

HOW MANY COME BACK? DUI OFFENDER RECIDIVISM IN VERMONT

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The offense of driving under the influence (DUI) is no stranger to attorneys who practice criminal law in Vermont. It is the single most frequently filed criminal charge in District Court and has been a central part of the docket for many years: about 4,800 arrests are made, and an equivalent number of criminal charges, are filed annually. Public health and safety data indicate that an estimated three hundred thousand DUI incidents occur annually in Vermont while about 48% of the ninety-three people killed on Vermont's highways in 1999 died in alcohol related crashes.¹ The picture painted by these statistics is sobering and has prompted a variety of public health, enforcement, and educational initiatives over the years to reduce the incidence of DUI and mitigate its impact on the public and legal system.

A particular challenge for Vermont and other rural States is that the incidence of DUI is significantly higher in rural areas than in urban areas.² In 1999, DUI arrest rates for rural counties (888 per 100,000 population) were almost twice those for large cities (474 per 100,000 population) and were significantly greater than those for suburban areas (583 per 100,000 population).³ Equally challenging is the recognition that increases in the severity of DUI penalties and public demand for enforcement result in greater demands on law enforcement and adjudication resources,⁴ which are even more limited in rural jurisdictions and have been the subject of continued legislative activity in Vermont.⁵ The legislature recently decriminalized first-offense possession of alcohol by a minor after significant pressure was placed on the court system by some four thousand annual charges over a two-year period, up from about two hundred to four hundred charges per year before enhanced enforcement began in 1997.⁶

Recidivism Patterns

Several questions arise from the almost three decades of empirical studies on the incidence and nature of DUI behavior. Perhaps most important is determining the proportion of DUI offenders who return to the legal system after having been adjudi-

cated and processed through the various sanction and remedial programs required as a result of legal intervention. The legal sanction for DUI is, of course, triggered by classification of the offender as either a first-time or repeat offender, typically outlined in statutes recognizing that a small but important proportion of DUI offenders continue to drink and drive despite legal or treatment intervention.

Most "social drinkers" tend to be first offenders and tend to refrain from continued drinking and driving, at least as measured by legal system intervention. Empirical studies support the hypothesis that first offenders are significantly less likely to recidivate than are repeat offenders, although the degree to which first offenders recidivate and changes in recidivism rates have important resource and policy implications both for legal and treatment systems. Alternatively, repeat offenders create a considerable challenge for policy makers given the persistence of drinking and driving behavior and increased demand on legal and health system resources. The primary objective of the study reported here was to examine the extent and nature of failure among first-time and repeat offenders with the goal of developing sound benchmarks against which future interventions might be assessed.

The literature on DUI recidivism suggests that repeated drinking and driving behavior is prevalent and that a significant proportion of DUI offenders have a previous DUI offense on record. An examination of driver records for the 4,494 persons convicted of DUI in Vermont during 1997 and 1998 found that 35% had at least one prior conviction, with a median time between convictions of 4.5 years. Estimates of the size of the DUI repeat offender population available from other empirical findings vary by study design and length of follow-up but typically report that between 15% and 35% of DUI offenders appearing in court are recidivists.⁷ Several additional studies designed to measure DUI recidivism in the context of particular program or policy evaluations indicate that DUI recidivism ranges from

about one-fifth to one-third of offenders.⁸

Prediction of individual failure is a risky game in most circumstances, although research on DUI offenders indicates that a number of factors are associated with increased risk of continued offending and, more importantly, suggest that the population of DUI offenders is more heterogeneous than homogeneous. For example, "problem drinkers" (those who consume alcohol on a regular basis, often in large quantities and in solitude) have a much higher risk of reoffending than do those not considered problem drinkers.⁹ Sociodemographic characteristics, especially age and sex, are also valuable indicators since males aged 18 to 34 are most involved in self-reported DUI behavior and enforcement actions.¹⁰

