Reducing repeat drunk driving offenses in Wisconsin

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Abstract

Driving under the influence of alcohol over the legal limit occurs with disturbing frequency in the United States. In fact, in 2019 over 10,000 people were killed by drunk drivers (National Highway Traffic Safety Administration, 2021). While this number is high it reflects a decrease in 732 deaths from 2017 (NHTSA, 2021). Perhaps these lives were spared due to increasing awareness, new court conditions for drunk drivers that require pretrial release participation, and improved drunk driving laws. For example, the Pretrial Justice Center for Courts (PJCC) suggests that certain pretrial programs are effective for improving court appearance rates (PJCC, 2021). In this paper, I review existing pre-trial services and court related drunk driving programs in Wisconsin and examine research on their effectiveness.
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Introduction

Statement of the problem

Drunk driving has been an essential problem for law enforcement officials, justice system professionals, and families for decades. Operating a vehicle while intoxicated (OWI) is not only a criminal offense, but also one that is seen as socially unacceptable. OWI offenses have been at the center of controversy for years especially when lives are taken by reoccurring offenders. According to the National Highway Transportation Safety Administration “since 2018, there has been a reported 36,560 accidents related to drunk driving and about 10,511 where fatal meaning people were killed in preventable crashes across the United States” (NHTSA, 2021). It is possible that if offenders were treated more effectively the first time, over 10,511 lives would have been spared in 2018. Repeated offenders are particularly dangerous. DUI offenders with prior a conviction are four times more likely to be involved in a fatal car accident compared to a first-time offender. Many OWI offenders who have already been through the justice process likely reoffend, in part, because the criminal justice system programming for these offenders is ineffective program. Why do so many current offenders become repeat offenders?

Purpose

Throughout this paper, existing research is reviewed to see if effective court programming for drunk drivers can reduce reoffending. Established pretrial services and other programs for OWI offenders and repeat offenders that are available in Wisconsin are reviewed and discussed.
Significance

In 2019, there were about 21,000 convictions related to drunk driving in Wisconsin (Wisconsin DOT, 2021). Of those cases 140 people were killed and 2,918 were injured (citation). Compared to the National average since the year 2019, everyday about 28 people in the United States die in a drunk driving crash, that is one person every 52 minutes (citation). This means every 52 minutes a preventable death could have been avoided and 140 people in one year in Wisconsin could have been spared due to a preventable act. It is therefore essential to determine which programs are most helpful in reducing repeat drunk driving offenses.

Literature Review

Pretrial release programs are a set of conditions given to an offender by a judicial officer to monitor, supervise offenders who are released back into the community. These offenders are given bail conditions and working with pretrial release programs is mandated for compliance purposes. These programs can be effective in reducing reoffending especially if they are based upon evidence-based frameworks. The US Department of Justice suggest that “Milwaukee County’s pre-trial diversion program focuses on offenders who have substance abuse or co-occurring mental health problems and uses either pre-trial diversion or deferred prosecution. Successful completion results in dismissal or reduction of the charges” (DOJ).

What is Drunk Driving?

The legal definition of drunk driving is operating a motor vehicle with a blood alcohol count (BAC) that is above a certain limit (NHTSA, 2021). For many of the United States a 0.08% BAC is the legal limit. In 1982 Congress developed a limit of .10%, but funding and grant
incentives encouraged states to enact stronger and more effective laws by changing the limit to 0.08%. According to the National Highway Traffic Safety Administration to “deter impaired driving, President Clinton called for the promotion of a national limit, under which it would be illegal to operate a motor vehicle with a blood alcohol concentration (BAC) of .08 or higher” (NHTSA 1).

**Pretrial services for drunk drivers in the US**

The Pretrial Justice Institute performed a survey in 2009, that consisted of state and local pretrial services programs in the United States. 171 of the programs responded. Survey results showed that “35 percent of pretrial services programs are in probation subdivisions, 23% in courts, and 16% in jails. An extra 14% of services are independent government agencies, and 8% are private nonprofit agencies” (Pretrial Justice Institute, 2009). The critical functions of a pretrial program are to gather and review information on the offender, to establish their risk level, make suggestions to the court about an offender’s release conditions, and to monitor offenders that are released into the community while their case is open. Pretrial services are mostly running on a county level. Pretrial services according to the National Association of Pretrial Services Agencies and American Bar Association consist of seven main purposes that are mandatory to run a successful program: universal screening, information verification, risk assessment, reporting to court officers, detention review, supervision, and measuring outcomes.

