

INTOXICATED DRIVERS

– Paul Pacheco, MS, Manager, Mental Health Center of Dane County, Inc. Clinical Assessment Program

- *Close to 9% of Wisconsin's 3,839,930 licensed drivers have been arrested for OWI "Operating While Intoxicated."*
- *The bulk of the intoxicated drivers consists of men (79%) aged 25-39 (43%).*
- *Of OWI drivers, 80% have 1 conviction, 16.4% have 2-3 convictions, 2.2% have 4-convictions, and 1% have 5-or more convictions.*
- *Between '91-2002, 75% of alcohol-related highway deaths and incapacitating injuries were caused by "first offenders" – people with no previous arrests for OWI or related offenses.*
- *In 2002, there were 38,214 OWI adjudications in Wisconsin – 82% eventually completed their court-ordered assessment.*
- *OWI (Operating while Intoxicated) laws cover operation of auto, snow-mobles, boats, and all-terrain vehicles.*

Throughout the 1970's and 1980's the serious social problem of intoxicated driving began to weigh heavily on the minds of many Americans. After a series of catastrophic motor vehicle crashes, many involving multiple vehicles and victims, the media began paying greater attention to the problem of intoxicated driving and its innocent victims. In addition, the sheer weight of national statistics showed that the incidence of intoxicated driving deaths and serious accidents was rising at an alarming rate. Across the country, increasingly vigilant state legislatures began responding to their constituents' demand for new and tougher intoxicated driving laws.

A number of commissions, studies, and concerned citizen groups, the most famous and enduring being MADD (Mothers Against Drunk Driving), were formed during this period. The excerpt below, taken from the MADD website, evokes the mood of that era, while also sadly illustrating a problem that is repeated too often still today.

"In 1979, five-and-a-half-month-old Laura Lamb became one of the world's youngest quadriplegics when Laura and her mother, Cindi, were hit head-

on by a repeat drunk driving offender traveling at 120 mph. As a result of the crash, Cindi and her friends waged a war against drunk driving in their home state of Maryland. Less than a year later, on the other side of the country in California, 13-year-old Cari Lightner was killed at the hands of a drunk driver. Two days prior, the offender was released on bail for a hit-and-run drunk driving crash. He already had 2 drunk driving convictions with a 3rd plea-bargained to 'reckless accident.' At the time of Cari's death, the drunk driving offender was carrying a valid California driver's license. Enraged, Cari's mother, Candace Lightner, and friends gathered at a steak house in Sacramento. They discussed forming a group named MADD-Mothers Against Drunk Drivers. Thus, MADD was born with a name that would sweep the nation."

[www.madd.org/aboutus/]



OWI - History of Wisconsin's Response

Wisconsin was one of several states to respond to public concern by developing new and more effective intoxicated driving laws. With the passage of the landmark *Chapter-20, Laws of 1981*, Wisconsin's intoxicated driving statutes – affecting everything from arrest to rehabilitation – took a number of dramatic turns. The state legislature and the two state agencies most involved with drunk driving (Department of Transportation and the Department of Health and Social Services [now DHFS]) wanted a set of statutes and accompanying administrative code that could bring greater clarity, consistency, and uniformity to the areas of OWI law enforcement, legal prosecution, and rehabilitation than was the case under the outdated *Ch.-193*. The main aspects of the new law are listed in this article.



Intoxicated Driving Defined

Effective May, 1982, *Chapter-20* created the offense of *Intoxicated Driving* as a matter of law. This meant that if a defendant was proven to have driven with a blood alcohol concentration of .10 or greater (.08 now), additional supporting evidence of intoxication was no longer required for charging and successful prosecution. In other words, .10 established *prima facie* (sufficient) evidence of impairment. In the early 1980's defense attorneys began challenging the accuracy of the breath and blood tests, but with advances in the manufacture of portable and stationary alcohol testing technologies, such defense strategies quickly faded from the legal landscape.

Implied Consent

This aspect of the law, originally passed in 1969, maintains that through the process of procuring a driver's license, each Wisconsin driver *implied* his or her consent to be tested for alcohol or drugs should a police officer request such a test. This provision was subsequently upheld by Wisconsin courts after the passage of *Chapter-20* and carried with it fines and penalties for refusing to take

a breath or other chemical test that were more serious than the penalties for OWI conviction itself. The "Implied Consent" provision closed an important legal loophole by preventing offenders from claiming sobriety in court after having prevented police from determining sobriety at the time of arrest. Today most people view a test refusal as equal to an admission of guilt.