Equally important for understanding recidivism, and of no surprise to the practicing defense attorney or prosecutor, is that driver record and criminal history are both related to subsequent DUI behavior. A number of studies have produced findings that lend credence to a "general deviancy" theory of DUI: a significant proportion of DUI offenders tend to have relatively extensive driving violation and/or criminal violation records. Previous findings suggest that, for a significant proportion of DUI offenders, drinking and driving is only one aspect of other risky behaviors, such as alcoholism, dangerous driving, and risk-taking.¹¹

A central question raised by current DUI researchers is the degree to which offenders may be cast into a record-based typology which has currency for treatment decisions and DUI policy formation. Specifically, are all DUI offenders alike and, if not, how may differences be typified in a way that is related to subsequent failure? Prior efforts to identify significant DUI subgroups have yielded mixed results with no particular typology gaining prominence among researchers. Similarities among studies conducted over the past two decades suggest that several key dimensions are important for differentiating subgroups of DUI offenders. Among these factors, are problems with alcohol, BAC levels at the time of arrest,

offender demographic and personality characteristics, driving history, and criminal history.

The most comprehensive study to date in which an offender typology was developed was conducted by Roebuck and Murty, who applied a general deviance approach to the study of 2,786 DUI offenders from Georgia DUI schools.¹² Building on existing literature on DUI and an analysis of arrest histories, they identified four subtypes of DUI offenders: (1) first-time DUI offenders; (2) DUI recidivists; (3) DUI and other traffic offenders; and (4) mixed multiple offenders.

The Roebuck and Murty typology was used in the present study primarily because it provides one of the best and most practical approaches to date. For purposes of this study the first-time DUI offenders (FIRST) group consisted of offenders who had no prior DUI or other arrests on record. The DUI recidivists (RECID) group was much smaller and included those who had prior DUI arrests and minor alcohol-related arrests as well as a very limited driving record. This group is best described as offenders who appear to specialize in DUI. The DUI and other traffic offenders (TRAFFIC) group was comprised of people who were primarily bad drivers who incidentally accrued DUI charges along with minor alcohol-related charges. This group is characterized by low levels of criminal involvement but extensive motor vehicle records. The mixed multiple offenders (MULTIPLE) group consisted of offenders with lengthy criminal records that included a variety of serious crimes (any felony landed subjects in this group) as well as DUI and traffic offenses.

The present study consisted of a systematic analysis of criminal history, driving history, and sociodemographic and assessment variables for DUI offenders with the primary objective to determine the level of failure and calculate baseline recidivism rates for those convicted of DUI in Vermont. Moreover, the Roebuck and Murty typology described above was applied to Vermont DUI offenders to determine the degree to which offenders are distributed over the types and the utility of offender types in predicting failure at the group level. It should be noted that individual risk assessment is a complicated and inexact science for DUI offenders; this study was not designed to produce a risk assessment instrument but instead to

provide a foundation for such efforts.

Methodology

A retrospective longitudinal design typical of those employed in driving under the influence (DUI) recidivism studies was used here. Specifically, a cohort of 4,403 people¹³ convicted of DUI in Vermont during calendar years 1993 and 1994 were tracked for five years¹⁴ from the date of conviction for new DUI, motor vehicle, and other criminal charges filed against them. Records were constructed on each subject from court data, Vermont Department of Motor Vehicles (DMV) driver records, postconviction assessment records maintained by the Vermont Office of Alcohol and Drug Abuse Programs (ADAP), and ADAP treatment completion records. Each source allowed for a comprehensive picture of contacts with the legal and treatment systems necessary for assigning subjects to one of the four DUI offender types, examining prior record, and monitoring recidivism.¹⁵

Three measures of recidivism were constructed to provide a better understanding of postconviction behavior and legal system involvement. Previous research on DUI recidivism and offenders suggests that a significant proportion of new non-DUI motor vehicle and criminal charges, in addition to new DUI charges, are likely to be accrued during the follow-up period. First, recidivism was measured as any new DUI charge filed in Vermont District Court or any new out-of-state DUI conviction recorded on the DMV driver record during the five year follow-up period. When multiple failures existed (e.g., new DUI charges on different dates), the first failure was used.

Recidivism was also measured as any new criminal motor vehicle or criminal (VSA Title 13) charge filed in Vermont District Court during the follow-up period. For both motor vehicle and criminal recidivism measures, only the first failure was used in rate construction if multiple failures existed during the five year follow-up. The filing date for new charges, or conviction date in cases of out-of-state DUIs, constituted the failure date under each recidivism measure.

