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APPENDIX C5 ENFORCEMENT STRATEGIES FOR THE PERSISTENT DRINKING DRIVER

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participants.)

The persistent drinking driver is an individual who continues to drink and drive repeatedly, often at very high blood alcohol levels. The goal of the present paper is to discuss possible enforcement strategies for dealing with such individuals, impediments to implementation of these strategies and ways to facilitate more effective efforts. It addresses efforts by police and considers the impact of expanded enforcement on the courts.

Background

Any single drinking and driving event will not likely lead to a drinking and driving arrest. However, continued drinking driving over an extended period of time can lead to a paper trail of drinking and driving activity. This trail can include license suspensions, license revocations and DWI convictions. An indication of this trail can be seen in the Fatal Accident Reporting System (FARS) of the National Highway Traffic Safety Administration.

FARS data were analyzed with respect to driver BAC, license status and prior DWI convictions. During 1992, there were 16,350 fatally injured drivers for which both license status and BAC were known. Of these, 2,403 did not hold a valid license typically because their license had been suspended (N=1,027), revoked (N=346) or canceled (N=38). The Figure on the following page shows the BAC distributions for those drivers who did and did not hold a valid license.

As shown in Figure 1, 57 percent of those drivers with a valid license were at .00 percent BAC as compared with only 30 percent of those without a valid license. The two groups were similar for BACs in the range from about .01 percent through .09 percent. The two groups began to diverge at about .10 percent. BACs of .25 percent and higher were about twice as common among unlicensed as opposed to licensed drivers (18 percent versus 8 percent).

The most common reason for not having a valid license is that the license has been suspended or revoked. Often, suspension or revocation is the result of a DWI conviction(s). For the year 1992, there were 1,033 fatally injured drivers, with known BAC, with one or more prior DWI convictions on their driving record. The second Figure compares the BAC distributions for those drivers (licensed and unlicensed) with and without a prior DWI conviction.

As shown in Figure 2, 56 percent of those drivers with no prior DWI convictions were at .00 percent BAC as compared with only 12 percent of those with one or more prior convictions. BACs of .25 percent and higher were about three times as common among the prior conviction group as

opposed to the no prior conviction group (28 percent versus 8 percent).

These results suggest that enforcement designed to combat the persistent drinking driver could be targeted against those individuals who continue to drive following an alcohol related license suspension or revocation. Alternatively, or in addition, enforcement could be more generally targeted at high-BAC (.15 percent+) drivers.

Enforcement Strategies

Traffic enforcement operations can generally be classified into three major types. The first, and by far the most common, is patrol activity including responding to crash scenes. The second is special operations and the third is checkpoints.

Patrol and traffic officers will encounter the persistent drinking driver as part of crash investigations. Crash involved unlicensed drivers can be cited at the crash scene or as part of a follow-up investigation. Similarly, high-BAC drivers can be cited and/or arrested though DUI arrest at the crash scene is secondary to obtaining medical attention for the injured and clearing the roadway.

The better patrol strategy would be to intervene before the crash occurs. Such interventions require detection of the persistent drinking driver from among the entire traffic stream.

One possible aid to detection is the *special license plate or license tag*. Special plates or tags are issued for the car(s) owned by the convicted driver. The plates or tags permit family members to continue to operate a vehicle that might otherwise have been impounded or had its registration suspended or revoked. Police are permitted to stop tagged vehicles and ensure that they are not being operated by someone violating the terms of an imposed drivers license sanction. Such programs are known to have been implemented in Washington and Oregon (see Voas paper in this report). Similarly, Ohio distributes a "hot list" to local authorities listing those drivers in their county with suspended licenses following five or more DWI convictions; Virginia distributes lists of habitual offenders; and New York has a program to deal with Persistent Revoked Operators (PRO).