**Universal screening**

Pretrial services programs provide a universal and impartial screening of all offenders arrested on criminal charges before their first court appearance. This interview is meant to assist
in establishing a suitable pretrial release order for the offender. The interview contains personal information like demographics, address, employment/educational background, substance history and mental health record, all of which assist in determining release conditions.

Information Verification

After the preliminary interview, a pretrial services official must verify the information gathered from the interview. The verification procedure is completed by contacting references that are given by the offender. In addition to this task, the pretrial official must verify all the information provided from the interview along with a criminal background check. This means searching the local, state, and national records to ensure the offender has no outstanding warrants and is not on probation or parole.

Risk assessment

The risk assessment identifies the risk of a defendant failing to appear in court. Risk assessments must be analytically developed to predict pretrial failure. Pretrial services officials authenticate all risk assessment tools by applying an intense authentication process. Risk assessments provide a set of qualities based on probability that help to determine if the offender will fail to appear for court and will they be a threat to society.

Report to court officer

The last three tasks are done prior to the offender’s first court appearance so the courts are provided enough information to help them decide on proper release decisions and conditions. The pretrial services program advises bond conditions and diversion eligibility that influences the offender’ risk upon release. Pretrial programs fluctuate in their reporting techniques to courts. Some programs will submit written reports and the others will send staff members to court.
Detention review

Another essential job of a pretrial program is to maintain contact with offenders who were not released or who were unable to make bail and remain in jail.

Supervision

The most vital facet of pretrial service programs is to provide supervision to offenders that have been released back into the community. Court officers will establish numerous conditions designed specifically for each offender. It is the job of the Pretrial service providers to make sure that all offenders are following their set court conditions. The most basic conditions will include routine check-ins at the Pretrial office, substance abuse treatment, mental health treatment, no contact orders, portable breathalyzer test, drug test and or electronic monitoring (GPS or SCRAM). Pretrial staff are also required to remind offenders of upcoming court dates as well. If an offender obtains a violation of their conditions, Pretrial officials are to report those violations to the court immediately this includes positive drug test and PBTs, missed appointments, contacting a no contact order, etc.

Outcome measures

Gathering and recording offender outcomes is critical to a program that thrives off quality assurance. Outcome measures include safety rate, consensus rate, success rate, and amount of time of incarceration. Performance levels are measured as well such as approval rates, offender responsiveness, and intervention percentage. Outcome measures are analyzed and the recommendations that follow from them are often applied to improve the pretrial service programs.
Drunk Driving in Wisconsin

In the state of Wisconsin, there is a legally set minimum and maximum amount of punishment for OWI offenders (See Wis. Statue 346.63). Grieve Law does an exceptional job of breaking down the offenses and their repercussions for Wisconsin offenders. When it comes to first time offenders, they are faced with a civil charge with legal penalties that consist of: license revocation for 6 to 9 months, $150 to $300 fine plus an additional OWI surcharge of $435, ignition interlock device (IID) installment for offenders with a BAC of .15% or above, high-risk driver rank that require SR-22 insurance. For those who have an occupational driver’s license they are required to have IID installation on top of having additional service charges. Failing to comply with the penalties for first non-compliance with IID will result to a $600 fine and 6 months in jail. Failing to comply with penalties for recurrence offender’s non-compliance with IID: up to $1000 fine and 1 year in jail. Offenders are also required to participate in Alcohol and Other Drug Assessment (AODA) and pay the necessary fees. Once completed offenders are then required to pay for the reinstatement of their driver’s license for $200.

Second time OWI offenders will face criminal charges that include 5 days to 6 months in jail, driver’s license revocation for 12-18 months, fines from $350-$1100 plus a $435 driver improvement surcharge. They then must install an ignition interlock device (IID) in their vehicle for 12-18 months and pay for a $250 alcohol and drug assessment.

