

Alcohol Impaired Driving in Texas

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**Mothers Against Drunk Driving
Texas Chapter**

...from the Director

As many as 25% of drivers in this country admit to having driven under the influence of alcohol. As many as 3 out of every 10 drivers are at risk for being involved in an alcohol-related crash at some point in their lives. This report identifies the characteristics of those offenders who come to the attention of the criminal justice system. It also reviews the laws in this state that apply to combating alcohol-related incidents. Ignition interlock devices have been introduced to prevent repeat offenders from driving under the influence. The rationales and functioning of these devices is discussed along with judicial perspectives on using this sanction. The report concludes with recommendations and future directions for alcohol impaired driving in Texas. We were fortunate to have been able to collaborate with Mothers Against Drunk Driving (MADD), Texas Chapter, in conducting this project. This organization has a vested interest in this topic and has been instrumental in bringing greater public awareness to the problems of alcohol-impaired driving. We hope this report will stimulate further discussion and lead to more effective ways to reduce alcohol-impaired driving.



Glen Kercher

Crime Victims' Institute



Mission Statement

The mission of the Crime Victims' Institute is to

- conduct research to examine the impact of crime on victims of all ages in order to promote a better understanding of victimization
- improve services to victims
- assist victims of crime by giving them a voice
- inform victim-related policymaking at the state and local levels.



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Extent of the Problem

Driving under the influence of alcohol is of great concern because it is committed by the widest spectrum of society, many who are otherwise generally law abiding. Depending on estimations used, one-fifth to one-fourth of drivers in the U.S. has admitted to drinking and driving in the past year.^{1, 2, 3} At any given time, approximately three percent of drivers are legally impaired, and this amount increases to 17% on weekend evenings.^{4, 5, 6} It is estimated that approximately 3 in every 10 Americans will be involved in an alcohol-related crash at some time in their lives.⁷ A motor vehicle crash is considered to be *alcohol-related* “if at least one driver involved in the crash is determined to have had a blood alcohol concentration (BAC) of .01 gram per deciliter (g/dL) or higher.”⁸

As of August 2005, all states are required to comply with an illegal *per se* law making it an offense to operate a motor vehicle with a Blood Alcohol Content (BAC) at or above .08.⁹ In 2008, an estimated 11,773 people died in drunk driving crashes involving a driver with an illegal BAC level. These deaths constitute 31.6% of the 37,261 total traffic fatalities in 2008.¹⁰

Characteristics of Offenders

Age

All too frequently, young drivers are both offenders and victims of the problem. Motor vehicle crashes are the leading cause of death for persons aged 15-20 years of age.¹¹ Two out of five teen deaths are the result of motor vehicle accidents.¹² One-third of all alcohol-related crashes involved 21-24 year old drivers.¹³

Repeat Offenders

On the other hand, repeat drunk driving offenders are made up of different characteristics. Repeat offenders are more likely to have the following characteristics:

- White
- Average age of 35
- Predominantly male (over 90%)
- Low education

- Low income
- Unmarried
- History of traffic/criminal violations
- Higher BAC levels.¹⁴

Approximately one out of every three drivers arrested for driving under the influence is a repeat offender and are more likely to be involved in fatal crashes.¹⁵

Ethnicity

Different sources of data provide varying results of drunk driving offenders; however, some patterns are noticeable. Caetano and McGrath (2005)¹⁶ found that according to self-reported rates of DUI convictions, groups with the highest rates were White men (22%), Native American/Native Alaskan (20.8%), and men of mixed raced (22.5%). Roadside surveys have shown that Hispanics were 1.5 times more likely than Whites to drive under the influence, and Blacks were two times more likely than Whites to drive under the influence.¹⁷ Arrest data also illustrate higher rates for Hispanics and Native Americans.^{18, 19} Hispanics and Native Americans are also over represented in alcohol-related fatalities.^{20, 21, 22}

Acculturation

Acculturation plays a role in impaired driving offender rates. Among a diverse Hispanic sample, less-acculturated members were more likely to report repeat impaired driving offenses than more acculturated individuals.²³ Hispanics are more likely to drink at home or at the home of a friend or relative whereas Whites are more likely to drink at a bar or restaurant.²⁴ Hispanics arrested for impaired driving offenses are less likely to consider drunk driving a problem, and are also less likely (compared to Whites) to believe they will be in trouble if stopped by the police.²⁵

The Texas Experience

Texas currently leads the nation in alcohol-related crashes and fatalities. In 2008, Texas is ranked first in deaths involving alcohol related crashes. Out of 3,031 fatal crashes in 2008, 1,146 involved alcohol related fatalities.²⁶ This accounts for more than 10% of all national fatalities and is well above the national average. Texas has consistently ranked very high in alcohol-related crashes and fatalities, and being ranked high in crashes and fatalities is a serious concern. Although there has been a 22.3% decrease in total deaths from 1997 to 2007,²⁷ there is much to be accomplished in regards to combating drunk driving in Texas.

Laws in Texas to Combat Alcohol-Related Incidents

Texas, in comparison to many other states, can be considered to fall on the stringent end of the continuum in regard to the legal sanctions for impaired driving incidents. The severity of penalties, coupled with escalating sanctions for repeat offenders are important aspects of Texas laws that apply to alcohol-related incidents.

- **Administrative License Revocation (ALR)**

In 1995, Texas implemented ALR laws that require suspension of a driver's license on the first offense for 90 days for adults and 180 days for underage offenders.²⁸ Texas funds this program entirely with state funds, illustrating the state's willingness to institute programs that influence alcohol related incidents and fatalities. While this 90-day suspension requirement is stricter than most states, there are a few states that surpass this requirement with harsher restriction timelines.²⁹

- **Habitual Traffic Offender Laws**

Habitual offending laws in Texas allow for special punishment of offenders with repeat traffic violations on their record, which includes revocation of driving privileges for one year.

