Guidelines for Sentencing DUI Offenders in the United States

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Background

Guidelines based upon research are needed to assist judges and prosecutors in reducing recidivism among people convicted of driving under the influence (DUI) or driving while intoxicated (DWI). While the efforts of judges, prosecutors and other professionals has contributed to the marked reduction in drinking-driving related deaths on the highway since the early 1980s, in the past 10 years progress has stagnated (see Figure 1).

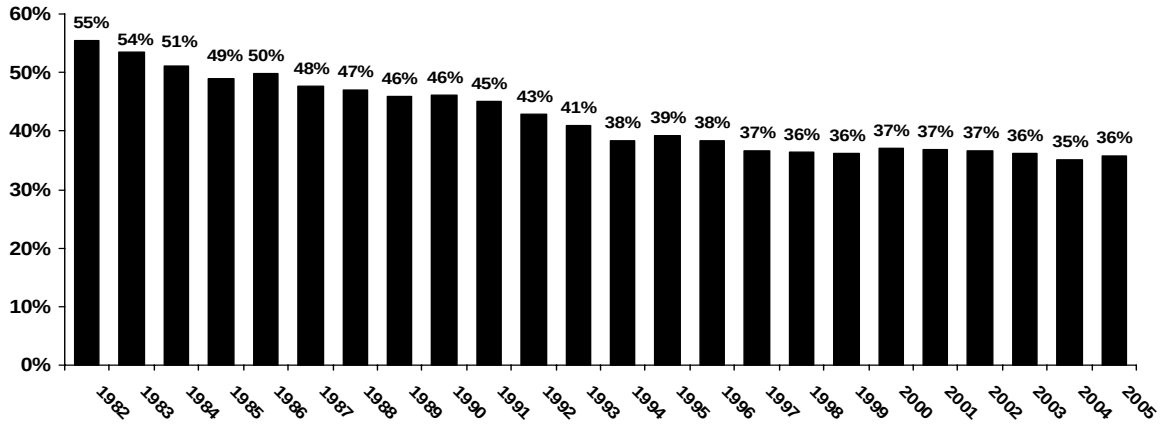

Figure 1: Percent of Fatally Injured Drivers with Alcohol (BAC>=.01)
1982-2005

The involvement of all practitioners in the DUI sentencing process is crucial from both community and public health perspectives. Dealing most effectively with serious traffic offenders can make a substantial difference in community members' health, quality of life, and public welfare.

The guidelines in this paper focus only on the offender convicted of DUI or DWI (the terms DUI and DWI are used interchangeably throughout this paper)—and does not differentiate between DUI offenders convicted as a result of a routine traffic stop and those convicted as a result of involvement in a crash. These guidelines also do not deal with the more serious charges that could result from a DUI such as vehicular homicide or vehicular manslaughter.

Sanctions That Work Best

Data on the effectiveness of *all* the different DUI sanctions used in the United States are inadequate and some data are conflicting. However, available information supports the following generalizations:

- Consistency in sentencing should be balanced with the need to tailor sanctions and the extent of treatment to individual offenders.[1,2,3,4]
- When dealing with recidivists, the focus of sentencing should shift from deterrence to incapacitation or separation of the offender from the vehicle.[5,6]
- Ideally, an evaluation of an offender's problem with alcohol or abuse of alcohol, administered and interpreted by qualified professionals, should be conducted before deciding which sanctions to impose.[2,7,8,9]
- There is a growing body of evidence that sanctions administered on the vehicles of DUI offenders substantially reduce DUI recidivism during the period of implementation.[10,6]
- Intensive supervision probation combined with frequent meetings with the judge and close monitoring of compliance with the offender's sanctions (e.g. DUI Courts) appear to be effective in dealing with multiple repeat offenders.[11,4]

In general, effective sanctions fall into the following areas:

- Licensing sanctions
- Vehicle actions
- Assessment and rehabilitation
- Other sentencing options

Research indicates that a combination of sanctions is more effective than any individual sanction.

