JUDICIAL DISCRETION ON DRUNK DRIVING IN OHIO

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ABSTRACT

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Each year in the United States, more than one million drivers are arrested for driving under the influence of alcohol or narcotics. With an arrest rate of 1 for every 135 licensed drivers in the United States, it is clear that drunk driving remains a major national problem. Needless to say, policymakers who are interested in reducing drunk driving rates must determine which sanctions are the most effective. Fortunately, from a research perspective, the growth of judicial discretion in sentencing methods makes it easier to determine which methods work best. This thesis provides the analytical framework to answer the questions: To what extent is judicial discretion used? And, are there connections between specific sentencing techniques and their effectiveness?

This study attempts to take an important first step toward identifying specific sentencing techniques and their effectiveness through the use of judicial discretion. Specifically, I assess different sentencing practices in three Ohio courts, and make some preliminary conclusions about which approaches are most effective at reducing recidivism rates. The literature review and findings of this research indicate that judges, although practicing under the same law, can offer very different sentences on drunk driving cases. Moreover, it appears that prior sentences do correlate with future recidivism rates, at least when it came to incarceration. This implication supports the body of literature that finds deterrence to be the most effective form of punishment.
To my family and friends, who have been unbelievably supportive.
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CHAPTER ONE: INTRODUCTION

While the idea of judicial discretion is not new, it is becoming an increasingly important part of the American criminal justice system. Indeed, especially during the last decade, the ability of judges to determine the type and length of an offender’s sentence has become a polarizing issue for legislatures and courts at both the state and federal level. Even the United States Supreme Court has recently entered the debate with a controversial ruling in December 2007.

There are, of course, two sides to the judicial discretion story. Those in favor of individualized sentences view them as a critical rehabilitation tool, allowing judges to sentence offenders to serve time in a treatment facility rather than jail. By contrast, those who oppose judicial discretion contend indeterminate sentencing is law without order. In other words, there should be formal punishments given to all offenders, and determinate sentences reduce the need for interpretation by judges, unfair sentencing practices, and recidivism rates (Walker 1992).

Surprisingly, despite the fact that judicial discretion is an increasingly important and controversial area of American public policy, there is a great deal that we do not know about how it functions. This thesis attempts to fill in some of these blanks by examining differences in drunk driving sentencing practices at three Ohio courts – one urban, one suburban, and one rural. My central hypothesis is that differences in the social, economic, and political profiles of the areas served by these three courts will result in different sentencing practices. As a secondary hypothesis, I also predict that certain sentences will be more effective at reducing recidivism. By investigating these hypotheses, I hope to determine the extent of sentencing discrepancies for identical crimes. If indeed such discrepancies exist, this finding would help frame future research into the causes and effects of judicial discretion.
Study Overview

Each year in the United States, more than one million drivers are arrested for driving under the influence of alcohol or narcotics ("DUI"). As of the last national report in 1997, there were 430,300 men and 82,900 women under correctional supervision for DUI offenses (Bureau of Justice Statistics, 1999). With an arrest rate of 1 for every 135 licensed drivers in the United States, it is clear that drunk driving remains a major national problem.

In an attempt to curb this persistent and dangerous epidemic, policymakers have designed numerous techniques for use in the criminal justice system. In fact, since 1980 more than 1,600 laws regarding drunk drivers have been passed nationwide (Buddy 2006). Broadly speaking, these various approaches can be categorized into three groups: deterrence, rehabilitation, and economic. Deterrence policies include stiff penalties, roadside checkpoints, and a higher drinking age aimed at discouraging drivers from drinking. Rehabilitation most often includes education and therapy interventions for convicted drunk drivers. Finally, economic policies hope to discourage drunk driving by targeting consumers and providers including, taxes placed on alcohol make it more expensive to buy alcohol, thereby reducing drinking rates. Crucially, from these three broad approaches, five specific types of sentences have emerged as the most promising and widely used. These five main types of DUI sentences are: (1) incarceration, (2) ignition interlock devices, (3) probation and fine, (4) license suspension, and (5) rehabilitation.

With so many options available to them, American judges have a very large degree of discretion in the area of drunk driving. As a result, there is a very good opportunity to research the judicial discretion phenomenon. Are judges using different techniques? Are there significant differences in terms of the types of sentences being handed down? If so, what accounts for those differences? Finally, is there any evidence that some techniques are more effective than others?
All of these questions are very important to the study of drunk driving policy responses, and judicial discretion more broadly.

To help answer these questions, I conducted a study of how three judges in three different Ohio courts handled DUI cases that came before them during a one year period. I selected the three courts because they represent three areas with very different socioeconomic and demographic profiles, and as a result, they provide an ideal opportunity to examine whether such differences correlate to disparities in sentencing. Other factors, such as the judge’s ideology or the method by which they are appointed, might also affect the choices that judges make in this area of sentencing. However, my project will focus on the role that location and demographic profiles play in sentencing because I believe those factors are most likely to affect judicial discretion. As I explain in Chapter Three, my hypothesis is that judges in areas that are more affluent and conservative will be more likely to impose stricter sentences, while judges in areas that are less affluent and more politically liberal are likely to favor shorter sentences and greater rehabilitation efforts.

