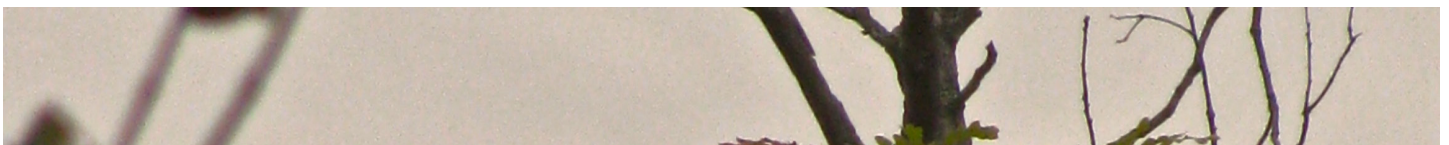


# DUI Penalties: The Effectiveness of Pennsylvania's Drinking and Driving Laws

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In 2003, a study surveyed 6,002 United States citizens in which 97% of people expressed that they feel drinking and driving is threatening their well-being. Between 1999 and 2002, anonymous phone surveys found that 40 million Americans admitted to driving while intoxicated (Dula, Dwyer & Leverne, 2007). Many of those surveyed stated that they feel the probability of getting arrested or in an accident were low (Dula et al., 2007). Using these statistics, it can be implied that despite the awareness that driving under the influence is in fact dangerous, Americans nonetheless continue to do so. DUI arrests are among the most common arrest offenses in the country, and make up 40% of Pennsylvania's sentenced jail admissions (LaBrie, Kidman, Albanese, Peller, & Shaffer, 2007). Each year

alcohol-related crashes cost the United States nearly 51 billion dollars (Moore, Harrison, Young, & Ochshorn, 2008). These statistics show that not only do Americans drink and drive, but it is a major concern within our society. This paper will describe Pennsylvania's drinking and driving laws and penalties that are currently enforced, including fines, jail time, license suspension, electronic monitoring options and treatment options. This paper will then discuss how these laws and penalties are rooted in the criminological theory of deterrence, which states that punishment can be used to prevent, or deter criminal behavior. Research will be presented on whether these laws are sufficient. This paper will conclude with reasons why having harsher laws and penalties for driving under the influence, and utilizing treat-

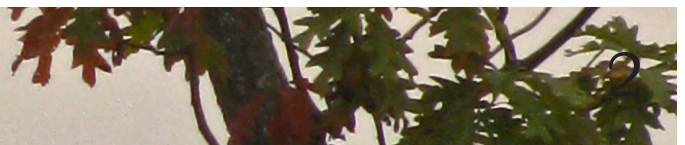


ment options, Pennsylvania can better prevent arrests and other issues associated with drinking and driving.

First, alcohol's effect on a person's driving is important to understand. Alcohol can cause disorientation, slow reaction time, and lack of focus. It can also affect a person's vision. These are all reasons why getting behind the wheel while intoxicated can be dangerous, and the reasons why many accidents occur. The penalties for driving under the influence in Pennsylvania are determined by the individual's blood alcohol content. A person's BAC is calculated based on the consumption of alcohol and his or her weight. The more alcohol a person consumes, the higher the BAC will be. A standard drink is considered to contain 0.5 fluid ounces of pure alcohol. This varies depending on the beverage. For example a 12 ounce beer would be the equivalent to one drink, and 1.5 ounces of a spirit would be considered a drink. A person who weighs 140 pounds, which is about the mean weight of an adult, would reach a BAC of about 0.08 after consuming approximately four drinks (Levinthal, 2012). This states that the average person reaches the legal limit somewhere around four drinks.

To be able to assess the effectiveness of

the laws in place, it must first be understood what they are. The laws were formed in order to address the concern of driving under the influence, after it was declared a major social problem in the 1980s. Some researchers believe that the DUI laws were formed because of this emergence of societal concern (Kingsnorth, Alvis & Gavia, 1993). Different groups opposing drinking and driving, were formed during this time as well. Well know today are the groups MADD, mothers against drunk driving, and SADD, students against drunk driving (Kingsnorth et al., 1993). In 1982, the Pennsylvania General Assembly passed Act 289, which set forth the penalties for driving under the influence in order to deter people from drinking and driving. In 1983, this act became law. This included making it easier for police officers to make an arrest and by making it more likely that the person will receive the penalties when arrested (Pennsylvania Commission of Crime and Delinquency [PCCD], 1988). Under this act, penalties such as the fines, jail time and the alcohol highway safety school were put into effect. Resources for police officers, such as chemical testing and allowing them more authority to pull over suspected drunk drivers were also added. This act also set the legal BAC limit to



0.10 to be considered a violation of these laws (PCCD, 1988).