DUI Offenders and Recidivism Findings

As a group the DUI offenders in this study were typical of those processed in Vermont's courts each year and of DUI

offenders nationally. The average age of Vermont's DUI offender was 32.4 years with the significant majority of offenders were male (85%), consistent with other findings.¹⁶ Proportionally few subjects were married (25%), with the majority either never married (46%) or divorced/separated (26%). Most offenders (about 60%) did not have more than a high school education, with only about one in ten having four years of college or more. Finally, among offenders who reported working, slightly less than half (40%) had been in their job one year or less.

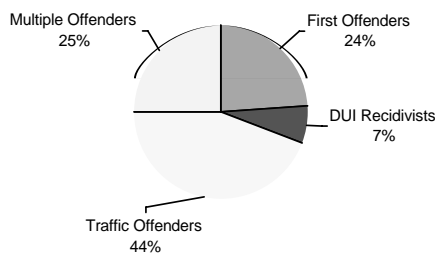
Not surprisingly, about six in ten subjects had no prior DUI charges and could be considered first offenders in regard to DUI only. The majority of what might be considered repeat DUI offenders had either one or two prior DUI charges; a relatively small group had three or more charges on file. Again, these findings were consistent with prior research and reflect the distribution of charges filed in Vermont courts as either first or second/greater offenders. The group was much more active in regard to civil motor vehicle traffic convictions, with almost two in three having at least one prior conviction. Moreover, about 43% had three or more traffic ticket convictions and averaged four citations on record at the time of the reference offense, indicating a significantly poor driving record for the group. Almost equivalent proportions experienced license suspensions, averaging 2.3 suspensions on record. Additionally, about one-third (32%) of the subject group had at least one prior criminal charge on record. Prosecutors and law enforcement officials have long suggested that alcohol is involved in most criminal events, perhaps as many as three out of four. Subject records indicated that about 20% had a prior criminal charge that was directly related to alcohol.

Most subjects were arrested with a relatively high BAC level, the average was .159% and was typically far above the statutory threshold of .08%. Not surprisingly, about half of the subjects were rated as having an alcohol problem while almost another fifth were scored as having a potential alcohol problem on screening tests.

How did the offenders fall into the DUI offender typology discussed above? *Figure 1* indicates that the largest single group (44%) were classified as TRAFFIC offenders while MULTIPLE and FIRST offenders each comprised about one-quarter

ter of the subjects. The smallest group consisted of DUI recidivists/specialists (RECID) at about 7%. These findings suggest that about three in four DUI offenders have some type of legal record when they appear in court; more than half of DUI offenders have a substantial record as either TRAFFIC or MULTIPLE offender types.

Figure 1: DUI Offender Groups



The major objective of this study was to determine how offenders performed during the five year follow-up period, both as a group and for each DUI offender type. Table 1 below presents the recidivism performance of the entire study group and for each DUI offender type and indicates that a significant proportion (21.2%) of DUI offenders accrue a new DUI within five years of conviction.

Several important differences are evident in recidivism rates for DUI as well as for new motor vehicle or criminal offenses. Generally, DUI offender type is related to recidivism in ways that would be expected. FIRST offenders consistently experienced the lowest observed recidivism rates on each of the three measures and the observed recidivism rates for RECID offenders were slightly more than those for FIRST offenders on each measure, although statistically these groups were not different. More importantly, TRAFFIC offenders experienced significantly higher recidivism rates (roughly twice as high) on each measure than did FIRST or RECID offenders. Not surprisingly, the rate of new motor vehicle charges among TRAFFIC offenders was significantly greater (24.8%) than that experienced by either FIRST (8.5%) or RECID (9.8%) offenders.