Third time offenders will sustain a criminal record for the rest of their life that includes all prior convictions no matter how long ago they occurred. Offenders will face 45 days to 1 year in jail, along with a revocation for 2-3 years, $600-$2000 in charges plus a that $435 driver improvement surcharge. They will also receive an ignition interlock device (IID) for 1-3 years. These offenders will also need to obtain and maintain absolute sobriety to regain their
occupational license. Lastly, these offenders will receive an alternate BAC limit of .02 BAC compared to the legal limit of .08 BAC for the rest of their life.

After a fourth offense a few minor changes occur for offenders compared to the third offense. The changes consist of 60 days to 6 years in jail, license revocation for life with no change of obtaining an occupational license and fines up to $10,000. As for a fifth time OWI offender, the only changes made to the list of consequences compared to the third time offense consist of 6 months to 10 years in jail and possible fines up to $25,000.

For OWI offenses after the sixth time, jail time and fine amounts increase significantly and can reach up to $50,000 for those who reach their 10th offense. Tom Grieve, an OWI and Criminal Defense Attorney, states that “99% of OWIs are never removed from anyone’s criminal record, as of the year 2021, less than 10 OWIs have been expunged of thousands” (Grieve 1). This implies that almost all OWI offenders will never rid of their offenses on their record thus automatically forcing them to be labeled as a repeat offender if they happen to do it again.

Pretrial Programs and Services

IMPACT Inc is one of the largest providers of alcohol and drug screening, assessment, and referral services in the state of Wisconsin (IMPACT, 2021). IMPACT Inc is a private non-profit organization that has served Wisconsin residents for 60 years by providing the community with free and confidential alcohol and drug consultation for those in need. IMPACT offers alcohol and drug assessments for violations like reckless driving, possession, underage drinking, and disorderly conduct. They also will complete assessments for cases of domestic violence and child custody. For Milwaukee County residents that have open OWI cases, they are required to
pay for the classes, take the assessment and have full completion of all related task to regain their driver's license status back to goods standing. For medical professionals, licensing boards, nurses, and other medical experts they are sometimes referred to IMPACT for an alcohol and drug assessments due to the nature of their job. For some professionals like substance abuse professionals and employees who work in the transportation business for example commercial driver’s license owners, they are unable to return to work unless an assessment and evaluation is completed. This is a clear example of how IMPACT Inc works with employers, professionals, and everyday people. The IMPACT assessment and IMPACT counselors’ goal is to make the client feel supported and motivated. The assessment is a conversational interview of questions that pertain drinking, drug use, and related issues. The IMPACT counselor discusses the results of the assessment and upon the results, they recommend a plan of action (education or treatment).

According to IMPACT Inc, at least 98% of clients reported that they have a better understanding of available resources. Another 72% of clients report having more value of their lives after working with IMPACT Inc. IMPACT’s OWI clients have the third lowest re-offense rates of all counties in the state of Wisconsin. Lastly, 76% of the OWI clients referred to the program complete their entire treatment versus the state average of 62% completion. IMPACT Inc has single handedly affected the state’s overall OWI rates (IMPACT, 2021).

JusticePoint is an organization dedicated to the promotion of evidence-based criminal justice policy and programming throughout Wisconsin & Minnesota (JusticePoint, 2021). The JusticePoint network stretches over the state of Wisconsin and each county that it serves has their own services they provide in collaboration with local court system. Justice Point Dodge County provides what is called a universal screen to help determine if a client will be able to participate
in their Treatment Alternative and Diversion (TAD) Program. This program is especially for those defendants facing charges for Third or Fourth OWI offenses in their Alcohol Treatment Court (ATC). In this program the court services coordinator makes sure the universal screens are done by using an actuarial based risk and needs assessment that will determine eligibility for both programs using evidence-based practices. Not only does the coordinator support, oversee and work with case managers assigned to the client they use SCRAM bracelet to help monitor the possible alcohol consumption that the clients may participate in while being back in the community. Scram systems describes the bracelet as a “breathalyzer for the ankle, the SCRAM Continuous Alcohol Monitoring (SCRAM CAM) bracelet provides 24/7 transdermal alcohol testing for hardcore drunk drivers, high-risk alcohol and domestic violence offenders” (1). The bracelet is used to support and aid court orders, monitor consumption, and ultimately help keep our community safe. Violations with these bracelets are reported to all court officials and handled by a judge.