- **Zero Tolerance Laws**

Zero Tolerance laws make it illegal for all persons under the legal age of 21 to have any measureable amount of alcohol in their system. The federal limit mandates that BAC levels to be less than .02. Texas supports a BAC level of .00 for all persons under age.

- **Drunk Driving with Children Present**

Twenty one states have instituted stiffer penalties for drunk driving when children are in the vehicle.³⁰ In Texas, child endangerment statutes come into play when considering stiffer sentences for drunk driving with children in the vehicle. In Texas, state jail penalties are enforced when children under the age of 15 are present in the vehicle.

Proposals for Improvement in Texas Laws

Vehicle Impound

While most states will allow limited driving privileges to be restored when a driver's license is suspended or revoked, Texas is strict in its mandatory administrative license revocation and its failure to issue hardship exceptions to this law. When the offender has been convicted of an impaired driving offense. Unfortunately, this requirement does not detour the 50-75% of offenders who will continue to drive without a license.³¹ Because of this, removing the vehicle from the offender's possession is an option. Only half of the states enforce some type of vehicle impounding penalties. While initial seizure is required by law when the alcohol-related offense is committed, there is no long term impound required by law.

Mandatory Alcohol Assessment and Treatment

Repeat drunk driving offenders are often involved with substance abuse. Texas law only requires mandatory alcohol education for individuals involved in alcohol-related offenses. Texas is one of 14 states that does not require alcohol abuse assessment and treatment as

part of sanctions or sentences. Intercepting drunk driving tendencies by addressing alcohol dependence is important in reducing drunk driving incidents. Many states have the power to adjudicate offenders into medical substance abuse treatment programs in order to regain driving privileges.³²

Hospital BAC Reporting

There is currently no statute in Texas that requires hospitals to report BAC levels of persons involved in crashes. Individuals that have eluded detection are still responsible for their actions, and reporting by hospitals should be encouraged to hold all offenders accountable for their actions. Although Texas does require testing of persons who survive fatal crashes, it is one of 13 states that does not require drivers who are killed in crashes to be tested for BAC levels.

Sobriety Checkpoints

Sobriety checkpoints are intended to deter individuals from driving under the influence of alcohol. Visual presence of officers and checkpoints aids in perceptual deterrence and increases the likelihood of getting caught. Research shows that utilization and publicity of sobriety checkpoints decreases alcohol-related crashes and fatalities by 20%.³³ While a couple of states choose not to participate in conducting sobriety checkpoints, Texas is one of ten states that specifically prohibits sobriety checkpoints.³⁴ Sobriety checkpoints have generally been argued as a violation of civil liberties because vehicles are being stopped without reasonable suspicion. Texas practiced sobriety checkpoints briefly in 1994 before the Texas Criminal Court of Appeals struck it down as violating their interpretation of the U.S. constitution. This is a different interpretation from the Supreme Court's ruling in *Michigan v. Sitz*³⁵ that held sobriety checkpoints are constitutional because the small inconvenience that drivers face is minimal to a compelling state interest to save lives. The Texas Court of Appeals specified that sobriety checkpoint decisions, as outlined in *Michigan v. Sitz*, are best left to "politically accountable state-wide governing body."³⁶ Thus, the Texas Court of Appeals has outlined that sobriety checkpoints are invalid unless specific procedures and guidelines surrounding their utilization and implementation are outlined by a governing body other than the courts. While this interpretation may include a few alternative avenues to legalization of sobriety checkpoints, the state legislature is likely the best suited to carry out such a task. Texas has introduced sobriety checkpoint legislation almost every session since 1995. Most recently in the spring of 2011, the Texas legislature considered HB 439 allowing for the legalization of sobriety checkpoints in populous cities and counties. Obviously there is controversy over the legality of sobriety checkpoints and, thus, there should be guidelines to ensure that officers do not violate any other rights when conducting them. What exactly these guidelines need to be is still a topic of debate, especially in Texas.

Alcohol Ignition Interlock Devices

Some of the main reasons people drive under the influence of alcohol are because they underestimate its effect on their driving or they convince themselves that they will not get caught. Despite tough impaired driving laws and crackdowns by law enforcement many alcohol impaired drivers will go undetected. Furthermore, two-thirds of impaired driving offenders continue to drive even after their licenses have been suspended.³⁷ Technology exists

to place physical limitations that would practically eliminate repeat offenses of drunk drivers. One prevention technique that is increasingly popular is the use of alcohol ignition interlock devices. These devices can be installed in vehicles to prevent the vehicle from starting when a person blows into the device and it registers a BAC higher than the pre-determined acceptable level.

The 1998 Transportation Restoration Act reauthorized highway funding and was the first federal law to provide additional funding to states that enacted strict sanctions for impaired driving offenders. One of the guidelines requires vehicle impoundment or alcohol interlock devices for serious or repeat drunk driving offenders. Interlock devices are a small yet sophisticated device that attaches to the starting circuit of a vehicle. A driver must blow into the device in order to start the vehicle. If the device detects a measurable level of alcohol that surpasses the predetermined level allowed, the vehicle will not start. If the level is not above the allowed limit, the vehicle will start normally. Additionally, most devices also require running retests. These retests are required at regular intervals while driving. They help to ensure that the driver does not bypass the system by asking a sober person to start the vehicle. These interlock systems have been proven to be between 64%- 90% effective, and recidivism is greatly reduced, at least while the device is installed.^{38, 39}

Support for Devices

Public support for interlock devices is relatively high. Research shows that 64% of the general public is in favor of interlock devices for first time offenders, and 84% support the devices for repeat offenders.⁴⁰ Furthermore, interlock devices prevent drunk driving without imposing some of the hardships of other sanctions. License suspension prevents the offender from legally driving to necessary places such as work or school. Vehicle impoundment or immobilization also burdens family members that require use of the same vehicle. Thus, interlock devices helps to insure that offenders will drive sober without many of the encumbrances of other sanctions.

