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## Alcohol Offenses

- What are alcohol offenses?
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- What might explain fluctuations in DUI filings?
- What are the outstanding issues concerning drunken driving?
- What are emerging policy issues concerning drunken driving?

### Responses

#### What are alcohol offenses?

There are three basic types of alcohol offenses. They are drunken driving; illegal liquor production, sale, and distribution; and public drunken behavior.

Drunken driving is the common name given to a variety of more legalistic definitions used by different states. In some states, the offense is called driving under the influence of alcohol (DUI). Other states refer to driving while intoxicated or impaired (DWI). Still other states refer to operating a vehicle while under the influence of alcohol (OUI).

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Despite the differences in nomenclature, the measurement and evidence of drunken driving are virtually the same throughout the states. The standard measure is blood-alcohol concentration, which is the percentage of alcohol in a human being's blood. Laws prohibit driving a motor vehicle with a blood-alcohol concentration (BAC) above a specified level.

Illegal liquor production, sale, and distribution revolve around the issue of tax evasion. For the entire history of the republic, individuals and organizations have tried to produce, sell, and smuggle liquor without paying taxes and without complying with industry regulations.

Public drunken behavior generally is a misdemeanor criminal or a municipal ordinance violation. This behavior frequently is associated with other nuisance behavior, such as loitering, lewd and lascivious conduct and clothing, and menacing.

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### **Why are alcohol offenses important to understand and to deter?**

The policy concern over alcohol offenses involves two consequences of alcohol consumption. First, alcohol is linked to traffic accidents and fatalities. There are many alcohol-related crashes, and observers view alcohol as the leading cause of traffic accident deaths.

Moreover, the accidents and deaths represent only a fraction of the instances of individuals driving while or after drinking. Statistics indicate as many as one in five drivers might drink while operating a vehicle at least once a year. Hence, there is a potential for more offenses, accidents and deaths.

A second consequence of alcohol use is the occurrence of violent behavior, such as assault, abuse, and even homicide. This linkage between alcohol and violence is a broader pattern of behavior than the linkage between alcohol and driving. The former is itself a coherent area of inquiry and public policy, which deserves its own analysis and discussion. Hence, the alcohol and crime connection is only noted here, although a list of pertinent references is offered in the Resource section to this module.

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### **What are the federal agencies concerned with preventing drug offenses?**

The primary federal government agency involved in the regulation of drunken driving is the National Highway Safety Administration (NTSA). This organization is a unit of the U.S. Department of Transportation with headquarters in Washington, D.C. In addition, there is the National Commission Against Drunk Driving. This group is a private, nonprofit public service agency.

Concerning the enforcement of liquor laws, the primary federal government agency is the Bureau of Alcohol, Tobacco and Firearms (BATF). This bureau is a unit of the U.S. Department of the Treasury.

There is no federal government agency dedicated to the prohibition of public drunken behavior. That policy area is generally the responsibility of local units of government.

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## **What are DUI laws?**

In a real sense, DUI laws are a combination of federal and state government policies. The NTSA has taken the lead in what driving under the influence of alcohol means. In the 1960s, NTSA, then known as the National Highway Bureau, began to formulate a federal standard of the illegal blood-alcohol concentration level. Initially, NTSA set it at a .10 BAC. By 1981, every state had set their BACs at this level or lower.

In the 1990s, NTSA once again defined a standard. This time the prohibited level was .08 or higher. Currently, this is the criterion for drunken driving in every state.

The unique state government components of DUI laws are the methods of enforcing and penalizing violations of the prohibited BAC level of .08 or higher. The federal government is relatively uninvolved in these aspects of DUI laws.

Finally, states can and have set other BAC levels for different policy purposes. For example, some states have created the offense of aggravated drunken driving and defined it in terms of drivers with higher BAC levels, such as .15 and .20. The punishment of this offense is considerably more severe than a DUI offense. And other states have set lower levels and created lesser offenses. For example, states have defined the impaired ability to drive as operating a vehicle with a .05 BAC and imposed less severe punishment in these cases than in the instance of a DUI violation.