The plan of my thesis is as follows. In the next chapter, I examine a variety of literature on drunk driving, including literature that exists on judicial discretion and the five sanctions previously mentioned for sentencing drunk drivers. Chapter Three is my methodology, where I detail my hypotheses and study design. Chapter Four contains my findings. Here, I assess the differences in judicial sentencing patterns and recidivism, using the 445 cases collected from three different Ohio courts. The final chapter consists of my findings analysis and conclusions.
CHAPTER TWO: LITERATURE REVIEW

This chapter will address a variety of literature on drunk driving and judicial discretion. First I will focus on judicial discretion. Next, I examine causes and possible solutions to drunk driving, current policies, and the current sentencing practices. The final section of this chapter will explore the studies on effective sentencing practices of reducing recidivism.

Judicial Discretion

Judicial discretion is best defined as the power given to judges to use discretion when sentencing offenders. From a research perspective, discretion can be seen when examining sentences among offenders for the same arrest. In these situations, judges have the authority to sentence offenders as they see fit, as long as they are within guidelines set by either state or federal lawmakers. Moreover, judges have the discretion to accept or deny a prosecutor’s plea arrangement and decide on the release of an inmate.

In recent times, judicial discretion has been a hot topic in the news. With current cases such as *Kimbrough v. U.S.* and *Gall v. U.S.*, in which the Supreme Court ruled to give judges more discretion when sentencing crack cocaine cases, it is clear judicial discretion is in need of discussion. Both Supreme Court cases decided in past weeks, have allowed federal judges to issue less severe sentences to those convicted of using/dealing crack cocaine. This is a result of the widely debated concerns of sentencing disparities between those convicted of using crack cocaine versus those convicted of using powder cocaine. While, the ruling does not guarantee lower sentences, it gives federal judges the authority to use discretion regarding the harshness of the sentence. At the federal level, judges must follow the sentencing guidelines issued by the United States Sentencing Commission. The sentencing guidelines have been in effect for over
twenty years, and aim to minimize judicial discretion. Before the guidelines, indeterminate sentencing was in practice. The commission issued the guidelines offering more determinate sentencing. According to the commission, innovations under the guidelines include: structured judicial discretion, appellate review of sentences, reasons for sentences stated on record, and determinate sentencing. When sentencing offenders, federal judges take two things into account, the severity of the crime and past criminal record. Judges must rank the severity of the crime on a scale of one to 43 and must assign the criminal history into one of six categories. The point at which the severity and criminal history intersect on a sentencing table, gives the judge a guideline for sentencing. Unless there are extenuating circumstances, the judge is required to follow the suggested guideline.

Initially, indeterminate sentencing was a policy that was celebrated, because it allowed for wide uses of discretion. Walker (1993) explains the idea was that judges could sentence based on each individual case, providing more of an individualized treatment to each case. Discretion could be used to decide sentence, length of jail or prison term, and date of parole release. Ross and Foley (1992) find an example of judicial discretion in a study of judicial sentencing in New Mexico. Of the 238 cases in which mandatory sentencing should have been imposed, only 106 cases were imposed and served the mandatory jail. The judges in the other 132 cases did feel mandatory jail was fit for the case, and therefore, reduced the sentence.

The reforms that have taken place took aim at these very ideas of indeterminate sentencing and discretion. Reformers want to minimize the use of discretion amongst judges, and have more determinate sentences. They feel that wide ranges of sentenced cause various problems within the system, including inequality, and that it is less efficient for case processing. Opponents also contend that indeterminate sentencing relies heavily on the judge to be fully
aware of the offender and the extent of their crime. Most judges, they argue, are not qualified to make those kinds of decisions (Walker, 1993).

In cases involving drug and alcohol-related crimes, indeterminate sentencing is often thought of as a rehabilitation tool because it gives judges the ability to individualize the sentence, allowing for addicts or those in need of treatment to get help in place of incarceration. Walker (1993) finds many people in favor of rehabilitation as a sentence felt that it was essential that the judge be able to determine a sentence based on each individual case. This is especially important when looking at drunk driving cases, as some argue that a first time offender may need a different sentence than a repeat offender or that first time offenders may need different sentences.

Policies have since minimized the amount of individualism of sentencing, but have not eliminated it. Those arguing against judicial discretion contend that unchecked discretion resulted in arbitrary sentences and racial discrimination, and that there were too many judges taking advantage of their power (Walker, 1993). By contrast those who favor determinate sentencing feel that there should be formal punishments all offenders must be faced with. Those arguing against judicial discretion contend that unchecked discretion resulted in arbitrary sentences and racial discrimination (Walker, 1993). They claim that there were too many judges taking advantage of their power, according to critics. For example Judge Marvel Frank (1972) was opposed to indeterminate sentencing saying that it was law without order. He condemned the lack of controls over judicial sentencing. Moreover, there is no leniency in the amount of time to be served with determinate sentencing. Judges set the final incarceration time at sentencing. Incarceration length is often set by guidelines that the judge must follow based on the offense, number of prior offenses, and victim involvement. Determinate sentencing removed the
discretionary release of offenders and got rid of parole boards. Examples of determinate sentencing policies are mandatory sentences, three-strikes laws, and truth in sentencing laws.