Support for these devices also arises from other notable alcohol focused organizations which are working closely with interlock manufacturers, insurance companies, car manufacturers, and national highway officials to coordinate strategies for making the public more receptive to the idea (Interlockfacts.com). Researchers in the Driver Alcohol Detection System for Safety (DADSS)⁴¹ program agree that current ignition interlock devices were designed for convicted drunk drivers, and would be too intrusive for the general driving public (DADSS.org).⁴² National Highway Traffic Safety Administration advanced a five-year campaign to research and develop standard ignition locks in all vehicles. In 2009, Mothers Against Drunk Driving (MADD) asked Congress for another \$30 million to be allotted annually for universal interlock development.

Interlock Device Costs

If ordered to have an ignition interlock device installed, fees for renting the device as well as the installation are required from the offender. Interlock devices are ordered from private companies that are approved to rent the systems. The installation of the device typically costs between \$100 and \$200. The monthly rental fee averages about \$65 dollars per month.⁴³ These fees do not include the additional charges for maintenance or having the device calibrated. Thus, the majority of the cost for these devices falls to the offenders themselves. Those unable

to pay may be qualified for indigent status which would shift some of the costs back to the state or the interlock companies.

State Laws

Forty-seven states have some type of alcohol ignition interlock law. Table 1 summarizes the various types of state laws. Thirteen states have mandatory conviction laws for first time offenders, and ten states have laws that mandate the devices for alcohol convictions with a BAC level greater than 0.15. Six states mandate the device for repeat convictions. One state mandates the device upon reinstatement. Seventeen states provide for some level of judicial discretion in requiring interlock sanctions. There are three states –Alabama, South Dakota, and Vermont—that currently have no interlock laws. Texas mandates interlock devices only for repeat convictions of alcohol impaired driving offenses and as a condition of probation for offenders with BAC levels greater than 0.15.⁴⁴ All other offenses are implemented solely on the discretion of a judge.

Table 1. State Laws for DUI/DWI

Mandatory .08 Conviction	Mandatory with BAC >.15	Mandatory with Repeat Conviction	Mandatory .08 upon reinstatement	Discretionary	No Interlock Laws
Alaska	Delaware	Massachusetts	Oregon	Connecticut	Alabama
Arizona	Florida	Missouri		Georgia	South Dakota
Arkansas	Kansas	Montana		Idaho	Vermont
California (pilot)	New Hampshire	South Carolina		Indiana	
Colorado*	New Jersey	Oklahoma		Iowa	
Hawaii	North Carolina	Texas		Kansas	
Illinois	Virginia			Kentucky	
Louisiana	Wisconsin			Maine	
Nebraska	West Virginia			Maryland	
New Mexico	Wyoming			Minnesota	
New York				Nevada	
Utah				North Dakota	
Washington				Ohio	
				Pennsylvania	
				Rhode Island	
				Tennessee	
13	10	6	1	17	3
Sources: NCSL, 2010					
* Strongly Encouraged					

Fatality, Crash, and Interlock Statistics

There are many sources of impaired driving data available; however, in order to understand the complete picture it is beneficial to look at the statistics together. Alcohol related crashes that result in a fatality are the most cited statistics, and crashes that do not involve a fatality are of lesser focus. Therefore, this report utilizes multiple sources including the national Fatality Analysis Reporting System (FARS) that provides statistics for alcohol related accidents that result in a fatality and the Texas Department of Transportation (TxDoT) that provides state specific alcohol related crashes. Utilizing both databases allows for a more in-depth analysis of all types of alcohol-related driving incidents, not just those that are fatal. Table 2 presents available national and state specific information for fatal crashes, crashes with an injury, and crashes with no injury or the injury was unknown.

Table 2. Crash and Fatality Statistics

Year	Total DWI/DUI Fatalities		DWI/DUI Crashes With Injury	Non-Injury/Other DWI/DUI Crashes
	U.S.	Texas	Texas	Texas
2007	11,780	1,186	12,051	14,617
2008	10,684	1,146	11,743	14,902
2009	9,817	1,001	11,541	14,829

* Data compiled from Fatality Analysis Reporting System (FARS) and Texas Dept. of Transportation (TxDot)

Interlock devices are utilized by most of the states; however, the number of active devices in use suggests that some states perceive more value in these devices than others. The number of devices in use has increased steadily throughout the U.S. over the past few years, and some states have emerged as the leaders in utilizing ignition interlock devices. In 2009, Arizona, Texas, and Washington had over 10,000 devices in use, while an additional 24 states had over 1,000 devices in use.⁴⁵ Rates of interlock device use is only a partial picture of a state's attempts to reduce drunk driving. The impact of interlock devices on all alcohol related crashes, not just those that result in death, is important in understanding the value of these devices as well as shed light on areas that could be improved. Table 3 presents information on interlock device counts and rates nationally and within the state of Texas. The information presented shows that the number of interlock devices imposed each year has increased steadily both nationally and within the state of Texas.

Table 3. Interlock Device Statistics

Year	Interlock Devices*		Interlock Devices per Fatality ***		Interlock Devices per Crash
	U.S.	Texas**	U.S.	Texas	Texas
2007	133,524	13,047	11.33	11.00	0.49
2008	146,337	14,395	13.70	12.56	0.54
2009	148,742	17,025	15.15	17.61	0.65

* Data compiled from Richard Roth, PhD. Currently installed interlocks in the U.S.
 ** Includes data from 9 out of 10 interlock providers
 *** Data compiled from Fatality Analysis Reporting System (FARS) & Tx. Dept. of Transportation (TxDot)

The data also shows that as the number of devices increased the amount of alcohol related vehicle crashes and fatalities decreased.