It may also be possible, through research, to identify a set of on-road cues to aid in the identification of the persistent drinking driver. Do these individuals drive differently than the typical motorist? Differently than the typical motorist who has been drinking? Differently during those periods when his or her license has been suspended or revoked? Has the persistent drinking driver modified his or her behavior after years of drinking and driving and years of attempting to avoid the police? Answers to these and similar questions

could aid patrol officers in the detection of the persistent drinking driver within the overall traffic stream.

Special Operations include any enforcement strategy which is markedly different from routine operations and is specially designed to deal with drinking drivers and/or persistent drinking drivers.

One such special operation is the saturation patrol where large numbers of officers blanket a given, typically high risk, area for some number of hours. Saturations have been successful in obtaining arrests and enhancing public awareness of DWI enforcement efforts. However, the saturation is, essentially, a patrol operation and thus the officer still has the problem of identifying the persistent drinking driver from among the entire traffic stream.

Another special operation strategy is the "stakeout." The home of a convicted drinking driver is observed one or more times during the term of the imposed license suspension or revocation. The most common time of day for the stakeout is in the morning when the driver might be expected to leave home headed for work. Any person fitting the description of the convicted person and leaving the home as the driver of a vehicle would be stopped and asked to produce a valid drivers license. This technique was tried some years ago as part of the Nassau County Alcohol Safety Action Project. DWI officers would often devote the last hour of their tour to stakeouts. Their results were not specifically evaluated. However, while labor intensive, the technique seemed to have merit and could serve as a deterrent both for the original DWI behavior and for subsequent driving with a suspended or revoked license.