However, it is fair to say that those in favor of determinate sentencing did not want to eliminate all of judicial discretion. Many opposed the indeterminate sentencing because of its focus on rehabilitation. Some argued that shifting the philosophies from rehabilitation to just deserts, with determinate sentencing, would leave some discretion. Many who favored determinate sentencing favored it because they opposed indeterminate sentencing (Walker, 1993). They were not in favor the elimination of discretion, just that limitations that should be put on it. The first step away from indeterminate sentencing took place in the mid 1970’s when the flat-time sentencing was introduced. This was when a judge was required to impose a fixed sentence, and the offender would serve that exact amount of time. This limited the discretion of the judge and parole boards. Flat-time did not last long, as there was some need for discretion. Mandatory sentencing, which has resurfaced, was the next step in the reform that was aimed to limit judicial discretion. The first example of this was in California in 1976, a new law gave a judge three possible prison terms for each crime to use a sentence, limiting all discretion.

This battle is relevant to the deterrence versus rehabilitation debate in sentencing drunk drivers. Those in favor of indeterminate sentencing feel that each drunk driver needs an individualized sentence. Whereas those who favor determinate sentencing feel that there should be formal punishments that all offenders must be faced with, regardless of individual characteristics. In regards to current policies, there is a mixture of the two sentencing practices. Many states require a minimum punishment and often leave rehabilitation up to the judge to sentence. Looking at Ohio laws specifically, a first time offense warrants a minimum of three days in jail or a three-day treatment program, an automatic license suspension (length determined
by the judge), and a minimum fine of $200. This shows that a judge has minimum sentence obligations, but also has a clear discretion and ability to vary is decision case by case. It is not until a third offense, in Ohio, that a judge is required to sentence a drunk driver to a treatment program.

**Factors Affecting Judicial Discretion**

There are a variety of factors that can affect judicial decision making. The most salient include: defendant characteristics, case characteristics, court location, the prosecutor, if a defense attorney is involved, and personal ideology. All of these factors affect decision-making. For the purposes of this study, I will focus on court location, political environment, and caseload of the court. These three factors are important because they determine influence sentences.

The demographics in which a court is operating is arguably one of the most important factors in judicial discretion. Vigarita (2003) conducted a study looking at courts from rural, suburban, and urban counties and discussed the differences in sentencing based on jurisdiction. Notably, he found that those sentenced in large courts are less likely to be incarcerated, regardless of the severity of prior record (Vigarita 2003; see also Myers and Talarico 1986). This is a result of several factors including ideology and resources. Similarly, rural counties are more likely to incarcerate than urban and suburban counties, and the effect of prior record varies significantly across counties. Vigarita also notes that sentencing county significantly affects the decision, and there are strong differences across types of counties with regard to factors that affect the decision. He concludes by saying it would be a surprise to find that there were no differences between types of counties. The demographics of a court include judicial ideology, political environment, and caseload. It is important to note, that judicial ideology is likely to
coincide closely with political environment, as municipal judges are elected.

The political environment surrounding the court will affect the sentencing style. One prominent theory holds that criminal courts should respond to local political sentiments (Helms and Jacobs 2002). It is unlikely that a conservative community would elect a lenient judge or that a liberal community would elect a conservative judge. A judge’s ideology is likely to therefore correspond with the community’s ideology. This will be seen in the sentences given to offenders. Conservative judges are more likely to be tough on crime. They incarcerate more offenders and for longer periods of time (Huang et al. 1996; Helms and Jacobs, 2002). Likewise, a politically liberal judge is more likely to use rehabilitation. Therefore, a conservative court is more likely to have tougher sentences, while a court in a more liberal environment may be more likely to sentence offenders to rehabilitation. Helms and Jacobs find that conservative ideologies in court environments have an influence on court decisions about punishments. This shows that the politics surrounding the courts do have influence on the judicial decision making.

The volume of a court is also an indicator to judge’s decisions. In a high volume court that hears several cases a day, a judge will be more likely to give unvarying sentences; in a smaller court, a judge would be able to individualize each sentence (Helms and Jacobs, 2002). This is because often time’s one judge is responsible for all sentences in a court. Therefore, that judge is operating under limited time and resources. A judge in a high volume court does not have the time to closely review each case and assess each defendant differently. Instead, sentences are more uniform, regardless of case characteristics. Ulmer (1997) noted that those sentenced in large courts are less likely to be incarcerated regardless of the severity of the record. That is, the effect of prior record decreases as court size increases. Finally, in a large city or county where jail space is limited, a judge may not sentence offenders to serve jail time; rather
give a higher fine or longer license suspension. This is because in large jurisdictions, jail space is needed for more serious, high index, crimes.