Table 4 presents the percentage change for national device counts and fatalities, as well as the device counts, fatalities, and crashes in the state of Texas. Between 2007 and 2008, that the national interlock counts increased by 9.60% and fatalities decreased by -9.30%. In the state of Texas, interlock device counts were up by 10.33% and fatalities decreased by -3.37%. The changes in crash statistics for Texas remained negligible, suggesting that perhaps interlock devices are more influential on fatality rates than on crash rates. Between 2008 and 2009 there is also a similar relationship between increased devices and decreased crashes and fatalities. Nationally, interlock device use increased by 1.64% and fatalities decreased by -0.81%. Within Texas, interlock device use increased by 18.27% and fatalities decreased by -12.65%. Additionally the total number of crashes in this period decreased by -1.03%, a more substantial decrease than in prior years.

Table 4. Interlock Devices, Fatality, and Crash Percent Changes

Location	% Change 2007 - 2008	% Change 2007 - 2008
U.S.		
DWI/DUI Fatalities	-9.30%	-0.81%
Interlock Devices	9.60%	1.64%
Texas		
DWI/DUI Fatalities	-3.37%	-12.65%
Total DWI/DUI Crashes	-0.09%	-1.03%
Interlock Devices	10.33%	18.27%

The increased use of interlock devices may not be the only thing responsible for these decreases, but the numbers are consistent. It could be, for example, that some of the decrease can be attributed to harsher sanctions and increased use of interlock devices.

BAC Test Refusals

BAC test refusals are another challenge to eliminating impaired driving. Often the criminal penalties for refusing to take a chemical test for DUI/DWI are much lower than the criminal penalties of a DUI/DWI conviction. Thus, repeat offenders may attempt to evade the harsher penalties by refusing to take the test. The breathalyzer test refusal rate in Texas is around 50%. While refusal in Texas automatically results in drivers' license suspension for 180 days, claiming hardship occupational license exceptions are much easier under this category than obtaining a hardship license if convicted for a DWI. Texas law allows any magistrate to issue a search warrant for those refusing to submit to a breath or blood test.⁴⁶ When laboratory resources are unavailable, some police departments in Texas practice no refusal nights that streamline the procedure for detection of impaired drivers who refuse to submit. This process centralizes all relevant parties, such as prosecutors and nurses, so that warrants can be acquired and blood can be drawn all at the same location. Since BAC levels are the most critical piece of evidence in DUI convictions, wider use of no refusal nights would have a greater impact on impaired driving convictions.

Incomplete Offender Information

Incomplete or unavailable records also pose a challenge to preventing drunk driving. This can happen when incomplete records from other states misidentify the offender as a first time offender, or when past charges have been plea bargained or reduced down. When judges are presented with an incomplete picture of the offender, the current offense may evade tough sanctions and treatment.

Judicial Perspectives on Impaired Driving and Interlock Devices

Ignition interlock devices are imposed as an impaired driving sanction by the judge that handles driving while impaired cases. The attitudes and viewpoints of judges concerning the use and imposition of interlock devices, barriers to implementation, and the effectiveness of the devices are important in assessing the impact of ignition interlock devices as a sanction. The role of judges is especially important in states that do not require the imposition of the devices on first offenders. Judicial discretion allows judges the authority to sentence offenders as they see fit, as long as they are within the guidelines outlined by law. International research has suggested that the non-use of ignition interlock devices by judges can cause interlock programs to fail.⁴⁷ In Texas, the imposition of interlock devices is not mandatory for first offenders unless the BAC level of the driver was over 0.15. Lenient or inconsistent sentences undermine and weaken the effect of the law. Thus, the role of the judge is pivotal to how effective the interlock program is.

The View from the Bench

Surveys were mailed to Texas District and County Court Judges. Judges were asked questions about alcohol impaired driving cases, their opinions on mandatory DWI sentencing, how sanctions — particularly ignition interlock devices— are decided and imposed, as well as other types of legal and non-legal factors that play a role in alcohol impaired driving cases. Surveys were sent to 255 County judges and 432 District Judges in Texas. Out of the total 687 surveys mailed, 126 were returned in a pre-postage paid envelope, (18% response rate).

Seventy percent of the judges were from District Courts, while 30% were from County Courts. The community populations in which judges served are represented in Figure 1.

Participants were asked for the primary zip code in which the judge's court was located and the zip codes were compiled into a map of Texas (Figure 2) to illustrate the representativeness of the sample. Seventeen respondents (13%) did not provide this information.

The length of time participants had been handling impaired driving cases in any capacity ranged from less than a year to 40 years. The average length of experience was 16 years. Participants averaged 9 years in their current position, with the minimum being less than a year and a maximum of 30 years. A majority of the judges (87%) responded that DUI cases represented less than 25% of their workload and 80% indicated that DWI cases represented less than 25% of their workload (Figure 3).