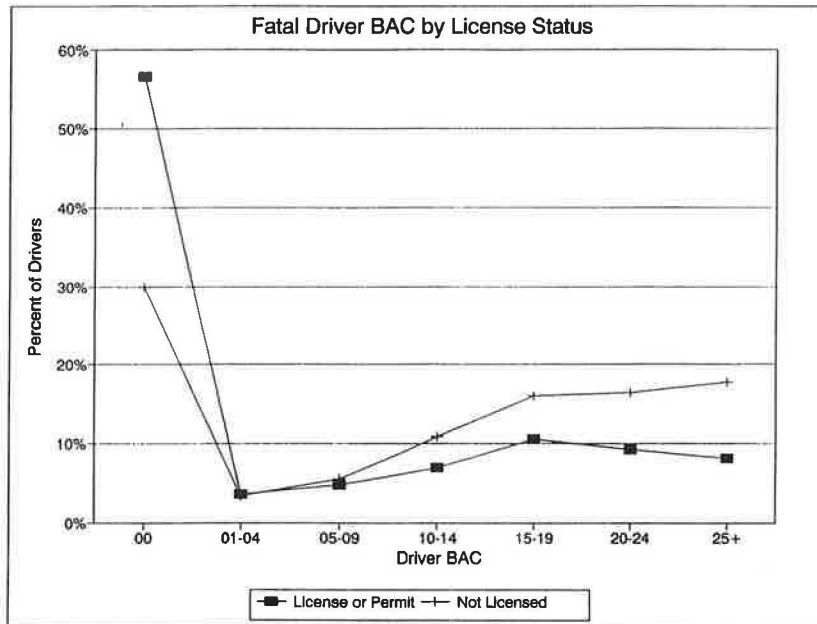


Figure 1

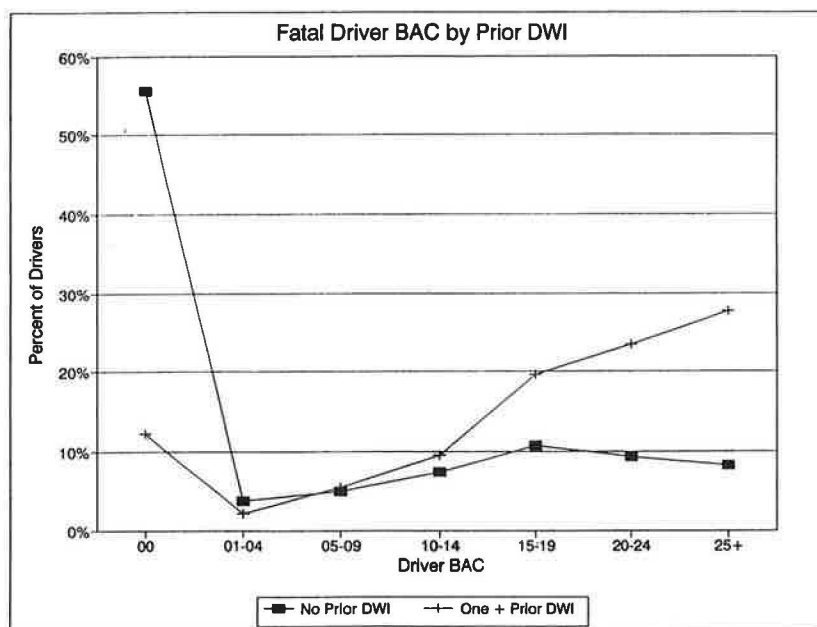


Figure 2

Two other types of special operations may also be worth considering in the present context. One involves the Dram Shop Laws which make it illegal to serve obviously intoxicated persons. Depending on where the drinking occurs, and the signs of intoxication provided by a persistent drinking driver, enforcement of these laws may make it more difficult for the persistent drinking driver to obtain large amounts of alcohol. A second is to target bars and taverns particularly around closing time. Legal concerns will probably require that such procedures be implemented randomly (or systematically based on known occurrences of alcohol related crashes or alcohol related violations) such that no single bar or tavern is singled out indiscriminately for special treatment.

Checkpoints offer the opportunity to detect persons driving with a suspended or revoked drivers license as the result of a drinking and driving conviction. These may be safety checkpoints, traffic checkpoints, belt use checkpoints or sobriety checkpoints.

In most states, officers at a checkpoint may examine the license of every driver, or a random sample of drivers, passing the checkpoint location. The license examination provides an opportunity to apprehend those individuals who might be driving in violation of their license sanction. Often, checkpoints will result in more enforcement actions taken against unlicensed operation of a motor vehicle than against drinking and driving.

Officers at a checkpoint also talk to each driver and make an assessment as to the likelihood that the driver has been drinking. This face-to-face alcohol assessment provides an opportunity to apprehend persistent drinking drivers who may have modified their driving to avoid on-road detection by officers using traditional DWI detection cues and/or traditional DWI patrol deployment strategies.

A recent trend in checkpoint operations is to include a Passive Alcohol Sensor as part of the driver screening process. Officers using these devices, as compared to officers without such devices, are more likely to detect drinking drivers particularly in the BAC range from .05 percent-.099 percent (Kiger et al., 1991) or .08 percent -.10 percent (Ferguson et al., 1993). Officers are also less likely to detain drivers for further processing with zero or low BAC levels (Jones and Lund, 1986). The effect of Passive Sensors for persistent drinking driver enforcement is unknown. Reduced processing time for zero and low BAC drivers and the generally enhanced ability to detect alcohol could lead to more persistent drinking driver arrests. Alternatively, the time spent processing those moderate BAC drivers detected with the Sensor could detract from the time available to find and process the high BAC persistent drinking driver.

We have several **recommendations** to enhance the ability of officers to find and process persistent drinking drivers. First, for crash investigations, all drivers involved in a serious or fatal injury crash should be tested for alcohol. If alcohol above the legal limit is detected, follow-up investigations should identify the source of that alcohol and consider enforcing dram shop laws or taking other appropriate action. Second, at checkpoints, officers should enforce all violations, not just drinking and driving offenses. In particular, officers should check for a valid license so as to ensure that they identify all persons operating a motor vehicle with a suspended or revoked license. Third, penalties for implied consent refusal should be strengthened to further dissuade persistent drinking drivers from choosing not to provide a breath or blood sample. Fourth, licenses reinstated following a DWI conviction should carry a "zero tolerance" alcohol restriction (i.e., any measurable blood alcohol concentration would be a basis for re-invalidating driving privileges).