In Pennsylvania, the legal limit blood alcohol content (BAC) in which a person can be arrested for driving under the influence is 0.08 and is considered general impairment. This was lowered from 0.10 by act 24 in September of 2003, also making 0.10 considered to be a high BAC (Pennsylvania Department of Transportation [PDT], 2012). Act 24 also changed the penalties for minors, commercial drivers, bus drivers and those who injure others in an accident to those penalties for high BAC, even if their BAC does not fall in the high category (PDT, 2012).

A person arrested for driving under the influence, no matter what his or her BAC, can be required to undergo treatment if ordered by a court. More than one offense no matter what the BAC will also result in an ignition interlock, a breathalyzer that is installed in the vehicle that has to be blown into before the motor vehicle can be started, for one year. A person who is arrested with no prior driving under the influence offenses and a BAC of 0.08 up to 0.099, general impairment, can receive a fine of 300 dollars, an ungraded misdemeanor, up to six months probation and will be required to attend alcohol highway

safety school. An individual with the same BAC range and two or more offenses will receive a fine of 300 up to 2,500 dollars. More than one offense results in a twelve month suspension of their driver's license, and can result in a five to ten day minimum of jail time. A third offense under this BAC range results in a 2<sup>nd</sup> degree misdemeanor (PDT, 2012).

A person who is arrested with a BAC of 0.10 up to 0.159, high BAC, can receive a fine of 500 up to 5000 dollars, a twelve month license suspension, and a minimum of 48 hours jail time. It is considered to be an ungraded misdemeanor. The person would also be required to attend the alcohol highway safety school. Alcohol highway safety schooling educates offenders on the effects and the consequences of alcohol consumption or use of other substances in relation to driving ability (Moore et al., 2008). This course is also required to include information on counseling and therapy options. A person who receives more than one offense under this BAC range can receive a fine between 500 and 10,000 dollars, one to three months of jail time and twelve month license suspension. When a person reaches a fourth offense under this BAC range, he or she can receive an eighteen month license suspen-

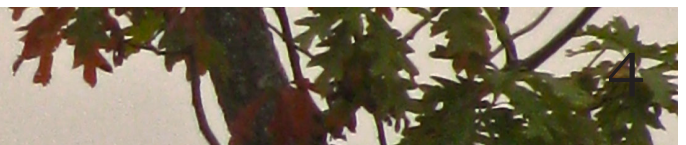
sion as well as a one year jail time minimum.

With this fourth offense it is also then considered a first degree misdemeanor. After more than one offense under this BAC range the person will also receive an ignition interlock for one year (PDT, 2012).

When a person is arrested with no prior offenses and a BAC of 0.16 or higher, highest BAC, they receive a fine ranging from 1,000 up to 5,000 dollars. This is considered an ungraded misdemeanor and the person spends 72 hours minimum in jail. This also results in a twelve month license suspension and alcohol highway safety school. When a person is arrested under this BAC range with prior offenses it is considered a 1<sup>st</sup> degree misdemeanor and they can receive anywhere from three months to one year in prison. It also results in a fine ranging from 1,500 to 10,000 dollars and an eighteen month license suspension. Under this BAC range more than one offense will result in an ignition interlock for one year (PDT, 2012). After having these specific penalties explained in detail, it is important to note that as the BAC increases, so does the severity of the consequences. This is a common pattern across all state that the penalties increase at every level, and each offense (Kings-

north et al., 1993).