JusticePoint in Portage County also provides programming for Adult Drug Treatment Court. This program allows clients a second chance to change their life around and alter their circumstances by becoming alcohol and drug free with the assistance of a comprehensive assessment, treatment, intensive supervision, random drug and breath testing, regular court appearances and immediate sanctions.

In Racine County, the Racine County Alternatives Program (RCAP) offers pretrial risk assessments and pretrial supervision to their clients. Recently arrested offenders are interviewed, evaluated for pretrial risk for the importance of measuring what kind of risk they will be in the community. Just like Dodge County, these clients of Racine also work with case managers who monitor the offenders with alcohol electronic monitoring. RCAP case managers make referrals
for offenders to obtain community resources for alcohol treatment. In Milwaukee County, the JusticePoint team encompasses all these programs and then some. Milwaukee County has pretrial supervision that allows for case managers to give resources and support for OWI cases.

The Milwaukee office also works with Wisconsin Community Services Inc to obtain and monitor OWI offenders with SCRAM court conditions. Milwaukee County allows their case managers to complete portable breathalyzer test in the office during the offenders scheduled office visit. Between JusticePoint case managers and WCS scram technicians all violations and positive portable breathalyzer test are reported to the courts and are usually addressed by all legal parties and the judge. Day Reporting is another tool that is used as it offers an organized routine along with random alcohol reporting and monitoring of clients who are released supervised back into the community (JusticePoint, 2021).

Of the most known in Wisconsin, Wisconsin Community Services (WCS) also offers Pretrial and other services to offenders that are battling OWI cases. Wisconsin Community Services offers several services to its community members who are struggling to get their life back on track. WCS offers alcohol monitoring for individuals with OWI cases (WCS, 2021). WCS works to extend essential services to entities with an interest in Continuous Alcohol Monitoring Programming this includes family courts, child protective services, family services, re offensive drunk drivers and lastly post-conviction alcohol offenders. WCS main objective is to get offenders help immediately after their arrest which to decrease recidivism rates. WCS also works to incorporate the utilization of the Secure Continuous Remote Alcohol Monitoring (SCRAM) bracelets for the necessary offenders. SCRAM CAM is the largest supplier of bracelets worn in southeastern Wisconsin. SCRAM CAM is device that monitors alcohol intake all day, it tests unconscious fluid through an ankle bracelet on the skin. SCRAM Remove Breath
is another device that is used via cell phone that test alcohol with a GPS location monitor. WCS also offers intoxicated driver intervention programs alongside their pretrial supervision for offenders. These offenders are being charged with their first OWI in conjunction with injury, homicide by OWI, and/or a second or subsequent Operating While Intoxicated (OWI) offense (Wisconsin Community Services, 2021).

Between Waukesha County and Jefferson County, they both offer alcohol and OWI treatment courts for offenders with open cases. JCATC Program was created in 2014, in Jefferson County to combat the response of a concerning program of operating while intoxicated for repeat drunk driving offenders. Of all the 54 drug courts in the State of Wisconsin, Jefferson County specifically targets alcohol to improve on sobriety. With the collaboration of the Judge, case manager, defense attorney, district attorney offenders required to comply with routine office appointments, court appearances, drug and alcohol testing and court conditions (WCS, 2021).

Waukesha County takes it a step further by providing OWI treatment court, and pretrial supervision services. Waukesha County OWI Treatment Court (OTC) works with third and fourth drunk drivers’ post-conviction with severe judicial management. There is great attention on treatment and helping offenders stop their drunk driving cycle. WCS offered the first OWI treatment court in Wisconsin after following the 1989, DTC model from Miami-Dade County in Florida (WCS, 2021).

Waukesha’s Pretrial Supervision Program supervises and monitors adult offenders who are charged with misdemeanors and felonies as they await trial or their verdict. This goal of their supervision is to lessen the possibility of FTAs (failing to appear) and to guarantee compliance of bail conditions, while assisting in recommendations for services like AODA or mental health treatment that of which will help reduce new offenses from occurring (WCS, 2021).
Ultimately, each of these programs offer a vital amount of information that not only benefits the offender with an open criminal case but keeps the community around them safer. The programs like JusticePoint and WCS seem to have the most resources and services to offer as they can reach more communities and cities around Wisconsin. All the programs have a connection with the Court system thus making these programs more serious and effective due to the legal consequences one may face if they ignore their bail conditions. Day reporting such as office check ins with portable breathalyzer test and SCRAM bracelets hold offenders more accountable for their actions daily.