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## **How are DUI laws enforced?**

Sobriety tests are used to detect drunken drivers. One type of examination is a law enforcement officer's observation of a driver's motor and mental skill levels, such as the ability to count correctly, to walk correctly and to talk coherently. If an officer believes that a DUI arrest is warranted after an initial observation, a breath test will be administered either in the field or at a police station. This second test is to obtain a blood-alcohol concentration level. Any driver who has a BAC of .08 or higher as indicated by the second test is guilty of driving while drunk. A prosecutor will obtain a conviction of drunken driving in this case despite any claims by the driver and any witnesses that the

vehicle was under control.

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## **What are the penalties or sanctions of DUI laws?**

Punishment for violating DUI laws includes imprisonment, license suspension, fines, alcohol treatment participation, and confiscation of vehicles and license plates.

There is no single array or scale of punishment options among the states. Incarceration may be mandatory or with a judge's discretion in some states, while other states impose incarceration primarily for repeat offenders.

Some states will suspend a driver's license only after a conviction, but other states can temporarily suspend a license after an arrest but before conviction. The suspension might occur because a driver refuses to take a sobriety test. The legal theory that justifies license suspension in this instance is that a driver implicitly consents to such tests by virtue of being a driver. However, some drivers not only refuse to take tests but will appeal any suspension of their licenses. These appeals are called "implied consent cases."

In some states, DUI violators may have their automobile registrations or license plates seized to deter them from driving while their licenses are under suspension. License plates may be altered to show that the driver is a DWI violator to shame the driver from further violations.

Finally, two other punishments have been introduced in the last few years. Some states allow the installation of an ignition interlock mechanism. It is a "Breathalyzer" attached to the ignition. A driver must blow into the device to start the car. If the BAC is above a prescribed level, the vehicle will not start. And in other states, specialized DUI courts may require the offender to meet with victims to adjust the offender's future driving behavior.

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## **Is the frequency of DUI cases filed in state courts increasing, decreasing, or staying the same?**

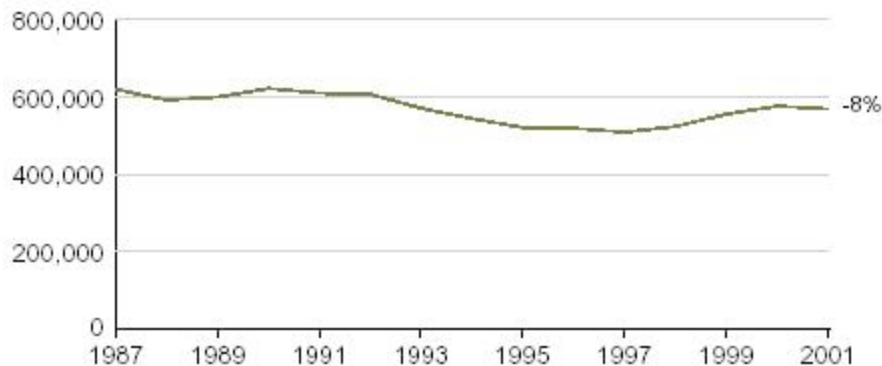
There is limited information of the frequency of DUI cases filed in the nation's state courts. Even less information is available on the manner of their resolution and the penalties imposed for DUI convictions. However, the National Center for State Courts has collected data from selected courts within selected states over the past several years. Hence, it is possible to see what the trend has been in the number of DUI cases filed in some limited and general jurisdiction state trial courts.

The pattern is striking. From 1985 to 2010, the number of filings has decreased by 8 percent (627,467 to 569,000). This figure is based on

reports from 27 courts in 20 states: Arizona, Arkansas, Florida, Hawaii, Idaho, Iowa, Kansas, Maryland, Massachusetts, New Hampshire, New Jersey, New Mexico, Ohio, South Carolina, South Dakota, Texas, Tennessee, Washington, Wisconsin, and Wyoming.

This relationship is shown in the graph below. A trend line tracks the annual number of filings, and the states reporting figures are shaded. Of course, the trend is not universal. There are several states where the number has increased from 1985 to 2001.