Brief History of Drunk Driving
As early as the 1920’s there was a growing public awareness of the effects of drinking and driving. However, it was not until the 1960’s that states began to enact legal limits of blood alcohol concentrations and began to criminalize drunk driving. According to Williams (2006), before that time, field sobriety tests were largely the bases for arrest¹. Now we have breathalyzers that can be administered on the scene that give the officer an accurate blood alcohol concentration.

Williams finds that in the 1970’s the federal government got involved in the drunk driving issue by launching the Alcohol Safety Action Projects program, which funneled 88 million dollars into 35 programs examining different approaches taken, enforcement, public information, and treatment (Williams, 2006). This initiative began the crusade to reduce drunk driving. By the 1980’s drunk driving became a major social concern, with the influence of organizations such as Mother’s Against Drunk Driving (MADD), Remove Intoxicated Drivers (RID), and Students Against Driving Drunk (SADD). The grassroots movement by such organizations led to a very publicized increase in DWI legislation. Along with the increase in legislation, this movement led to a moral movement as well: it became socially unacceptable to be a drunk driver (Ross 1999; Ross and Foley 1987).

Aside from grassroots movements by organizations, technology made the increased legislation and enforcement of drunk driving possible. Much like DNA evidence linked to

¹ Field sobriety tests were the only way for an officer to detect a drunk driver before the use of technology. They include having the offender walk a straight line, say alphabet, and balance tests. While, these are still used, they are used in combination with technological devices.
murder convictions, breathalyzer tests and other technologies help to convict DWI offenders. It was not until the 1960’s that technology allowed law enforcement to know the BAC of a suspected drunk driver through the breathalyzer device and blood tests. Today, breathalyzer tests can be administered on the scene to give the officer a deemed accurate blood alcohol concentration.

Causes of Drunk Driving
In order to be able to determine appropriate policies concerning drunk driving, we must understand its causes. Ross (1992), a leading drunk driver researcher, argues that policies generally ignore the social roots of drunk driving. He contends that drunk driving is the logical outcome or culmination of the fact that both drinking and driving are interwoven in the life of contemporary America. Specifically, according to Ross, the two important causes of drunk driving are the dependence on the automobile and the social acceptance of drinking. He says that drunk driving will decrease only to the extent that drinking decreases. In other words, until we find ways to reduce the alcohol intake of Americans, we will not decrease drinking and driving. Ross concludes that much attention has been given to drunk driving, and not enough to drinking and driving. Along similar lines, Jacobs (1989) finds that until we focus on the complex meaning of alcohol and driving in our society, there will be no solutions.

Another cause of drunk driving is the social drinker/problem drinker dichotomy defined by Williams et al. (2006). He argues that drunk driving is a result of the large number of people suffering from alcohol addiction. Simpson, and Mayhew (1991) argue that the hard-core drinking drivers are the ones with addiction and that they are the most resistant to behavioral change. Williams et al. find that there are an estimated 17 million alcoholics in the United States, most of whom drive, which indicates that there is relationship between alcoholics and drunk driving. By
contrast, Toomey and Wagenaar (1999) argue that moderate drinkers are at risk on the roads just as “drunks.” Therefore, attention needs to be paid to all drunk drivers, and not high level or low-level drinkers. Policy Responses to Drunk Driving

As Sundt, Applegate, and Turner (1998) say, policies present today are categorized into three types: deterrence, rehabilitation, and economic. Each category has a different aim. Deterrence policies include stiff penalties, roadside checkpoints, and a higher drinking age. They are aimed at people who have not yet committed the offense as well as those convicted. Rehabilitation policies help to treat offenders rather than punish. Sundt, Applegate, and Turner say it is thought that by educating the public about concerns with drunk driving people may be more likely to refrain from committing the offense. Rehabilitation policies were very popular in the 1980’s and began to phase out. Only recently has rehabilitation begun to make a comeback. Finally, economic policies hope to discourage drunk driving by targeting consumers and providers. For example, taxes placed on alcohol make it more expensive to buy, resulting in fewer consumers able to afford it. Similarly, states are able to place minimum prices on alcohol, thus preventing anyone from selling it too cheaply. Another economic policy requires offenders to pay fines. The fines act as retribution from the offender to the state. They also give money to the courts that can help to fund alcohol related programs.

Solutions to Drunk Driving

Deterrence is thought to be a forerunner in solutions for drunk driving. Kenkel (1993) states that a policy of deterrence can be thought of as a way of imposing a tax because it creates costs for the potential drunk driver in the form of fines, jail sentences, and loss of driving privileges. He also argues that deterrence can only work if the drunk driver perceives the probability of arrest and conviction as high. Therefore, policies such as sobriety checkpoints, anti-plea bargaining,
and mandatory first offense sentences need to be implemented. Wilson and Mann (1990) also find that deterrence policies are based on a set on the assumption that the drunk driver must perceive the probability of arrest as high. If that assumption is wrong, there will be no deterrence. There is a counter-argument (Legge 1991) that some kinds of deterrent policies, such as roadside checkpoints, are a violation of civil liberties, and rather than checkpoints we need to focus on the methods used after arrest.