Table 1: Five Year Recidivism Rates by Offender Type

Recidivism Measure	Offender Type				Total N=(4403)
	FIRST (n=1062)	RECID (n=297)	TRAFFIC (n=1954)	MULTIPLE (n=1090)	
% of New DUI Charge	10.4%	12.1%	22.1%	33.6%	21.2%
Number of Recidivists	110	36	431	355	932
% New Motor Vehicle Charge	8.5%	9.8%	24.8%	41.1%	23.9%
Number of Recidivists	90	29	485	448	1052
% New Criminal Charge	11.7%	13.8%	21.7%	46.3%	24.8%
Number of Recidivists	124	41	424	505	1094
% Any New Charge	22.9%	27.6%	43.8%	64.8%	42.8%
Number of Recidivists	243	82	855	706	1886

Note: DUI = driving under the influence of alcohol or drugs; FIRST = first-time DUI offenders; RECID = DUI recidivists; TRAFFIC = DUI and other traffic offenders; MULTIPLE = mixed multiple offenders.

The highest levels of recidivism on all measures were found among MULTIPLE offenders, as was expected because of their background and proclivity toward general criminal behavior. DUI recidivism rates in this group were significantly higher than in the others, with one-third of its members receiving a new DUI charge. Moreover, this group was equally active in regard to new motor vehicle and criminal charges, with about 41% and 46% so charged, respectively. When any new charge is considered some two in three MULTIPLE offenders received a new charge.

Perhaps the most important observation resulting from the use of different recidivism measures is that subjects who received a new DUI charge accounted for only about half of the subjects who could be considered to have failed in some way. That is, if only a new DUI is considered the recidivism rate is about half of that when any new charge is considered. These findings suggest that an exclusive focus on new DUI charges is rather narrow and does not accurately capture the further criminal justice involvement of DUI offenders, many of whom return to the legal system in one form or another.

Needless to say, the study group was rather prolific during the five year follow-up period with the 1,886 persons who failed accounting for 6,622 new charges, an average of 3.5 new charges each. As would be expected from their criminal and driving history, the greatest levels of failure were experienced by the TRAFFIC and MULTIPLE groups. (More than half of all new charges were accrued by the MULTIPLE group alone.) Not surprisingly, the types of new charges were predominantly misdemeanors (84%) with about one-quarter comprised of new DUI

charges. The single most prevalent charge, representing one in five new charges, was for driving with a suspended license. This pattern is familiar to those involved in the adjudication of DUI and other motor vehicle offenses and, consequently, it is not surprising or unique to Vermont that a significant proportion of those with suspended licenses continue to drive.

Conclusions and Observations

The major objective of this study was to determine baseline rates of recidivism among DUI offenders. Additionally, a DUI offender typology was tested to examine the degree to which Vermont's DUI offenders fell into the four types and whether recidivism rates were related to offender type. The central finding is that about one in five DUI offenders will be charged with a new DUI within sixty months of conviction. The expected DUI recidivism rate will vary, however, by offender type. First offenders generally fail at rates much lower than those with extensive prior criminal and/or driving records. In essence, the best predictor of failure is previous failure since criminal and driving record was the major measure used to assign DUI offender type.

These findings suggest that the image of the typical DUI offender as someone who is new to the criminal justice system is not accurate. The offender with no prior record is the exception and represents only about one-quarter of offenders who may be considered archetypal first offenders. This finding is consistent with a general deviance approach and suggests that DUI offenders experience problems in other areas of their lives beyond involvement for the instant DUI offense. In fact, sociodemographic measures employed in this

study paint a picture similar to that explored by Roebuck and Murty¹⁷ in their interviews and in-depth study of DUI offenders' lives. Specifically, offenders other than first offenders reported experiencing problems with jobs and family relationships and continued contact with the legal system.

Perhaps the most important implication of this finding is that the problems experienced by most DUI offenders are multifaceted and that any approaches developed to mitigate DUI behavior must go beyond isolated treatment of the alcohol problem or DUI behavior. Intervention for alcohol problems in DUI offenders' lives is only one aspect of larger problems related to employment, families, and connections to other social institutions that are at the source of continuing illegal behavior.