Treatment Approaches That Work Best

Two generalizations can be made about alcohol abuse and alcoholism treatment effectiveness:

- Treatments that combine strategies, such as education in conjunction with therapy and aftercare, appear to be most effective for repeat as well as first-time offenders.[12,13,14,15,16]
- The more severe the alcohol problem, the more intensive should be the treatment.[17] For alcohol dependent offenders, any one of three popular treatment philosophies appear to work equally well in reducing alcohol abuse up to one year post-treatment. These include cognitive-behavioral therapy (CBT), motivational enhancement therapy (MET) and 12-step facilitation therapy (TSF).[18]

Data are insufficient to determine the most effective specific treatment strategy for each offender. In general, evidence for alcohol problem treatment supports a 7-to-9-percent reduction of DUI recidivism and crashes averaged across all offender and treatment types.[12]

Characteristics of a Good Treatment Program

Regardless of treatment type, a treatment program should accomplish at least the following.[19]

- Create a treatment plan for each client with specific, measurable goals.
- Provide for family involvement.
- Provide for aftercare.
- Be willing to report back to the court (or probation official) to help enforce compliance with the order for treatment.
- Have medical backup to ensure safe detoxification and healthcare, if required.
- Be sensitive to ethnic, gender, and other differences that might affect treatment effectiveness.
- Have bilingual capability, if needed.

DUI Courts

There is growing evidence that DUI Courts, modeled after Drug Courts, hold promise in substantially reducing DUI recidivism of offenders who complete the requirements of such a court. DUI Courts generally involve:

- Frequent interaction of the offender with the DUI Court judge
- Intensive supervision by probation officers
- Intensive treatment
- Random alcohol and other drug testing
- Community service or some equivalent
- Lifestyle changes
- Positive reinforcement for successful performance in the program

Most DUI Courts assign non-violent offenders who have had two or more DWI convictions in the past to the Court. At the present time, there are multiple sources of funding for Drug/DUI Courts to help defray their costs. DUI Courts have been shown to hold offenders accountable for their actions, change offenders' behavior to reduce recidivism, stop alcohol abuse, treat the victims of DUI offenders in a fair and just way, and protect the public.[20,21]

Alcohol Ignition Interlocks

Breath alcohol ignition interlock devices, when embedded in a comprehensive monitoring and service program, lead to 40-95% reductions in the rate of repeat DWI offenses of convicted DWI offenders. Reducing the DWI rate is an important indicator of a public safety impact because DWI is a strong predictor of crash risk involvement. While it may be a safe assumption that reduction in DWI will lead to fewer crashes, there has not yet been any study with sufficient statistical power to demonstrate a direct reduction in crash risk attributable to an interlock program.

Because of the manner in which interlocks are assigned to prior DWI offenders, the most dangerous repeat DWI offenders only rarely become eligible for an interlock and then only for a brief period of time. Research is called for that would evaluate the impact of lowering the threshold for entry into an interlock program and raising the threshold for exit from an interlock program. If such an approach were successful it could put more of the most dangerous repeat offenders under control of an interlock program and retain them until evidence is available documenting their readiness to drive without an external

monitor. Two methods that could be used to provide evidence of readiness for full license reinstatement without an interlock are suggested. These include interlock device data logs that document the BAC test results over the preceding months, and the measurement of blood borne biological markers associated with alcohol dependence.

Interlock programs are most often used as a form of secondary prevention to prevent impaired driving by people identified as high-risk due to prior DWI offenses. These programs reduce recidivism by 40-95% as long as the interlock remains on the car. The period of interlock use does not lead to the adoption of enduring safer driving decisions in the longer term since the recidivism rate increases to control levels after the interlock is removed. Effort needs to be made to prevent the post-interlock increase in the rate of DWI offenses.

The majority of convicted DWI offenders whose licenses are suspended choose to drive anyway, and since an alcohol interlock program can improve monitoring and prevent impaired driving, it is worth evaluating the public safety impact of an early post-conviction interlock requirement relative to simply suspending the driver's license.

Motor vehicle authorities and courts should give consideration to criterion-based removal of the interlock devices rather than to simply require that these devices be used for a pre-ordained period of time. Criteria for removing the device could be based on a combination of biomarkers and objective behavioral evidence that public risk exposure related to drinking-driving by an offender has been reduced.

In most interlock programs, the offender pays to cost of the program at approximately $65 U.S./month equivalent. There is no evidence that the interlock is a serious cost-burden, but insurance carriers might be able to overcome any cost impact with an offsetting adjustment in insurance rates if data show evidence that DWI offenders driving with an interlock installed have lower overall crash risk.