Enforcement Implementation

Enforcement may mean arresting persistent DWIs; it also may involve deterring this population from drinking and driving as well as deterring persons from making alcohol available to them. Police may increase deterrence by making clear that they are watching commercial establishments and enforcing the minimum purchase age, dram shop, and responsible beverage service laws. Such activities may be carried out so as to take less time than processing an arrest and, if positively reinforced by supervisors, can maintain officer morale.

Familiarizing the police with the techniques for detecting and apprehending the persistent drinking driver will require training plus incentives to act on their new knowledge. What motivates police to enforce DUI laws? A number of studies have found that police exercise wide discretion in decision making and the less serious and visible the offense the greater the officer's latitude. Decisions to enforce DUI laws are influenced by a number of environmental, organizational, situational and individual factors.

Environmental factors are related to local demand for DUI enforcement, particularly from MADD and other politically interested citizen groups, as well as competing pressures for use of officer time. Recent NHTSA data indicate that from 1988 through 1992, nationwide, the number of tickets issued for speeding fell from 7.5 to 7 million (while crashes and fatalities also declined; Washington Post August 15, 1994: A1, A10). The reason for reduced traffic enforcement include reduced police personnel, more calls for service, and a shift

from pure deterrence to an emphasis on public education regarding highway safety.

Organizationally, even a police chief who strongly supports vigorous DUI enforcement must motivate officers with the limited "carrots and sticks" available. The occupational culture of rank and file patrol officers may oppose very active DUI enforcement and condemn as "bounty hunters" and "rate busters" those officers who make many DUI arrests (Mastrofski and Ritti, 1992). This is because the time spent processing DUI arrests removes them from patrol, shifting the work of responding to calls for service to others. Thus, alternative mechanisms for rapidly processing DUI arrests is an important part of stepped up enforcement efforts.

Other factors contributing to low DUI arrest productivity among some officers is lack of skills and their preference for spending time on other activities. This is particularly the case when they regard the laws as too severe and/or lack faith in the ability of the criminal justice system to deliver either proper punishment or adequate treatment. The task, then, is to provide not only the enforcement strategy, but the skills, opportunities and motivation to implement that strategy.

System Variables

Decisions in one part of the criminal justice system have rebound effects on downstream agencies and on demands for resources throughout the system. It is desirable for policy planners to include consideration of these effects and associated costs as part of any recommendations for innovative programming and strategies, and to attend to the unanticipated consequences of public policies that are intended to "do good." Absent a system wide perspective, providing police with more effective techniques and motivations for identifying persistent DUIs may simply make the revolving door of the court house spin faster in dealing with our most frequent type of arrest (FBI, 1992) and "our most commonly prosecuted criminal offense" (Jacobs, 1988: 173).

One study, comparing sentencing practices for third-time DUI offenders in four California counties, concluded that decisions are guided by a "not-too-rational mixture of conflicting goals and policies involving punishment, traffic safety, jail standards, fiscal stability, alcohol problem prevention, and treatment resource development" (Speigman, 1991: 27; see also, Speigman, 1994). How much should enforcement of persistent DUI offenders be expanded in light of jail overcrowding, the limited availability of treatment programs, the lack of proven program effectiveness, fiscal constraints, the competing demands for police attention and resources? What policies and strategies can we recommend?

Similarly, what is the likely resource trade-off and effect on apprehensions of persistent DUIs of the adoption of .08 laws and zero tolerance policy for drivers under 21 that may require different police enforcement strategies? If the police were able to double the number of arrests of high-BAC recidivists, what effect might this have on police and offenders if there is limited follow up in the court or a shortage of available treatment programs in the community? In the fiscally-restrained 1990s we may not be able to have it all. This necessitates making difficult resource trade-offs between these different enforcement strategies. It also suggests that we must be prepared to allocate the necessary resources to catching, prosecuting, and treating the "hard cases" (i.e., the persistent drinking driver) if that is our priority.