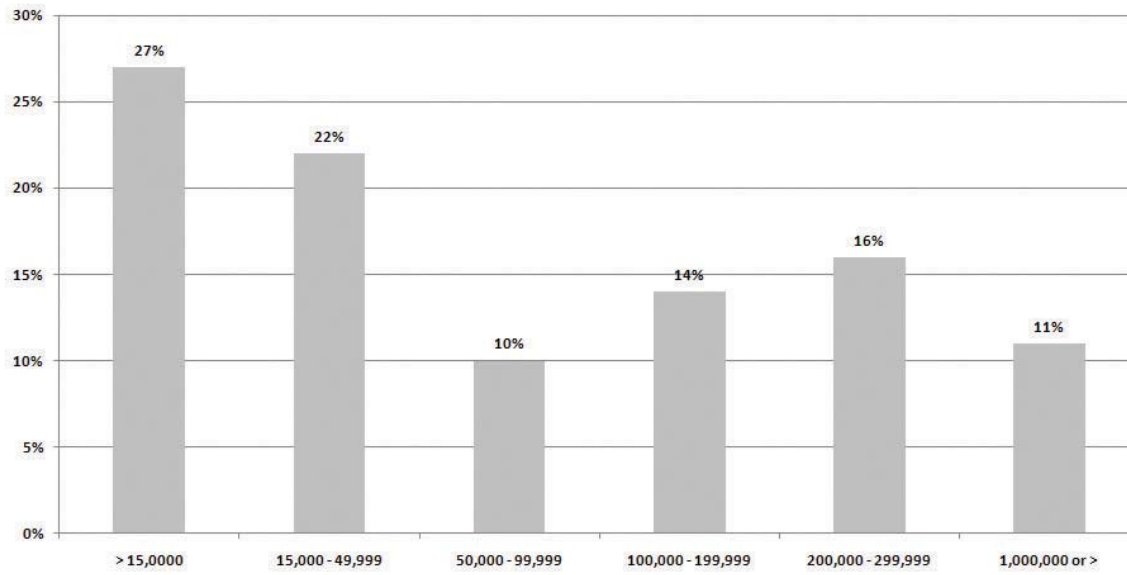


Figure 1. Community Populations represented by Respondents

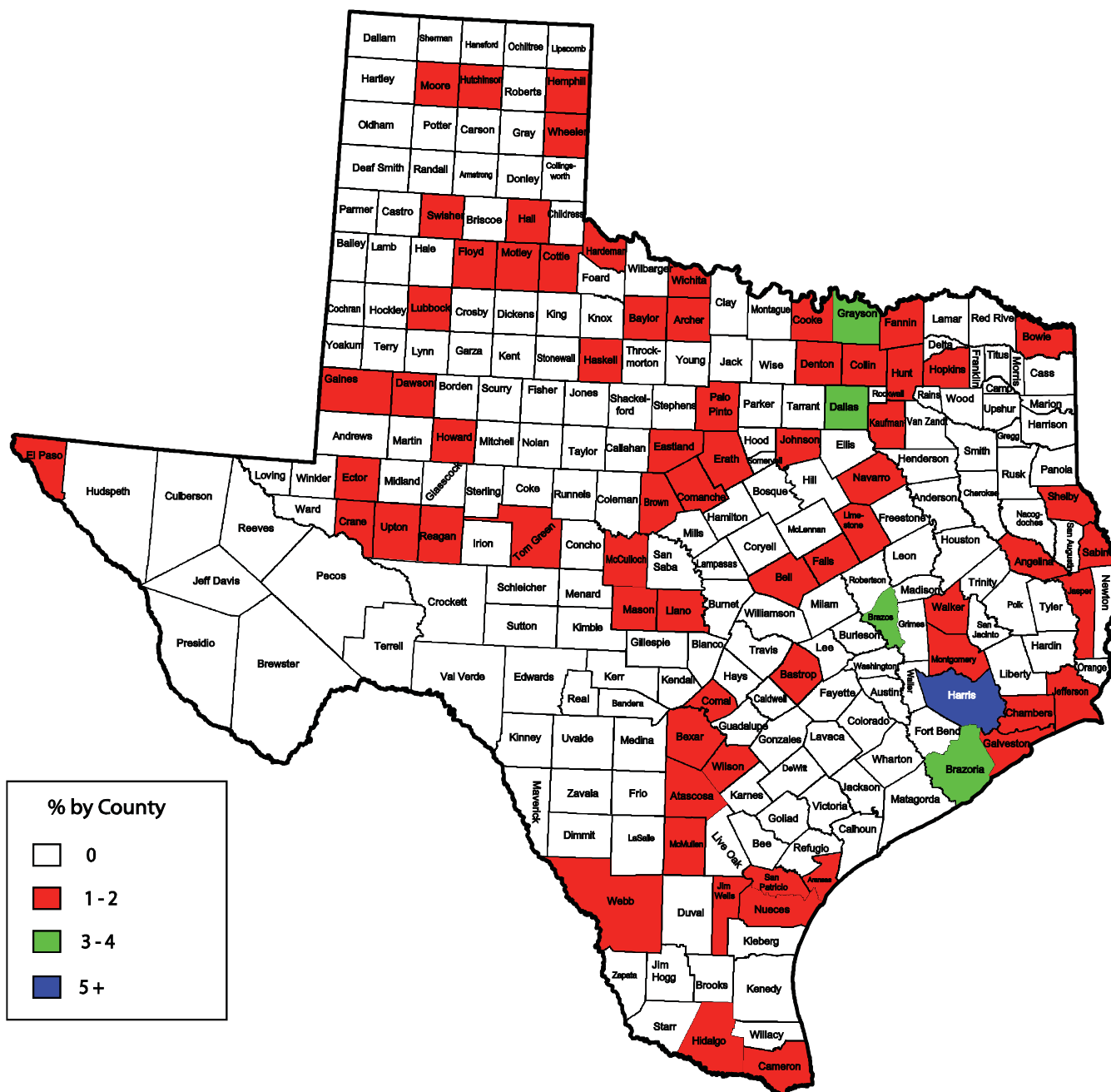


Figure 2. Distribution of Respondents

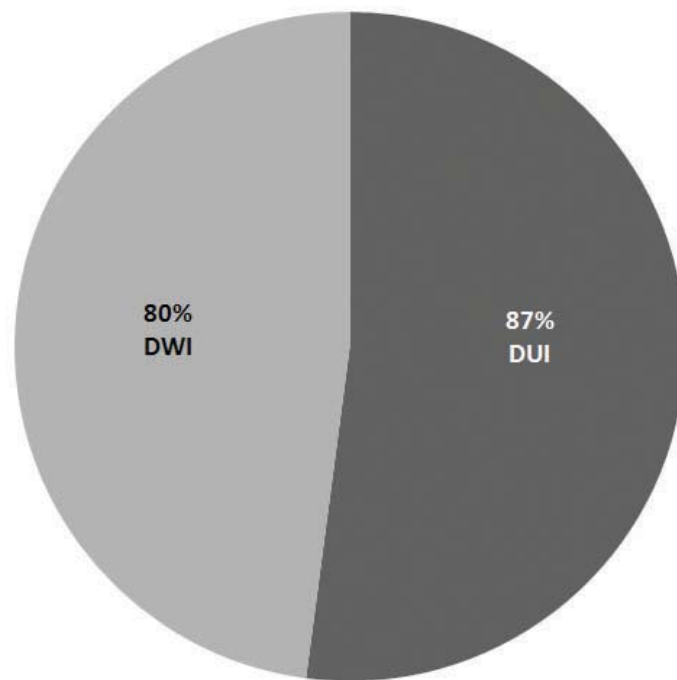


Figure 3. Judges whose caseloads were made up of less than 25% of driving while impaired cases.