These laws and penalties are based on deterrence strategies. They focus on the consequences of the crime committed. Studies have shown that people make these decisions based on what they perceive will be the consequences, as well as the certainty and immediacy of these consequences (LaBrie et al., 2007). This implies that people who are likely to drink and drive need to believe that something bad will happen when they do. This complies with the criminological theory, deterrence theory. Deterrence theory states that punishment should be used to prevent criminal behavior and that this punishment needs to be certain, meaning the punishment needs to be delivered every time the behavior happens, swift, meaning it needs to be as immediate as possible, and severe, meaning the punishment needs to be severe enough to fit the punishment. Put simply, the costs of committing the crime need to outweigh the benefits (Braga & Weisburd, 2012). The effectiveness of these laws rely on the perceived certainty and severity of the laws by the people (Kingsnorth et al., 1993). There are two types of deterrence. General deterrence is to prevent a population from participating in criminal behavior and specific deterrence is to prevent



individuals that have already participated in criminal behavior from offending again.

General deterrence, in relation to drinking and driving laws, means they want the penalties to be severe enough that the population will not want to risk getting caught driving under the influence. Specific deterrence, in relation to these laws, means they want the increasing severity of the penalties to prevent one time offenders from getting arrested for driving under the influence again. Pennsylvania's penalties concerning driving under the influence focus strictly on the punishment consequences when an arrest is made. The idea is that the risk of these penalties will prevent people from driving under the influence. After the first offense, the severity of the consequences increases. This is the way in which the severity aspect of deterrence theory is incorporated into these penalties. These penalties were also created assuming the severity would be enough of a deterrent to prevent people from driving under the influence at all.

Braga and Weisburd (2012) have found that police intervention can be effective in preventing crime. They say that increasing the number of police, as well as police visibility, are ways in which the perceived risks are heightened, boosting both

general and specific deterrence strategies. This is one way to increase the perceived certainty of punishment for driving under the influence. Being arrested is an immediate punishment which is another aspect of deterrence theory. This punishment is then followed by more consequences such as the fines and jail time.

At a national level, DUI interventions that have been enforced, such as DUI checkpoints and the penalties put forth by the law, have not been shown to have made a major impact on the amount of arrests related to drinking and driving (Dula et al., 2007). Deaths related to traffic accidents involving drinking and driving has maintained a steady average of 41% since 1992 (Dula et al., 2007). In 2004, the FBI reported driving under the influence of alcohol and other drugs the most deadly crime in the United States based on the number of fatalities (LaBrie et al., 2007). It is also important to note that the arrests for DUIs only represent a fraction of driving under the influence instances that occur. It is shown that the penalties in place for driving under the influence are not a severe enough deterrent for some people, and that many people will continue to drink and drive despite these penalties (LaBrie et al., 2007).

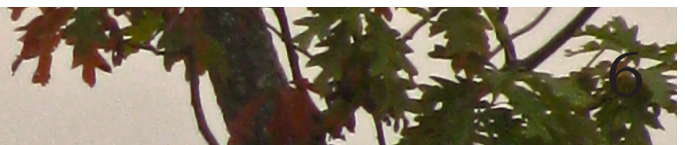
When these laws were first enacted in 1982, Pennsylvania saw a 68% increase in DUI arrests by 1987 (PCCD, 1988). This same year it was found that a high percentage of these arrests were repeat offenders. During the first two years, the state also saw an initial drop in alcohol related accidents, showing that at first these new laws had some effect on changing peoples' attitudes towards drinking and driving (PCCD, 1988). Since many of these accidents were caused by first time offenders, it can be assumed that the decrease was related to a deterrence of would-be offenders, taking into consideration treatment options were not incorporated into the penalty options under after the first few years of these laws. Studies have since shown that fatal accidents due to drunken driving have increased since these laws were passed initially (PCCD, 1988).

There are two different ways in which the drinking and driving laws can be made more effective in Pennsylvania. The deterrence strategies already in place, although not proven to be effective the way they are, can be expanded upon, making them more severe and increasing the risk of receiving them. This could prevent many first time offenders. The second way these laws can be made more effective, is incorporat-

ing more treatment options. Treatment has been shown to be an effective way to prevent recidivism in people arrested for driving under the influence.