It is also noteworthy that significant additional criminal and motor vehicle offending occurred, in addition to DUI recidivism, during the follow-up period. These findings suggest that policy developed to treat or manage DUI offenders must be coordinated among a number of systems. Specifically, the significant level of criminal justice involvement by DUI offenders indicates that many will be under the custody (community or institutional) of the Department of Corrections, not necessarily or only coincidentally as the result of a DUI charge. It is important, therefore, that approaches to managing this population be carefully coordinated among agencies primarily responsible for adjudication (the courts), treatment (Department of Health), and correction (Department of Corrections). Moreover, other departments within the human services realm are likely to be involved to the extent that the DUI clientele are involved with their services. The fundamental implication is that initiatives to mitigate recidivism must be multidisciplinary and result in a coordinated multiagency approach of which the legal system is a central aspect. Some jurisdictions have developed special dockets or DUI courts' similar to drug courts to address this issue.¹⁸ Although the evaluative evidence of this approach is only now becoming available, there is an underlying logic to this approach that is worthy of examination.

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¹ W. Clements, J. Owen, & L. Denton, *DUI Statistical Resource Book, 2001* (Vt. Center Just. Res. 2001); Vermont Governor's Highway Safety Program, *Vermont Crash Data Resource Book, 1999* (Vt. Dept. Pub. Safety 2001).

² H. LAURENCE ROSS, *CONFRONTING DRUG DRIVING: SOCIAL POLICY FOR SAVING LIVES* (1992).

³ FEDERAL BUREAU OF INVESTIGATION, *CRIME IN THE UNITED STATES 1999: UNIFORM CRIME REPORTS 215* (2000).

⁴ P. Kinkade & M. Leone, *The Effects of Tough Drunk Driving Laws on Policing: A Case Study*, 38 *CRIME & DELINQ.* 239 (1992).

⁵ Vermont enacted several key pieces of legislation during the 1990s, beginning with a reduction in the blood alcohol concentration (BAC) level from 0.10% to 0.08% in 1993 and a streamlining of administrative license suspension procedures. Since 1997, the State has lowered the BAC level from 0.08% to 0.02% for drivers aged 19 to 20. The State also enacted provisions for immobilization and forfeiture of vehicles for repeat offenders (although few cases have used these options), formed a special police unit for DUI enforcement, and created the position of coordinator for alcohol safety programs. Additionally, as of 1998 all DUI offenders are required to be screened for alcohol abuse and attend treatment if necessary. Comprehensive legislation passed as Act 117 (1997-98 session) included many of the provisions noted above and is the current watershed in DUI efforts.

⁶ Clements et al., *supra* note 1.

⁷ See S. C. Lapham, B. J. Skipper, & G. L. Simpson, *A Prospective Study of the Utility of Standardized Instruments in Predicting Recidivism Among First DWI Offenders*, 58 *J. STUD. ALCOHOL* 524 (1997); L. Marowitz, *Predicting DUI Recidivism, Volume 1: Blood Alcohol Concentration and Driver Record Factors* (Report RSS-96-164) (Cal. Dept. Motor Vehicles, Div. Prog. & Pol'y Admin., Res. & Dev. Sec. 1996) at 9; J. Yu & W. R. Williford, *Calculating DWI/DWAI Recidivism with Limited Data: Using State Driver License File for Drinking and Driving Research*, 21 *J. DRUG EDUC.* 285 (1991).

⁸ B. Morse & D. Elliot, *Effects of Ignition Interlock Devices on DUI Recidivism: Findings from a Longitudinal Study in Hamilton County, Ohio*, 38 *CRIME & DELINQ.* 131 (1992); R. Lilly et al., *Electronic Monitoring of the Drunk Driver: A Seven-Year Study of the Home Confinement Alternative*, 39 *CRIME & DELINQ.* 462 (1993); T. H. Nochajski et al., *The Effects of a Drinker-Driver Treatment Program: Does Criminal History Make a Difference?*, 20 *CRIM. JUST. & BEHAV.* 174 (1993); A. Rogers, *Effect of Minnesota's License Plate Impoundment Law on Recidivism of Multiple DWI Violators*, 10 *ALCOHOL DRUGS & DRIVING* 127 (1994); J. Yu, *Punishment Celerity and Severity: Testing a Specific Deterrence Model on Drug Driving Recidivism*, 22 *J. CRIM. JUST.* 355 (1994); J. Yu & W. R. Williford, *Drunk-Driving Recidivism: Predicting Factors from Arrest Context and Case Disposition*, 56 *J. STUD. ALCOHOL* 60 (1995).