It may be impractical to require that an interlock be installed on every vehicle owned by someone who will be required to use an interlock device. As an alternative the driver license of such drivers should be clearly marked showing that the driving privilege is exclusively contingent upon use of interlock vehicles.

In the future, the interlock will likely be an integral part of advanced driver recognition and control systems. In the meantime it is very easy for a driver to circumvent the interlock by using a different vehicle without the interlock. Accordingly, at the current stage of technological development, an offender's motivation for compliance with the interlock restriction is expected to be a factor in effectiveness. Brief motivational interventions delivered while drivers are captive in the interlock program may help improve motivation for making lasting behavior changes.

Brief Interventions

Recent research on the effectiveness of brief interventions in medical settings is promising. However, most of these interventions are accomplished before drivers are arrested or

charged with DUI. Counseling by medical professionals of drinking drivers injured in crashes and treated at hospitals has been shown to reduce future alcohol-related episodes. [15,22,23]

The table below summarizes the evidence in the literature concerning various DUI sentencing options:

Table 1. DUI Sentencing Checklist

OFFENDER	SANCTION	EFFECTIVENESS	COMMENT
FIRST CONVICTION	**LICENSING:**		
	Suspension/Revocation (>=90 days; 30 days hard)	Reduces alcohol-related fatalities 6-19% (administrative) and reduces recidivism.	Studies show it does not cause employment problems.
	VEHICLE ACTIONS: (FOR VERY HIGH BACS):		
	Impoundment/ Immob lization	Reduces recidivism by 40%-70%.	Immobilization may be more cost effective.
	Alcohol Ignition Interlocks	Effective while on vehicle.	Breath test failures in first few weeks are best predictor of recidivism.
	License Plate Impoundment	Shown to be effective in MN.	More cost efficient than impoundment.
	ASSESSMENT & REHABILITATION:		
	Treatment as appropriate to problem	Reduces recidivism by 7%-9%.	Should be paid by the offender when possible.
	SENTENCING OPTIONS:		
	Electronic monitoring Home confinement	Effective alternative to jail. Reduces recidivism by 33%.	Can be self-sufficient if paid by the offender.
	Fines	Increase in mandatory fines has been associated with an 8% reduction in intoxicated driver fatal crashes.[24]	Sometimes used to pay for programs.
MULTIPLE CONVICTIONS (Repeat Offender)	**LICENSING:**		
	Suspension/ Revocation (>= 1 year) 30-90 days hard Remaining days on restricted license/work permit		Studies indicate 50-70% of offenders continue to drive anyway.
	VEHICLE ACTIONS:		
	Impoundment/Immobilization	Reduces recidivism by 40%-70%.	Immobilization may be more cost effective.

OFFENDER	SANCTION	EFFECTIVENESS	COMMENT
	Alcohol Ignition Interlocks	Reduces recidivism by about 65%.	Breath test failures in first few weeks are best predictor of recidivism.
	License Plate Impoundment	Shown to reduce recidivism in one study.	More cost efficient than impoundment.
	ASSESSMENT & REHABILITATION:		
	Mandatory assessment of drinking problem and mandatory treatment.	Reduces recidivism by 7%-9%.	Should be paid by the offender when possible.
	SENTENCING OPTIONS:		
	Electronic monitoring and home confinement.	Reduces recidivism by 33%.	Can be self-sufficient if paid by the offender.
	Intensive Supervision Probation.	Reduces recidivism by 50%.	Should be at least partially funded by the offender.
	Special DWI Facilities.	Reduces recidivism by 75%.	
	Day Reporting Center.	Integrates offender back into society.	More cost effective than jail.
	Fines. Reinstatement Fees.		Helps pay for costs of other sanctions.
	DUI Court (e.g. frequent contact with judge; intensive supervision probation; treatment; random alcohol/drug testing; lifestyle changes; positive reinforcement).	Some Courts reporting reductions in recidivism by 50% or greater.	Multiple funding sources available. NHTSA and NIAAA evaluations are underway.

When considering sanctions for DWI offenders, the guidelines in Table 1 provide judges with an overview of the various sentencing options and information on their effectiveness. More information on sentencing options can be found in a guide published by the National Highway Traffic Safety Administration (NHTSA) and National Institute on Alcohol Abuse and Alcoholism (NIAAA). [25]

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