Conclusions

We have raised a number of questions related to both policy choices and research needs as well as identifying specific enforcement strategies. Among the factors we suggest should be considered before implementing an enforcement strategy are:

1. Embedding all enforcement focused on persistent DUI offenders within a broader DUI policy and weighing its benefits, costs, and consequences;
2. Weighing tradeoffs that may be necessary by seeking to greatly expand the pool of DUI drivers (by adopting .08 laws and zero tolerance for drivers under 21) versus focusing on the persistent DUI;
3. Examining the perspectives of the Chief and police officers in trying to provide both skills and motivations;
4. Considering the impact of any change in enforcement level or enforcement strategy on the adjudication and rehabilitation systems.

We also urge that any recommendations designed for policy makers include strong support and commitment of funds for process and outcome program evaluations to determine their short and longer term effects.

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APPENDIX C6 DRIVER LICENSE STRATEGIES FOR CONTROLLING THE PERSISTENT DUI OFFENDER

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Introduction

Any consideration of how driver licensing can be used more effectively in controlling persistent and hard core DUI offenders should begin with an understanding of the control and deterrence mechanisms which reside within the driver licensing process. A review of prior functional analyses of this process (Finklestein & McGuire, 1971; Peck, 1987) reveal the following interfaces between driver licensing and DUI control.

² This paper represents the opinions and conclusions of the authors as independent agents rather than as representatives of their respective organizations. The recommendations may therefore not reflect the opinions and policy perspectives of the State of California or the Province of British Columbia.

1. Pre-licensure: The screening out and nonlicensing of applicants with uncontrolled substance abuse problems.

2. Problem Identification: The use of the driver record file to identify high risk DUI offenders.

3. License actions: The imposition of license restrictions, alcohol education, alcohol treatment and license withdrawal as a means of reducing public safety risk.

4. Compliance monitoring: Determining whether the sanctions and treatments in (3) have been complied with. Suspending the license of drivers not completing treatment and identifying suspension violators.

5. Re-entrance: Reinstating license privilege of suspended DUI offenders.

In this paper, we will not consider process number 1 because it is judged to offer the least payoff potential for impacting the persistent DUI offender. Although most jurisdictions inquire about the presence of disqualifying medical conditions, including substance addiction, at the time of initial application, there are a number of practical difficulties in obtaining correct answers and determining what action to take upon receiving information of a "problem." Perhaps an even more fundamental limitation is that most novice drivers are too young for a drinking problem to have materialized to the point of representing "a persistent DUI problem."

Process number 2 will only be touched on lightly since it is being addressed by another background paper to this workshop (Simpson). Its connection with driver licensing strategies, however, cannot be ignored since driver license action severity is functionally related to the number of prior DUI offenses and other factors identifiable from state driver record file. In some instances, the driver licensing agency is both the risk identifier and delivery system agent for triggering and monitoring control actions, as implied by figure 1 taken from Peck (1992). Similarly, alcohol education and rehabilitation programs, which are being discussed in another background paper (Timken and Wells-Parker), are sometimes given as alternatives to license suspensions and they also often modify the terms of a suspension and determine the offenders reinstatement eligibility.

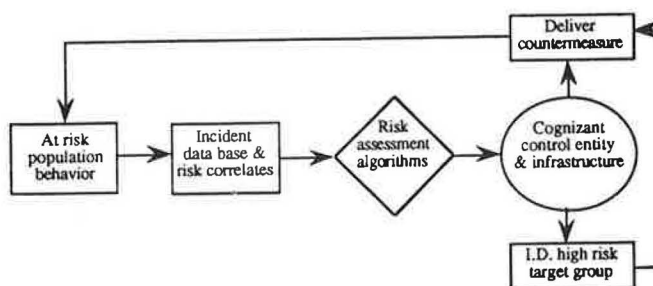


Figure 1.--Simplified model of target group and countermeasure delivery system process