Other observes contend that policies that reduce alcohol consumption and reduce driving will be the most effective (Wilson and Mann 1990; Ross 1987). These policies include high alcohol taxes, higher legal drinking age, and introducing alternatives to private automobile use. Ross (1992) says that the solution to drunk driving is the following:

> Acknowledging that in most cases the villains-drunk drivers-and the victims-those killed in alcohol-related crashes-are the same people. Viewing the problem primarily as a matter of public health, preventing injury and death, rather than a criminal matter focusing on punishing the guilty, and looking to policies beyond deterrence, including reducing overall alcohol consumption, increasing the use of alternatives to the private automobile for transportation, and providing safer cars and roads and better medical care for trauma so that fewer occasions of impairment will result in death and injury. (Ross, 1992: 226)

An opposing argument is to rehabilitate drunk drivers, which will reduce the occurrence, as more than half of those convicted reoffend. Nichols (1990) finds that therapeutic interventions and education programs are the two most effective forms of punishment. Taxman and Piquero (1998) find that there are different types of drunk drivers and therefore individualized treatment programs are necessary. Similarly, Argeriou, McCarty, and Blacker (1985) argue that because treatment facilities tend to treat all drunk drivers as a homogenous group, rehabilitation is ineffective.
Sentencing Policies

This section examines the current penalties that are given to convicted DWI offenders. The most popular penalties imposed that I will discuss are incarceration, fines and probation, license suspensions, ignition interlock, and rehabilitation or treatment programs.

Incarceration

As an option of punishment, a person convicted of DWI may have to serve time in a correctional facility. The severity of the crime as well as the number of previous offenses generally determines if a person is sent to jail or prison. Prison is reserved for the more serious offenses, often involving an accident causing harm to another, and for repeat offenders. The prison sentence is frequently longer than a jail sentence. Jail terms are saved for first or second time offenders often serving only days or months. BAC test results also affect incarceration. For a high BAC, which is often labeled as .15 and above, there are harsher penalties. In fact, some states, including Arizona, mandate a minimum of 10 days for a high BAC first time offender (National Conference of State Legislatures, 2004). Clearly, driving with high blood alcohol content is considered to be a much more serious offense.

Fines and Probation

Aside from (or in addition to) incarceration, the convicted may receive probation and fines. Probation can be assigned on two different terms: reporting and non-reporting. Reporting probation requires the offender to report to the probation officer at pre-determined times. Often it is once a week or once a month. Non-reporting probation, much like reporting, acts as a trial period in which the offender must not have another conviction, but they are not required to report in to a probation officer.
Fines may be given at every level of DUI conviction. The average DUI fine is $250, and although often ranges from $200-$1,000. These amounts do not include court costs and other costs that may be mandated throughout the penalty phase. For example, offenders may have their vehicles impounded, resulting in daily fines, they may be required to attend treatment programs that they pay for, or they may be placed on house arrest, which is also paid for by the offender.

License Suspension

Voas (2006) finds license suspension provides the most consistent evidence for deterrence among DUI offenders. There are two ways that offenders lose their license. The first is through Administrative Per Se Laws. Administrative Per Se Laws allow the drivers license to be suspended by the police or administrative personnel without a conviction. Rather it is an immediate penalty often happening within days or even hours of the arrest. The second form of suspension requires a conviction. Often times, a judge will issue a suspension, which can result in a delay of the suspension for several months.

Ignition Interlock

In place of license suspensions, some judges may order that an ignition interlock device be placed on the vehicle of the charged. This interlock device controls the ignition of the vehicle and requires that the driver blow into a tube before starting the vehicle. By blowing into this tube, the breath can be tested for alcohol. If it detects alcohol, the device prevents the vehicle from starting. If no alcohol is detected, the vehicle will start, but it will require random blow tests while driving to ensure that a third party did not start the vehicle.

Ignition Interlocks are still fairly new and not adopted by all states. As of 2002, there
were 30,000 interlocks in use in the U.S. and Canada (Voas et al, 2006). But several states use it with frequency, requiring DWI offenders only to operate vehicles with the device during the punishment period. Those states include Alaska, Arkansas, Colorado, Idaho, Kansas, and New York. Sometimes it is used in lieu of suspension or vehicle impoundment, while other states use it as a condition of probation. In most situations the person chooses between impoundment and ignition interlock, or even jail. Voas (2006) finds in some states, of those eligible to use the device, as few as one percent chose to do so. This is because many view it as a nuisance to have to constantly blow in a device. It is also expensive, costing as much as $60 a month.

_Rehabilitation_

Rehabilitation, most often includes education and therapy interventions. Programs can include Alcoholics Anonymous, hospital treatment programs, outpatient treatment programs, weekend alcohol treatments, and long stay treatment facilities.