Plea-Bargaining Eliminated

Chapter-20 eliminated the ability of prosecutors to agree to plea-bargain OWI offenses to lesser charges, such as reckless driving, which was common under *Chapter-193*. Although some OWI charges are still reduced to lesser charges, this happens in only about 3% of cases – when, for example, the blood alcohol concentration [BAC] is below the legal cutoff and other evidence of intoxication is inconclusive. In Dane County in 2002, only 107 cases were amended to lesser charges out of 3,187 citations.

Because of the prohibition against plea-bargaining, together with .08 BAC serving as sufficient legal evidence of impairment, it has become very difficult for offenders to avoid conviction in court. In the period 2000 - 2002, ninety-two percent of all OWI citations written in Wisconsin resulted in guilty verdicts. Dane County's conviction rate was even higher: 93.7%. "Not guilty" verdicts are exceedingly rare. Of the 6.3% in Dane County who were not adjudicated guilty, most were either dismissed for legal cause, or were amended to reckless driving for reasons explained above.

OWI - Mandatory Court-Ordered Assessment

Another major change under *Chapter-20* is the requirement that all persons convicted of OWI, Implied Consent Refusal, or related offenses must undergo a clinical assessment after conviction, and then must complete a driver safety plan. In Dane County, this mandatory assessment is provided by the Mental Health Center's Clinical Assessment Program.

Chapter-20 made mandatory assess-



ments and driver safety plan completion conditions of sentencing and thus pertain equally to first offenders and multiple-offenders – in other words, both (assessment & safety plan) are required after *each* conviction for OWI.

The purpose of the assessment is to determine whether each offender drove drunk because s/he has a serious drinking, drug, or medication-abuse problem, or because of poor judgment or carelessness. Once that determination is made, the OWI assessor has an objective basis upon which to require offenders to participate in a driver safety plan (education or treatment) that is *appropriate* to their level of impairment.

A key assumption is the belief, supported by research in the 1970's, that persons with serious substance problems such as alcoholism and drug dependency should not be mixed (in intervention programs) with persons whose problems are more attitudinal than clinical. Thus, the model developed by Wisconsin's Intoxicated Driver Program mandated driver safety plans for all intoxicated drivers, but required those with more serious problems to undergo treatment. Those assessed to be less impaired were to participate in remedial education programs.

OWI - Mandatory Driver-Safety Plan

In addition to completing a clinical assessment, all intoxicated drivers are required by *Chapter-20* to complete a



"Driver Safety Plan" as a condition of licensure. If a serious alcohol or other drug problem is assessed, individuals are referred to counseling in state certified, county approved treatment facilities. In Dane County individuals needing treatment have a choice of attending counseling at eight outpatient agencies, and one inpatient facility.

When the problem is assessed to be attitudinal or lack of information (vs a significant alcohol or other drug problem), intoxicated drivers are referred to an educational program called Group Dynamics. Locally, MATC provides the first-offender (24-hours) and second-

offender (48-hours) curriculum for Dane County's Group Dynamics programs.

The Department of Transportation keeps a person's license suspended indefinitely until the OWI assessor reports the individual is complying with both the assessment and driver safety plan. Tracking the individual's treatment compliance constitutes a major part of every OWI assessor's job responsibility.

WI OWI Assessment Findings, '02

- 40% Irresponsible Use of A/D
- 16% Irresponsible Use, Borderline
- 12% Suspected A/D Dependence
- 19% Alcohol/Drug Dependence
- 06% A/D Dep. in Remission
- 07% Multiple Findings

OWI - Surcharge

Planners at Health and Social Services submitted an innovative proposal to charge all convicted OWI offenders a surcharge, *in addition* to other penalties and court costs. This surcharge would be collected by local courts and then transferred to the state, where it would serve as the principal funding source that pays for treatment costs for uninjured and indigent intoxicated drivers.

Every intoxicated driver (regardless of ability to pay) would be required to pay for the assessment out-of-pocket – current assessment fees average \$183 statewide. For those unable to afford the much more expensive costs for treatment, the surcharge fund would pick up 100% of treatment costs.

The net effect of the surcharge is that it created a system in which intoxicated drivers themselves, not taxpayers as a whole, financed the most expensive parts (treatment services) of the state's Intoxicated Driver Program. And most importantly, it brought costly inpatient and outpatient treatment services within the grasp of all intoxicated drivers. While impaired drivers come from all socioeconomic backgrounds and most are not indigent, a significant number of severely impaired drivers do have financial problems. More often than not, these financial problems are the direct consequence of their worsening addictions.