⁹ J. J. Buntain-Ricklefs et al., *Differentiating "Bad*

Drivers" with and without a DWI, *J. STUD. ALCOHOL* 356 (1995); ROSS, *supra* note 2; L. R. Snowden, L. S. Nelson, & D. Campbell, *An Empirical Typology of Problem Drinkers from the Michigan Alcoholism Screening Test*, 11 *ADDICTIVE BEHAV.* 37 (1986).

¹⁰ S. Liu et al., *Prevalence of Alcohol-Impaired Driving: Results from a National Self-Reported Survey of Health Behaviors*, 277 *J. AMER. MED. ASS'N* 122 (1997); J. Yu, D. T. Essex, & W. R. Williford, *DWI?DWAI Offenders and Recidivism by Gender in the Eighties: A Changing Trend?*, *INT'L J. ADDICTIONS* 637 (1992).

¹¹ See especially M. Argeriou, D. McCarty, & E. Blacker, *Criminality Among Individuals Arraigned for Drinking and Driving in Massachusetts*, 46 *J. STUD. ALCOHOL* 525 (1985); L. Gould & D. MacKenzie, *DWI: Isolated Incident or a Continuous Pattern of Criminal Activity?*, in *DRUGS, CRIME AND THE CRIMINAL JUSTICE SYSTEM* (Ralph Weisheit ed. 1990); R. Hall et al., *Problems in Deterrence: A Comparison of the Driving Histories of DWI and Non-DWAI Drivers*, 53 *J. Stud. Alcohol* 576 (1992); Nochajski et al., *supra* note 8; L. Marowitz, *Predicting DUI Recidivism, Volume 2: The Incremental Utility of Non-Driver Record Factors* (Report RSS-96-164) (Cal. Dept. Motor Vehicles, Div. Prog. & Pol'y Admin., Res. & Dev. Sec. 1996); L. Marowitz, *Predicting DUI Recidivism: Blood Alcohol Concentration and Driver Record Factors*, 30 *ACCIDENT ANAL. & PREV.* 545 (1998).

¹² J. ROEBUCK & K. MURTY, *THE SOUTHERN SUBCULTURE OF DRINKING AND DRIVING: A GENERALIZED DEVIANCE MODEL FOR THE SOUTHERN WHITE MALE* (1996).

¹³ The study group represented 80% of the 5,504 people convicted of DUI in Vermont during 1993 and 1994. Some 1,101 people were excluded because they did not have a Vermont driver's license, they were not Vermont residents, or their residence could not be readily determined from court records. Only licensed Vermont residents were used because of the inability to obtain necessary criminal records and complete driving records from out-of-state sources.

¹⁴ Research using driving records suggests that after approximately seven years, there is marginal gain in recidivism rates associated with adding more years to the follow-up period, in part due to database purging procedures. Yu & Williford, *supra* note 7. A recent investigation of Vermont driving records conducted by the author was consistent with this finding and indicated a median time of 4.5 years and an average time of 5.9 years between DUI convictions, suggesting that most recidivism measurements using official records will be captured with follow-up periods of between five and seven years.

¹⁵ For a detailed review of the methodology see William Clements et al., *Recidivism Among DUI Offenders in Vermont: Offender Classification and the Prediction of Failure* (Vt. Dept. Health, Office of Alcohol & Drug Abuse Progs. 2001).

¹⁶ See Ross, *supra* note 2; L. Winfree & D. McGiever, *On Classifying Driving-While-Intoxicated Offenders: The Experience of a Citywide DWI Drug Court*, 28 *J. CRIM. JUST.* 12 (2000).

¹⁷ *Supra* note 12.

¹⁸ See Winfree & McGiever, *supra* note 16; J. TAUBER & C.W. HUDDLESTON, *DUI/DRUG COURTS: DEFINING A NATIONAL STRATEGY* (U.S. Dept. of Justice, Office of Justice Programs, 1999).