States may require treatment after a certain number of offenses. States such as Utah, Vermont, Mississippi, and Kentucky require that first time offenders complete educational courses, while second and higher offenses are required to get treatment (National Conference of State Legislatures, 2003). This assumes the first time offender may have just made a mistake, while the second time offender has a problem. In many cases, rehabilitation is used along with other punishments discussed above. For example, people may have their licenses suspended until they complete a program or their jail sentence may be reduced upon completion.

_Literature on Effective Sentencing_

While there is a vast body of literature on drunk driving and sentencing, there is fairly limited literature on specific penalties and effectiveness in reducing recidivism. As a result, most of the
literature discussed examines, “How to punish,” not “What works?” The problem is that knowing what penalties are the most effective is essential to determining how to punish. To that end, the following section will provide an overview of literature that explores what penalties are the most effective. The first section focuses on judicial discretion in sentencing, the second examines literature on the effects of penalties, the third reviews literature on the use of rehabilitation, and the final section examines deterrence and the use of social sanctions that can be applied to the use of penalties and rehabilitation.

**Effectiveness of Penalties**

When convicted of drunk driving, an offender generally does not receive one penalty, but rather a combination of multiple penalties. The most common penalties include jail sentences, probation and fines, license suspension, and ignition interlock. This section will examine the literature regarding the use of five different penalties and will review past studies on the effectiveness of each penalty on reducing recidivism.

**Incarceration**

Weinrath and Gartrell (2001) examine the effectiveness of sentence lengths. They look at first time and repeat offenders, examining the length of their sentence and recidivism rates, and they find that offenders serving four months or less and offenders serving long sentences were the most likely to re-offend. More specifically, the deterrent effect peaks from 121 days to six months. Therefore, those sentenced to serve anywhere from 121 days to six months are less likely to reoffend. Weinrath and Gartrell next examine the contention that those serving longer sentences may be more likely to re-offend because they have a history of drunk driving behavior and are less likely to be influenced by longer sentences. Weinrath and Gartrell offer an
explanation: offenders with longer sentences often have longer criminal records or a more severe crime. In other words, criminals, given their persistence in criminal activity, they may be resistant to deterrent effects. Put differently, Weinrath and Gartrell find that those with longer sentences may be more likely to re-offend, but this may not be a result of longer sentences.

In order to get an accurate understanding of the deterrence effects of longer sentences, Weinrath and Gartrell conducted a study of convicted DUI offenders. In this study they control for the variable of prior offenses, and find that chronic offenders with four or more convictions actually exhibit the strongest deterrent effects of sentence length and as sentence length increases, repeat DUI decreases. This finding challenges the prior assumption of the authors that those serving longer sentences are more likely to recidivate. The study finds that deterrence was the highest at around four to six months of incarceration.

Along similar lines, Williams (2006) finds that very stiff penalties such as incarceration for first time offenders have been found ineffective in reducing rates. Meanwhile, case studies such as Ross and Foley (1989) find that excessive incarceration penalties are often resisted by the criminal justice system and result in fewer charges and convictions. Authors Nichols and Ross (1990), after reviewing sentence lengths in North America, find that only one program was able to prove as a deterrent effect compared to other sanctions. That program was a 2-day mandatory jail sentence for all first time offenders in Tennessee.

Probation and Fines

Aside from (or in addition to) incarceration, the convicted may receive probation and/or fines. Probation can be assigned on two different terms: reporting and non-reporting. In Ohio all offenders are put on probation, and the minimum is one year of reporting probation. Moreover,
as part of their probation terms, offenders may also be required to serve time on house arrest, and/or wear an electronic device prohibiting them from leaving their home.

Innovations in probation suggest that some approaches can be more effective than others. For instance, an Oregon judge, Dorothy Baker, has developed her own intense probation plan for repeat DUI offenders. She has named it the DUI Intensive Supervision Program or DISP (Lapham, Kapitula, C’dé Baca, McMillan, 2006). Under this program, offenders serve a short jail sentence, are subject to electronic monitoring and breath testing over phone lines, and must attend weekly Alcoholics Anonymous meetings. In addition, they are required to have full-time employment or school attendance, frequent visits with probation officer and regular polygraph tests. Offenders are in the program for three years. The offender must agree to DISP, but the incentive is substantially less jail time of one-four days compared to 60 or more for non-DISP participants.

Lapham, Kapitula, C’dé Baca, and McMillan (2006) look at DISP participants from 1998 to 2001. The authors match the DISP participants with offenders not in the program in order to compare differences. They are matched based on age at sentencing, gender, year of conviction, and prior DUI offenses. Lapham, et al. finds that there is a 48 percent reduction in re-arrests for DWI over the three-year time of supervision. However, the study is conducted while the offenders are participating in DISP, not after they have completed the program. It would be necessary to see if reduced rates continue after program completion.