There have been studies done over the years to test the idea of swiftness of punishment in relation to the DUI penalties. What was done is some of the DUI court cases were expedited to see if the faster punishment would have an effect in deterring drinking and driving. It was found that doing so did not result in less DUI arrests and accidents related to drunken driving. The study concluded that expediting the court cases did not increase a deterrent effect for DUIs (Bouffard & Bouffard, 2011). This implies that swiftness of the punishment is not one of the main issues associated with the laws in place.

The issues with the penalties being rooted in deterrence theory that are included in the current laws, include that the punishments are not always, certain or severe. It has been proven that intermediate punishment is much less effective than consistent punishment of a behavior. This is relation to driving under the influence means that the chance of a person getting caught are not certain, the more likely it is for the person to drive drunk. Related to this, it has been stated



that those who perceive the consequences as being severe, also perceive the chances of getting caught relatively high (Kingsnorth et al., 1993). Even when the DUI “Crackdowns” occur, meaning police spend more time watching for and arresting drunk drivers, it only has a short term effect (Kingsnorth et al., 1993). Part of the problem could also be that people do not find the penalties to be severe enough. Fear of the risk of being arrested have not proved to produce a behavioral change among DUI offenders (Kingsnorth et al., 1993). Based off the fact that people continue to drink and drive despite their awareness of the risks if they do get caught, is proof that the penalties are not severe enough to deter drinking and driving.

The percentage of repeat offenders among all people arrested for DUIs is high. This is proof that the consequences are not severe enough to deter people from drinking and driving even after being caught the first time. The idea that repeat offenders also make up a large percentage of accidents related to driving under the influence shows that this continues to be a prominent threat to highway safety (PCCD, 1988). Studies have shown that many repeat DUI offenders have criminal histories (LaBrie et al., 2007). Because of this treatment has become more prominent in

the consequences of repeat DUI arrests. From 1996, until 1997, a sample of 1,281 repeat DUI offenders was conducted. All of these participants chose treatment as an alternative to time in prison.

Treatment programs allow for a more personalized intervention for a person based on the offense, as well as any prior offenses (Voas et al., 2011). These treatment options have only become more common since 2009 (PDT, 2012). Implementing more alcohol consumption deterrence rather than just driving after having been drinking is a way to prevent the offender from being in a situation in which drinking and driving becomes an option, rather than trying to prevent the drinking and driving after the person is already impaired. Treatment programs focus on ways in which an individual can reduce their alcohol consumption. It has been found that while deterrence strategies can be effective, repeat offenders often adapt better when given the alternative interventions, such as treatment programs (Braga & Weisburd, 2012). This is because treatment focuses on the individual, and introduces alternatives behaviors, rather than just receiving a punishment. When it comes to recidivism, those who undergo therapy have less of a chance of being repeat drunken drivers (Moore et al., 2008). This

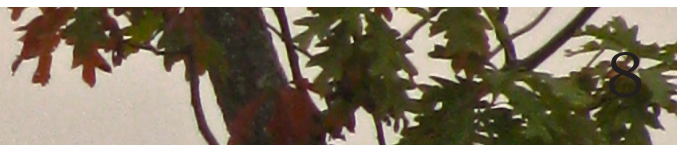
is because of the individualized attention to the person's alcohol use and antecedents to driving under the influence. A study followed 63 participants who were arrested for more than one DUI offense, and attended four months of outpatient treatment. These people were assessed for alcohol abuse problems, self-esteem issues, as well as their arrest histories were examined. These participants were reexamined after a 21 month period, and the recidivism arrest rate for those individuals was as low as 13% (Moore et al., 2008). This is an example of how treatment therapy can be effective.

Ways to address driving under the influence in a different way, can include methods of preventing recidivism aside from incarceration of repeat offenders. This is where something such as the ignition interlocks, electronic home confinement or alcohol consumption monitors can be effective (Voas, Dupoint, Talpins, & Shea, 2011). This kind of monitoring can not only save communities money but also give more of a focus on rehabilitation. Given the laws that are in effect now, there are not a lot of options presented for dealing with offenders. They can basically be put on probation, have their licenses taken away or be incarcerated. These alternative systems

allow for more flexibility in monitoring the offenders and again, allowing a focus on rehabilitation (Voas et al., 2011). Allowing offenders to drive an interlocked car could be more effective than suspending their license. This is because when their license is taken away they are more likely to drive illegally which is creating the opposite of the desired effect. The interlock system allows the individual to drive themselves, but it is a sure way of making sure they do not drive under the influence.

