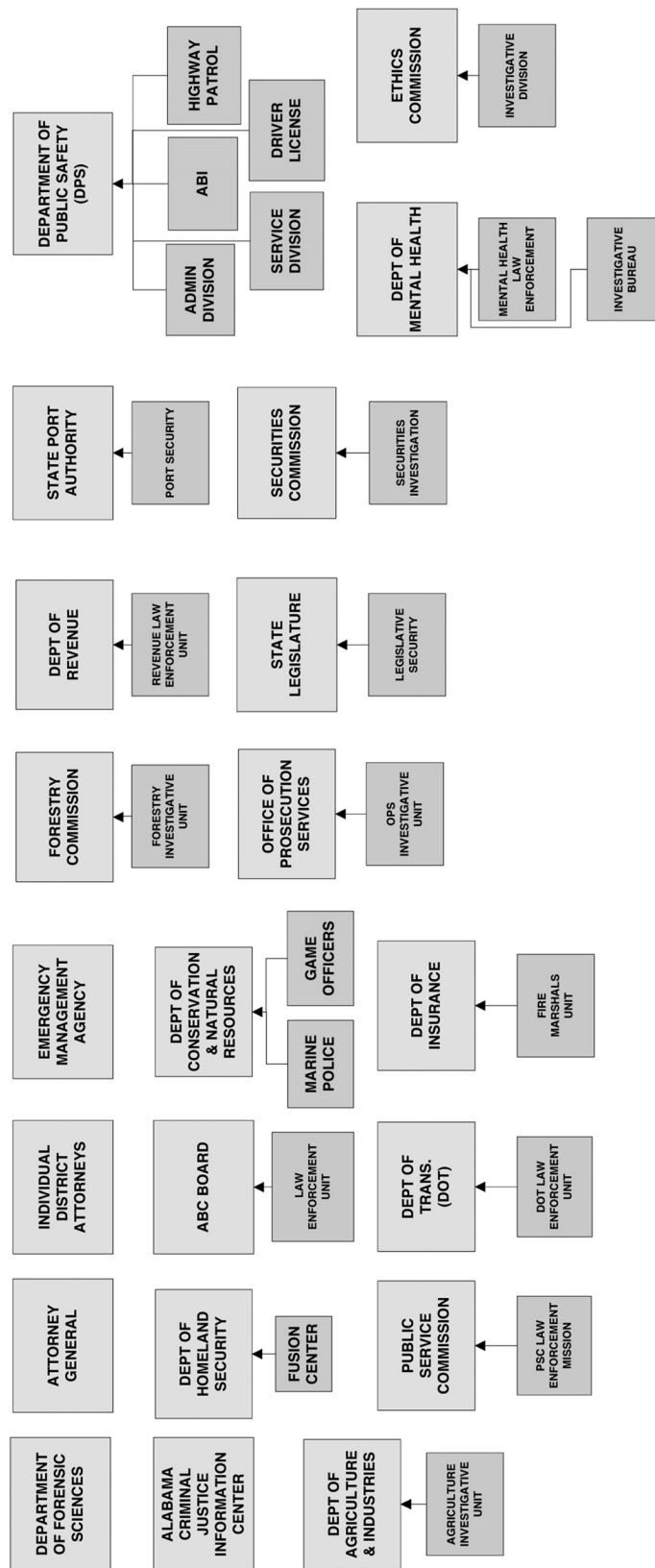
Whether a sworn officer in one state law enforcement department can laterally transfer from one department into another department and whether each department will maintain their own recruiting, hiring, and training standards was not stated. Another issue not addressed was the salary and rank alignment to undertake the merge and consolidation. For example, the current Department of Public Safety utilizes the rank of corporal as a first line or field supervisor; the current ABC Board does not, and the ABC Board's first line supervisor is a sergeant. If the consolidation and merger takes place, will an ABI corporal transfer in the new Department of Investigations as a corporal or a sergeant, or will an entirely new rank/pay grade system take over, such as 'State

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APPENDIX A
CURRENT STRUCTURE OF LAW ENFORCEMENT / INVESTIGATIVE MISSIONS



KEY:

AGENCY
DIVISION
LAW ENFORCEMENT / INVESTIGATIVE UNIT

NOTES:

AGENCIES WITH LAW ENFORCEMENT / INVESTIGATIVE MISSIONS: 21
AVG. NUMBER OF LAW ENFORCEMENT / INVESTIGATIVE AGENCIES IN OTHER STATES: 5

Figure A1. Current Structure of law enforcement/investigative missions in Alabama