Fines are also a part of most sentences. The average fine amount is around $250 throughout the states (Taxman and Piquero, 1998). In a review of fines as a deterrent, Ross (1992) finds that fines are successful in Europe because they are set very high, often around $1,500, and are readily enforced. In the United States, however, under enforcement of fine
collection has undermined the fine as a credible sanction for drunk drivers. This is in part a result of lack of enforcement for unpaid fines. If it is enforced, the penalty for lack of payment in most cases is suspension of driver’s license, which most offenders do not hold anyway. If they are still on probation, they may be re-incarcerated for lack of payment. This places a large degree of accountability on the court system to keep track of who is missing payments or who has defaulted on payments.

License Suspensions

Taxman and Piquero (1998) find that license suspension provides the most consistent evidence for deterrence among DUI offenders. Other authors have also conducted separate studies analyzing the recidivism rates associated with administrative license suspension. Stewart (1988) looks at recidivism rates pre and post administrative per se laws in Mississippi, Louisiana, and North Dakota. He finds no significant reduction in Mississippi and Louisiana, but in North Dakota finds that the recidivism rates a year after conviction was 10 percent after the law, compared to 15 percent prior to the law. Meanwhile, Lacey (1990) finds that administrative suspensions decreased the risk of being rearrested during the first year following sentencing. This study compares drivers arrested for DUI under administrative law and judicial suspension, covering a period up to 30 months post arrest, and finds a 4.8 percent recidivism rate for administrative suspension compared to 7.79 percent for judicial suspension. Finally, Rogers (1995) compares pre-law and post-law DUI offenders and recidivism in California. This study finds that the law significantly reduced recidivism in the first year after arrest. One reason for this may be that people under administrative suspension lose the license immediately, while those who aren’t under administrative suspension must first be convicted and sentenced before a suspension is issued. Administrative suspensions reduce the amount of driving time for the
offender, giving them less opportunity to recidivate.

According to Voas (2006), who conducts a study of DUI offenders that lost their license immediately and those who did not, license suspensions reduce the risk of DUI by as much as half. Somewhat different results were reported by Macarthur and Kraus (1999) who conduct a study in which they examine the Administrative per se laws in three states. Macarthur and Kraus find in the first state, license suspension results in a one third reduction of repeat arrests, while the second state shows 39 percent reduction in recidivism and the third state showed 34 percent reduction in re-arrests after license suspension.

The literature suggests that in some instances administrative per se laws are effective in reducing recidivism. What cannot be concluded, however, is why they are successful. Specifically, it is not clear if license suspension is an effective deterrent, or if it constitutes less driving by the offender, therefore leading to less recidivism. License suspension may be effective not only because it reduces the driving time by offenders but also because it can cause a dramatic change in lifestyle. As noted above, large portions of DUI offenders hold jobs. Grasmick, Bursik Jr, and Arneklev, (1993) finds the loss of a driver’s license can lead to the loss of a job which causes the offenders to arrange for people to drive them around. This leads to social shaming. It is also very costly to regain a driver’s license. Just the thought of losing their license is an effective deterrent for most people. The loss of a license causes a tremendous amount of inconvenience. Aside from being a leading deterrent, according to Weinrath (2006), license suspension is also a very cost effective punishment for the state when compared to treatment programs and custody.

*Ignition Interlock*

In place of license suspensions, some judges may order that an ignition interlock device be
placed on the vehicle of the charged. As of 2002, there were 30,000 interlocks in use in the U.S. and Canada (Voas, Romano, Tippetts, Furr-Holden, 2006). In a review of effectiveness, Beirness and Marques (2004) find that greater use of alcohol interlocks would be effective in reducing drunk driving, others agree. Beck, Baker, and Williams (2006) randomly assign 1,387 eligible offenders to the ignition interlock program and to traditional post-license treatment programs. The subjects are studied for a year during the ignition interlock participation and for one year following participation. The actual recidivism rate among ignition interlock participants is 2.4 percent during the first year, compared to 6.7 percent of the others (Beck, Rauch, Baker, and Williams, 1999). However, the same study finds that after the ignition interlock was removed from the participant’s vehicle, there was not a significant difference in recidivism rates between the two groups. This is important, because it suggests that the device is effective during participation, but does not act as a deterrent. In other words, once removed, it does not appear to prevent offenders from re-offending.

Ignition interlock may be impractical and burdensome. For instance, Voas (2006) conducted a study through the special alternatives sanctioning program. In this study he tried to motivate offenders to use the ignition interlock program, but was only successful in enrolling 62 percent of DUI offenders in Hancock County, Indiana. This is because many view it as a nuisance to have to constantly blow in a device. It is also expensive, costing as much as $60 a month. To be fair, this is a new device and people have not been sold on the new technology. As technology continues to develop, it will be left up to the public to accept or reject these new inventions. There is legislation being considered in New York that would require all vehicles to have an ignition interlock device by 2009. Automotive companies like Saab and Volvo are offering the device as an option to new vehicles in Sweden (O’Donnell, 2006).
Rehabilitation

Mann, Vingilis, and Steward (1988) note that there have been mixed reviews on the use of rehabilitation over time. Most rehabilitation programs include education and therapy interventions. Programs can include Alcoholics Anonymous, hospital treatment programs, outpatient treatment programs, weekend alcohol treatments, and long stay treatment facilities. Many states are using rehabilitation methods, but a problem is that in many states it is a discretionary decision. This places a great burden on the judge to determine which offenders have alcohol problems, and a judge is not properly trained to make decisions on someone’s medical issues.