Although treatment has been proven to be effective for some repeat offenders, today's treatment often involves substance abuse interventions. The issue with this is that is based on the idea that people repeatedly drink and drive because of their substance use (LaBrie et al., 2007). Along with this, even though treatment has been incorporated into the law, it is on a court ordered basis, so it is only involved if the judge sees it fit. Creating treatment programs targeted specifically at repeat drinking and driving offenders, not substance abuse offenders, could be one way to utilize the effectiveness of treatment programs.

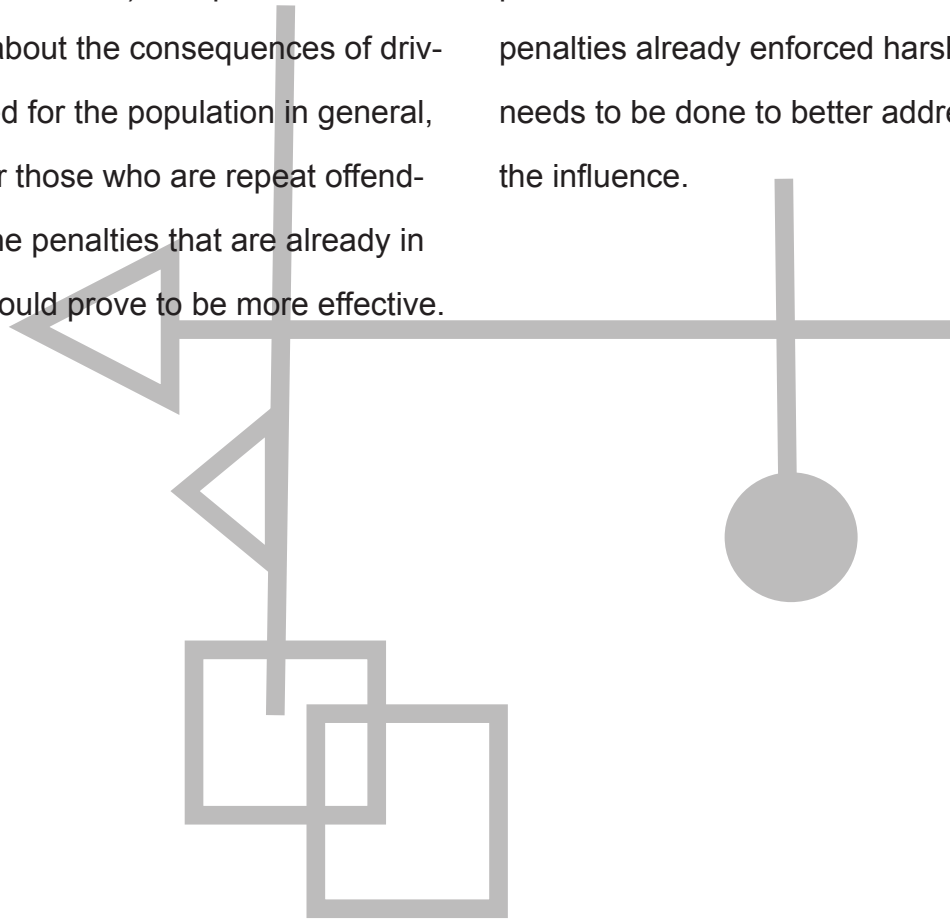
In conclusion, Future policy revisions should focus on individual treatment for





repeat offenders, and also on the certainness of punishment and getting caught (Bouffard & Bouffard, 2011). If deterrence was shown to be effective, we would have seen a much larger improvement in highway safety since these laws have taken effect (PCCD, 1988). People need to be better informed about the consequences of driving while impaired for the population in general, and treatment for those who are repeat offenders, along with the penalties that are already in place, perhaps could prove to be more effective.

Increasing the severity for the first time offenders could also be an effective way to lessen the instances of repeat offenders. The DUI penalties that are in place are not adequate. Whether it be implementing a more individual approach to repeat offenders, such as treatment or making the penalties already enforced harsher, something needs to be done to better address driving under the influence.



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