OWI - Blood Alcohol Content



Over the course of a night's drinking (approx. 4-hours) a healthy 180-pound man could consume six beers and likely remain below (.06) the state legal limit of .08. A woman who weighs 140-pounds could consume only three beers during those same 4-hours if she wanted to remain safely below the .08 threshold. A variety of factors can increase or decrease a person's BAC. Countless scientific studies have confirmed that judgment and reflexes are both impaired after only a few drinks. The average BAC among WI's intoxicated drivers has, for many years, been .17 for both men and women.

Alcohol-Related ...

Even though alcohol-related fatalities have risen 8% in this state since 1992, alcohol-related injuries are down 24%, and alcohol-related crashes have declined 22% over the same time period. The table below compares crash and injury data between 1981, the year before Chapter-20 took effect, and 2002.

WI Alcohol-Related Crashes, Fatalities, Injuries: '81 + '02.

Year	Licensed Drivers	Crashes	Fatalities	Injuries
1981	3,059,428	26,978	573	18,648
2002	3,839,930	8,922	292	6,570

Wisconsin's Intoxicated Driver Program is one of the greatest untold success stories of recent times. Along with the mandatory seat belt law and raising the minimum drinking age, the IDP - while not perfect - has had a very beneficial effect upon reducing OWI-related crashes, injuries, and deaths throughout WI.

Effectiveness

There is no easy way to assess the effectiveness of Wisconsin's IDP in suppressing intoxicated driving. Although alcohol-related crash and fatality data are encouraging overall compared to the pre-'82 era, there have been, in addition to *Chapter-20*, other factors exerting a positive influence over the intoxicated driving phenomenon – e.g.: increasing WI's legal drinking age to 21 ('86), the efforts of MADD, lowering the legal BAC, and a growing national consensus that driving while intoxicated is an extremely serious social problem that must be combatted in a variety of ways.

The *Chapter-20* mandate requiring treatment for persons assessed with significant AOD problems deserves special mention. Statewide in 2002, county assessment programs sent 48% of assessed intoxicated drivers to treatment, and 52% to education programs. In Dane county that breakdown was 53% (treatment), and 47% (education).

Even though many individuals are at first resistant to being mandated to get help (as a condition of licensure),

treatment professionals view outpatient treatment as being moderately/highly effective with the majority of offenders. It is also true that there remains a minority of offenders for whom treatment has been ineffective and these individuals continue to drink and operate a vehicle (often while their licenses are revoked for poor participation in treatment). However, state figures from '89-'02 indicate that with each intervention (arrest through assessment and driver safety plan, which the vast majority of offenders do complete) there is a steady reduction in the tendency for offenders to progress towards multiple convictions.

Bearing in mind that OWI laws cover operation of autos, snowmobiles, boats, and all-terrain vehicles, DMV records show there are 335,850 WI drivers with one or more OWI's on their records. Of that number: 269,439 have a single conviction, 55,009 have 2-3 convictions, 7,427 have 4, and 3,975 drivers have 5-or more.

While not necessarily the first time, and not for everyone, for the vast majority of OWI offenders assessment and treatment do work.

MHC

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Newsletter Vol. 2, Issue 1, June 2004

NONPROFIT ORGANIZATION
U.S. POSTAGE PAID
MADISON, WI
PERMIT NO. 1870

Intoxicated Driver Assessment



"The majority of intoxicated driver fatalities and serious injuries are caused by first-offenders."

Clinical Assessment Services

Through a contract with Dane County Department of Human Services, the Clinical Assessment Program provides Chapter 20 Assessments of Intoxicated Drivers, Court-Ordered Evaluations (Civil Commitment, Juvenile Court Evaluations), and Protective Placement and Service Evaluations. Alcohol/drug and broad-brush mental status assessments are available to social service agencies and private individuals and Employee Assistance Program assessments are also available for Dane County employees. An additional primary focus is clinical and administrative coordination for two jail diversion programs: Treatment Alternatives Program (TAP) and the Dane County Drug Court Treatment Program. Contact info: 702 W. Main St, Madison, WI 53715; Ph (608) 280-2630.

Useful Websites / Resources

- <http://www.madd.org/aboutus/>
Mothers Against Drunk Driver. A very useful source for current information on national trends, legislative initiatives, and thoughtful criticism of current laws on intoxicated driving.
- <http://www.fightingback.org/default.jhtml>
An organization dedicated to helping communities reduce alcohol and drug abuse by timely news-gathering, public service announcements, and sharing strategies used by local communities throughout America.
- <http://www.dot.wisconsin.gov>
Official website for the Department of Transportation.

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Newsletter published by the Mental Health Center of Dane County, Inc. for the purposes of education/advocacy. Please address editorial comments and inquiries to: Terri Pellitteri, MHCDC, 625 West Washington Ave., Madison, WI 53703, 608-280-2407.

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