Judicial discretion is a primary issue when it comes to discussing impaired driving sanctions. What factors should influence judges' decision-making? Figure 4 shows the level of satisfaction with judicial discretion in DUI and DWI courts.

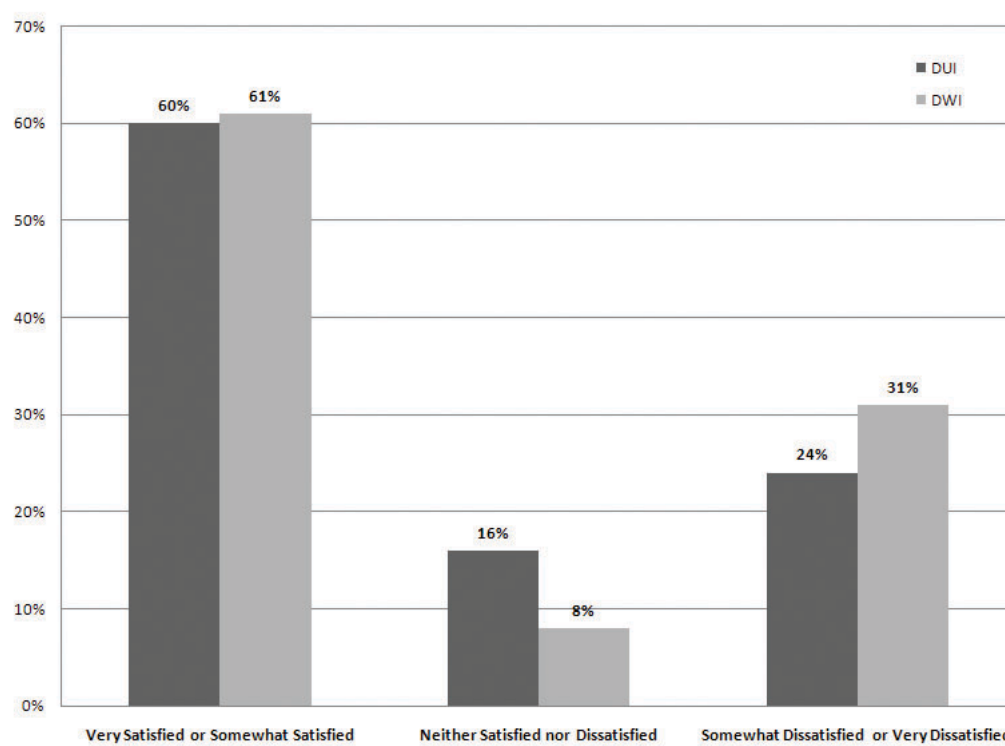


Figure 4. Respondents Opinions About the Amount of Discretion Allowed (DUI/DWI)

Judges were asked how supportive they would be for mandatory interlock device sanctions for all impaired driving offenses (Figure 5). Responses to the discretionary questions were not significantly associated with a specific response in the mandatory question category, demonstrating that judicial discretion may not be the only factor that influences how a judge feels about mandatory requirements.

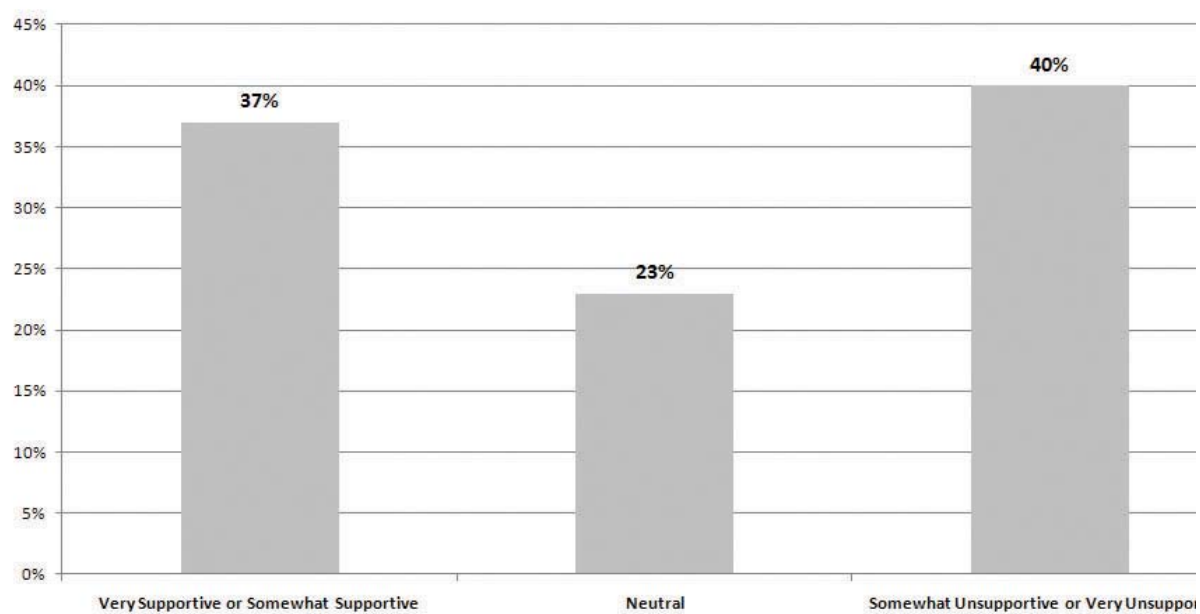


Figure 5. Respondents Level of Support for Mandatory Interlock Devices

A little over half of the judges either declined to respond about the number of ignition interlock devices imposed in the past year or did not have that information readily available. Of the 40 judges that did respond, the number of devices ranged from 0 to 200, with an average of 33 imposed the previous year. This indicates that there is great variation in when and how often ignition interlock devices are imposed by Texas judges. Given this variation, information was also gathered to determine which variables are considered when deciding whether or not to impose interlock devices or not.