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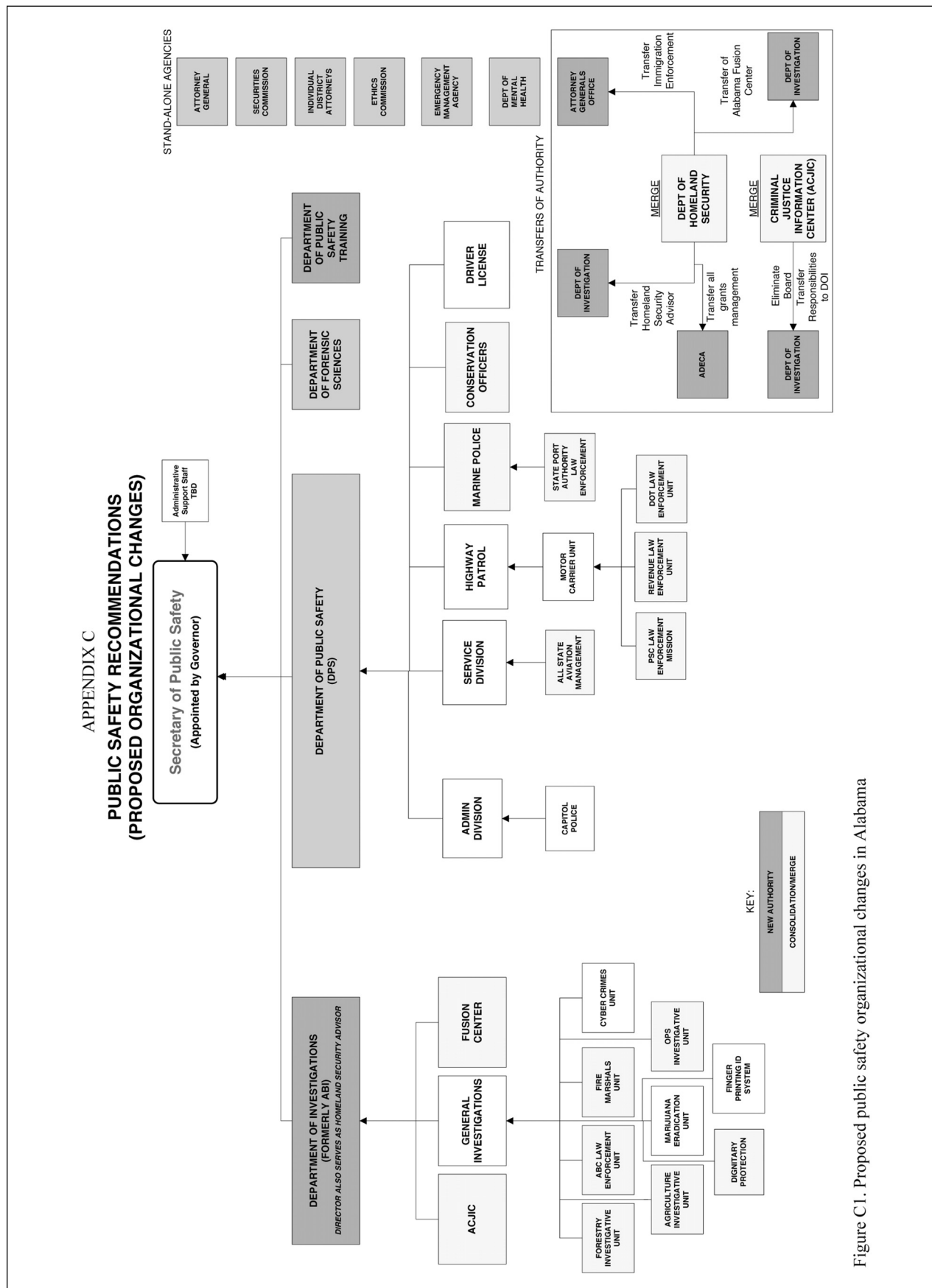


Figure C1. Proposed public safety organizational changes in Alabama

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Investigator I' and 'State Investigator II' and so forth? The same holds true for the some 65 members of the current Alabama Marine Police organization – how will current Marine Police officers be transferred into the new Public Safety Department and their rank and salary schedule aligned to existing state trooper ranks?

While it is probably true that duplication exists some aspects of state law enforcement - an example is the duplication in commercial truck enforcement with the current Department of Public Safety's MCSAP unit, Department of Revenue motor vehicle enforcement, and Public Service Commission all having over-lapping responsibilities in this area – the primary thrust of the study is reducing costs to state government. There was no mention of, and apparently no real thought given, to improving or expanding state law enforcement services. The demographic shift in state's population over the past fifty years, where the significant majority

of the state's population now lives in urban areas, has created an expanding need for state-provided law enforcement services in the rural parts of the state. According to the last census in 2010, over twenty counties in the state, mostly in the southwest quadrant of the state, are losing population and resultant revenue to support local law enforcement functions. In many counties, the Sheriff's Department, due to budgetary restraints, is relegated to courthouse security and serving court papers. Many small-town police agencies are understaffed and under equipped for emergencies. Will the newly created Public Safety Agency step in to fill gap areas in local law enforcement services? The study's primary emphasis was long-term revenue savings, and not on the essential law enforcement services provided to the citizens of the state. Whether or not savings can translate into better services remains to be seen.

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