DWI Filings in 27 Courts, 1987-2001



However, the overall decrease in DUI cases in the 20 states remains an important observation for two reasons. First, the increases in individual states are generally modest while the decreases are substantial in other states. Second, even the states with increases in the absolute number of DUI filings would likely show a decrease in the rate of filings. If taken as the ratio of filings to the number of state residents or state drivers, the rate would likely be decreasing in all 20 states. The number of residents and the number of drivers have increased considerably in many of these states since 1985. As a result, the ratio would generally be smaller in 2001 than in 1985 in most states.

Therefore, a deeper understanding of DUI filings is important. What policy initiatives or other factors are behind the decline in DUI cases?

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### What might explain fluctuations in DUI filings?

The observed changes in DUI filings might be the product of two different forces. On the one hand, a decrease in the number of DUI

cases might occur because drivers are deterred from drinking by more effective enforcement, stiffer penalties, a lowering of the illegal BAC level, increased social stigmas, and other costs associated with drunken driving. On the other hand, more effective detection or the continued willingness of some drivers to operate a vehicle while under the influence of alcohol could bring about an increase in DUI filings.

Currently, there are no studies that test these propositions systematically. Future policy research is necessary to discern the combination of factors that account for interstate variations in the number of DUI filings and the trends in filings among different individual states.

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## **What are the outstanding issues concerning drunken driving?**

State courts are the forums to adjudicate violations of DUI laws. These offenses are instances of the law's failure to prevent or deter the potentially devastating social consequences of excessive alcohol consumption. Therefore, it is of vital public policy importance to understand the "causes" of interstate variations in DUI case filings. Three issue areas warrant serious social inquiry.

First, more information is needed to answer questions that revolve around the number of filings. Is the pattern in the 20 states similar to or different from the other 30 states? Do most DUI arrests lead to DUI convictions? What are the penalties imposed on first-time and repeat offenders?

Second, information is needed on the relationship between DUI cases and traffic accidents and fatalities. Are increasing trends in the DUI filings associated with either fewer or greater numbers of alcohol-related crashes? Is there a lagged effect? Or is the effect more immediate?

Third, more information is needed on the relationship of DUI filings and enforcement policies. Do new initiatives produce more filings in the short term followed by fewer filings in the long term? Or do policy enforcement enhancements primarily affect drivers who are not chronically drunken drivers? If so, is the level of DUI filings not reflective of the deterrent effects of innovative policy enforcement?

These three areas are important challenges that research can help to clarify. Additionally, research should be able to conclude whether the number of DUI cases filed is a practical barometer of the incidence of drunken driving. Finally, research should cast some light on the compliance of drivers to alternative and special enforcement policies.

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## **What are emerging policy issues concerning drunken driving?**

Much attention has been placed recently on what is called the “hard-core” drunken driver. This particular type of offender is the subject of a national study, **DWI System Improvements for Dealing with Hard Core Drinking Drivers**, by the Traffic Injury Research Foundation. This study is the third in a series on drunken driving. The foundation surveyed 900 state court judges and conducted intensive workshops on the problems of and prospects for adjudicating hard-core drunken drivers.

The concept of the hard-core drunken driver is still in a formative stage, but it refers generally to someone who repeatedly drives while exceeding a BAC level of .08 or more, but who manages to elude the detection, adjudication, punishment, and monitoring efforts of the criminal justice system. This individual might have been stopped or even arrested for DUI offenses on multiple occasions, but nevertheless continues to drink and drive. The system is unable to curtail or to deter this repeat offender. In fact, the hard-core drunken driver might have been convicted of DUI violations on a few occasions. Hence, “hard core” is different from the idea of a “repeat” offender. The hard-core offender is a driver who violates the law without experiencing the consequences.

The hard-core drunken driver is not easily adjudicated as a violator of DUI laws by state court judges. The report distills from the national survey nine different problems that judges believe that hard-core drunken drivers pose for swift and effective adjudication. The problems range from the inability of judges to monitor sentences to inadequate and unavailable driving records to a lack of time that judges can devote to these complex cases.

The Traffic Injury Research Foundation report also provides recommended changes in court policies, procedures and practices to respond to each of the problem areas. Results are available at <http://www.trafficinjuryresearch.com>.

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