When it comes to impaired driving cases involving first time offenders, 43% of the judges responded that they were neither inclined nor disinclined to impose an ignition interlock device. This indicates that there are other important factors within the judges' discretion that play a role in deciding when devices are imposed. If the case involved a crash, 50% of judges responded that they usually or always imposed an interlock device; however, when the case involved a fatality, 73% of judges responded that they usually or always imposed an interlock device. Additional factors judges reported considering include:

- situational circumstances of the crash (43%)
- criminal backgrounds (60%)
- age (19%)
- family background (11%)
- gender (2%)

- offender's standing in the community (1%)
- less than 1% consider race.

Nineteen percent listed other factors that they consider which included access to other vehicles, substance abuse or addiction issues, occupation or employment, support system, and time between convictions. Only 8% of judges stated they do not consider any additional factors when making a decision about whether to impose an interlock device as a sanction.

Judges were also asked to rank the information considered to be the most important when deciding which type of sanction to impose. The ratings are as follows:

- prior conviction as very important (81%)
- history of substance abuse as very important (50%)
- severity of current offense as very important (46%)
- current Blood Alcohol Content (BAC) as very important (40%)
- offender's age as very important (5%)
- demeanor in court as very important (3%).

Since ignition interlock sanctions involve operating and maintenance costs, judges were asked how much weight is given to the ability of the offender to pay for the device and its monthly fees. Forty-four percent indicated they give very little consideration or no consideration to this issue and 41% indicate they give some or a lot of consideration. In addition to ability to pay, 48% of the judges responded that they give some consideration or a lot of consideration to other issues associated with monitoring the device, such as who installs the device and follow-up reports. Eighty-nine percent of the judges responded that ignition interlock devices are best utilized when paired with other sanctions, such as probation, alcohol or drug abuse programs, and restricted driver's license privileges.

Judges were asked whether they believe the ignition interlock technology can be circumvented (Figure 6). The responses were broadly distributed with 24% responding it would not be easy, 36% responded it would be somewhat easy, 16% said they thought it would be very easy, and 23% said they were not sure.

In regards to the overall impact of interlock devices, a majority of the judges (72%) indicated that they thought ignition interlock devices were somewhat effective or very effective in reducing DWI recidivism rates, 71% indicated that they thought interlock devices were somewhat effective or very effective in preventing DWI crashes, and 72% indicated they thought interlock devices were somewhat effective or very effective in preventing DWI fatalities. Judges were asked if they thought that positive impact of ignition interlock devices would be increased if they were made mandatory for all DWI offenses. Sixty-three percent indicated they thought the impact would be somewhat or very increased, and 34% responded it would neither increase nor decrease. Overall, it appears that a majority of Texas judges believe that ignition interlock devices can be effective under some circumstances.

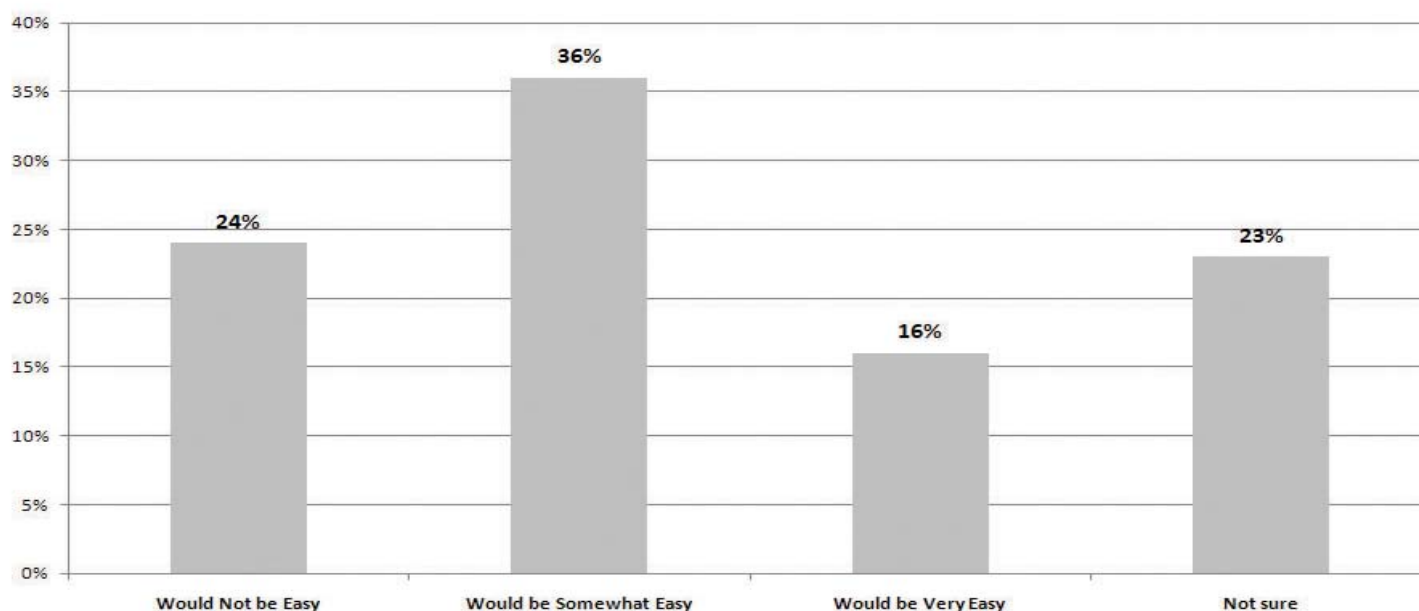


Figure 6. Respondents Perceptions About the Ease of Circumventing Interlock Devices

Judges were also asked about the extent to which their handling of driving while impaired cases were influenced by Mothers Against Drunk Driving (MADD), Driver Alcohol Detection System for Safety (DADSS), Coalition for Traffic Safety (ACTS), and the National Highway Traffic Safety Administration (NHTSA). Twenty-six percent replied that organizations like these are somewhat or very influential, and 59% replied that they were neither influential nor un-influential. In addition to organizational influence, judges were also asked how much consideration is given to prevailing public attitudes when handing out sanctions. Fifty-six percent indicated they gave some or a lot of consideration to public attitudes and 28% indicated they were neutral. One judge replied with additional comments about the need for public education about impaired driving, pointing out that jurors are sometimes responsible for the outcome of an offender's case. Public sympathy and/or lack of knowledge about technology's impact on impaired driving can influence case outcomes.