**Theoretical framework**

**General Deterrence theory**

One important purpose of criminal sanctions is to deter criminals from reoffending and to serve as a warning to would-be offenders. In an article titled, General Deterrence of Drunk Driving: Evaluation of Recent American Policies, it was reported that “to ensure that laws discourage many potential drunk drivers, States and localities should take a general deterrence approach to the problem (280). While general deterrence refers to the ability of criminal sanctions to deter would-be offenders, specific deterrence refers to the ability of criminal sanctions to reduce the chances that an individual will reoffend. Under this philosophy, sanctions for OWI offenders are used to lower repeat OWI offense, and as example for would-be drunk drivers.

**Social Bond Theory**
Social bond theory also explains why people engage in drunk driving. "We are moral individuals to the degree we are social individuals” (Hirschi 2009, 735). Meaning that we as people depend on our social interactions and attachments with others to prevent us from engaging in criminal behavior. Delinquent acts such as drunk driving are heightened when an individual has weak or broken bonds with family, friends, and/or social institutions (e.g., school). OWI offenders may drink and drive due to their lack of bonds with significant others. Offenders may also lack commitment to conventional institutions and may have trouble creating and achieving personal goals or planning their future, which can create a layer of pressure and stress that cause them to drink excessively and get behind the wheel. Offenders who drink and drive may also have lacked involvement in things prosocial activities, social clubs or any structured groups that involves real contributions over the years. Lastly, a drunk driving offender lacks the belief that the acts are morally wrong and irresponsible. According to Durkin, Wolfe, and May, “[t]he belief component includes a general acceptance of the rules of society as being morally valid and binding, as well as respect for authority and the legal system” (736). OWI offenders, likely lack more respect for the laws and legal justice system.

**Recommendations**

IMPACT Inc, JusticePoint, and WCS all appear to be effective and helpful to the offenders and society. More programs should implement the elements these programs have. IMPACT Inc is effective as they offer testing assessments and referrals for offenders. Under this program offenders have support from the beginning of the court process. JusticePoint provides many services that help reduce the amount and reoccurring OWI offenders such as day reporting, and SCRAM. Lastly WCS offers day reporting, SCRAM, and OWI treatment court. In line with
the social bond theory, offenders are less likely to reoffend if they have support early and often and make and keep their commitments to court officials.

In addition to effective programming, more effective legislation is also needed to help reduce repeat drunk driving offenses as it stands now, OWI offenders are only classified as a felon after three convictions. This is entirely too many chances to offer to repeat drunk driving offenders. In line with deterrence theory, by holding offenders accountable sooner, offenders will likely make better future decisions, and would-be offenders are more likely to be deterred from drinking and driving.

Spreading and creating more awareness of drunk driving is also beneficial to our communities. Spreading awareness and educating citizens, will help law enforcement, community members, and families to keep their loved ones safe.

In addition, MADD (Mothers against Drunk Driving), an organization located in Milwaukee, WI, found that requiring interlocks for all offenders helped the number of fatalities decrease per year. They report that states like “West Virginia, Arizona, Louisiana, and New Mexico have all seen a drop-in death rate after the interlock laws were passed” (MADD).

Limitations

While the programs reviewed in this paper appear to be successful in reducing repeat OWI offenses, they are specific to the state of Wisconsin. It is possible that what works in Wisconsin, will not work as well in other states. Further, while this paper reviewed some of the most widely used programs, it is not an exhaustive overview of Wisconsin OWI programs.
Lastly, this paper reviews existing research on a few programs. More, original research is needed to determine the efficacy of these and other OWI programs around the state and country.

Conclusion

In conclusion, because there are so many stakeholders involved with OWI cases, it is difficult to have a single recommendation for reducing repeat OWI offense. In fact, both legal and programmatic changes are required. Pretrial and treatment programs, while not perfect, can be improved by implementing the program elements outlined above. Further, changing laws to hold repeat offenders accountable sooner may also help in reducing repeat offense. Pretrial and treatment programs do help to lead offenders into the right direction. With a few changes they can be more effective for everyone.
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