Future Directions

There is discussion among some members of the Texas legislature to include a less severe level of impaired driving offense, referred to as Driving While Ability Impaired or DWAI. Currently two states, Colorado and New York, have this additional category. A DWAI charge would be an additional impaired driving offense that would include 0.05 to 0.07 BAC levels. Judges were asked how supportive they would be of this additional offense if it were to be passed into law. While 42% indicated they were neither supportive nor unsupportive, 45% replied that they were somewhat or very unsupportive. However, if legislation such as this were to become law, judges would be more likely to support DWAI as a traffic infraction if it was paired with driver's license restrictions and substance abuse counseling (23%). Another 18% of judges would support it as a traffic infraction alone, and 14% would support it as a lower level criminal offense. An additional ten percent indicated they would support any of the above options, and 26% indicated they would not likely support any of the above options.

Technology has provided judges with a variety of sentencing options. Judges were asked an open ended question about other technological advances they would like to see utilized in impaired driving cases. Ten percent of the judges would like to see greater use of cameras along with the interlock device to insure that the BAC level was that of the person targeted. Fourteen percent mentioned some type of ankle monitoring system as a viable alternative. The most utilized ankle bracelet is Secure Continuous Remote Alcohol Monitor or SCRAM. This type of device combines continuous alcohol monitoring with GPS tracking or house arrest technology. It is versatile in monitoring alcohol levels as well as an offender's location. This technology does cost more than interlock devices, about \$320 a month versus \$65 a month for interlocks. Both alternatives, however, are less expensive than confinement in jail or prison (AlcoholMonitoring.com). There is some consensus that this technology may be more appropriate for repeat, hard-core drunk driving offenders rather than all impaired driving offenders.⁴⁸ Further research is needed on the utility of this approach.

Three percent of judges favored mandating drug treatment that includes anti-abuse drugs such as Vivitrol which makes an offender sick if they consume alcohol as an alternative sanction.

Conclusions

Despite improvements in the response to alcohol impaired driving, it continues to take a toll on the American driver either in terms of crashes, injuries, or death. This problem places an untold burden on the resources of law enforcement and the courts. A number of sanctions are available to handle driving-while-impaired cases. Technology such as ignition interlock devices has added to the options available to the courts. Such technology has demonstrated effectiveness in reducing alcohol related automobile crashes and fatalities. Ignition interlock devices are mandated in Texas for repeat and high BAC offenders; otherwise, judges exercise considerable discretion in deciding whether or not to require interlock devices for offenders.

Sixty-four percent of the public supports the imposition of an interlock device as a mandatory sanction for first time offenders, 80% favor it for repeat offenders. Judges in Texas seem more willing to examine the facts in each case and its circumstances when deciding on an appropriate sanction. Since a majority of the judges reported they take public attitudes and opinion into consideration, there is an opportunity to ensure that judges in Texas and the general public are both satisfied with the outcomes of impaired driving cases. Education of the public is important and making public opinion available to judicial players is perhaps just as fundamental.

Many judges believe that SCRAM ankle devices are a very important technological tool for sanctioning impaired driving offenders. SCRAM devices are more expensive, but they serve a purpose for offenders who have demonstrated a history of substance use and abuse, because they monitor overall alcohol consumption rather than targeting only impaired driving behavior. Thus, a conciliated middle ground would be widespread use of ignition interlock devices for first time offenders and utilizing the SCRAM ankle bracelets for those repeat offenders who are in need of a more severe sanction and substance abuse intervention.

Support for sobriety checkpoints and Texas law have not reached consensus in the state. The Texas Legislature most recently considered a bill (HB 439) that would allow law enforcement to conduct sobriety checkpoints. Passing a bill allowing for sobriety checkpoints would extend the impact of no refusal weekends to allow law enforcement officers to screen all suspected persons.

Recommendations

Utility of Ignition Interlock Devices

Interlock devices have a demonstrated, positive impact in reducing alcohol-related fatalities and to a lesser extent crashes. Accordingly, their use should be encouraged, especially when combined with cameras. Continued judicial education on the merit of this approach may be warranted.

Imposition of Sanctions

Currently Texas law only requires imposing an ignition interlock device on repeat and high BAC DWI offenders. There is no uniform agreement on how all cases, especially those involving first time offenders, should be best handled. Many organizations and public opinion groups recommend mandatory sentencing for all DWI offenders, but many judges reported that they have reservations about enforcing such inflexible rules. Overwhelmingly, judges believe that impaired driving cases are best handled by examining the individual circumstances of each case. Additionally, substantial attention should be given to first time offenders to prevent them from becoming repeat offenders. Sanctions tailored to the individual may continue to be the most appropriate approach to sanctioning impaired drivers, and efforts should be made to ensure judges have as much vital information as possible about each offender.

Mandatory Alcohol Education and Treatment

Texas does not have a requirement for mandatory alcohol education, assessment, and treatment for impaired driving offenders. Many of the judges believe that a history of substance use and abuse is an important factor in understanding the best course of punitive action for each offender. Requiring these educational and assessment classes as a sanctioning component may preempt first time offenders from becoming chronic offenders and should be carefully considered.

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