Taxman and Piquero (1998) find that alcohol education and treatment can be especially important with first time offenders because there is a higher chance that they will not re-offend after receiving treatment. They find that first-time offenders receiving alcohol education are 22 percent less likely to re-offend, while those receiving alcohol treatment are 17 percent less like to re-offend. Taxman and Piquero conduct a study on probation before judgment (PBJ), which is given to first-time offenders in Maryland. This program allows the offender to receive treatment and education with reduced jail sentences. They find that of those sentenced to PBJ, 86 percent received a fine, 48 percent had supervised probation, and 28 percent had unsupervised probation, while only 1 percent served jail time. With regard to rehabilitation, 29 percent of PBJ participants were required to attend Alcoholics Anonymous and 32 percent required alcohol treatment. If the offender successfully completes the program, their conviction is stayed, not affecting the person’s criminal record. They find rehabilitation mixed with formal punishments was the most successful in decreasing recidivism.

A study examining the treatment of chronic DUI offenders had a similar finding in the
effectiveness of treatment programs. Nichols (1990) finds that longer-term treatment programs are the only approaches that have demonstrated reductions in DWI recidivism among repeat offenders. Pratt, Holsinger, and Latessa (2000) conduct a study in Cincinnati on a treatment program called “Turning Point.” This program is used for repeat offenders. The treatment effect is the strongest among those offenders targeted by the Turning Point Program. Offenders are placed in a residential care for twenty-eight days, given a combination of education and individual and group treatment sessions, a six-month aftercare component, and one year of probationary supervision. The program is designed to be a comprehensive treatment program that focused on alcohol addiction.

Interestingly, Turning Point subjects were almost 30 percent more successful in avoiding new offenses and 8.9 percent more successful in avoiding new DUI charges than the comparison group (Pratt, Holsinger, and Latessa, 2000). While there are many who feel that rehabilitation is unsuccessful, the Pratt study suggests that treatment and education was successful in reducing recidivism. Similarly, Mann, Vingilis, and Steward (1988) find that for high alcohol problem offenders, long term individually oriented treatment programs are successful.

Social Costs in Relation to Penalties

There are social costs that come with various sanctions that are not directly issued in the sentencing. These are social factors that play into the aftermath of a drunk driving conviction. It is important to examine these effects because they can have as much of an impact on recidivism as the actual penalties.

With increased attention and pressure placed by media, lobbyists, and legislators over the past two decades being a drunk driver is no longer socially acceptable. A study conducted by the National Highway Transportation Safety Association finds that 97 percent of people view
drinking and driving by others as a threat to their personal safety (Williams, 2005). The offender faces costs of a stigma and damaged relationships with family and friends as a result of conviction (Weinrath and Gartrell, 2001). Friends and family are aware of the penalties and costs of drunk driving, and therefore, have more reason to discourage it. This leaves no excuse for drunk driving.

To a person who otherwise has abided by the law, this stigma can have severe implications on the offender’s life. In an article reviewing the social shameful backlash that sanctions can have, Brian Netter (2005) finds that shaming sanctions go a step beyond the relative anonymity of isolated imprisonment or passive fine-paying by broadcasting to all who will listen, and by seeking to provoke communal outrage. Shaming takes place because society has been exposed to decades of influences condemning the drunk driver. These moral crusaders have allowed for such stigmas and shaming to be possible. The harsher penalties, on one hand, and the efforts to change moral climate surrounding drunk driving, on the other, mirror two major themes in the study of crime and social control (Grasmick, Bursik, Arneklev, 1993). The change in moral climate that he is referring to is an informal punishment that is given to the offender by the community, rather than law enforcement officials. Drunk drivers may complete the formal sanctions given by a judge, but then must overcome the social sanctions.

The thought of losing a driver’s license or going to jail can be enough to deter a person from drinking and driving. But the threat of social sanctions has proven to be a more effective deterrent. Grasmick, Bursik, and Arneklev (1993) find that shame, a variable with a long and recently revitalized tradition in sociology, not only appeared in the analysis as a greater deterrent to drunk driving than the threat of legal sanctions, but also accounted for the reduction in drunk driving over the eight year period (Grasmick, et al., 1993). This is said after Grasmick et al.,
conduct a study of two surveys taken over an eight-year span evaluating the public’s perceptions on drunk driving and the shame and embarrassment that were attached. The U.S. Bureau of Justice Statistics (2004) finds that 61 percent in jail and 62 percent in prison for drunk driving offenses were repeat offenders (Bureau of Justice Statistics, 2004). This indicates that any deterrence policies, whether they are legal or social, do not work. In the study conducted by Grasmick et al (1993), they found that although people were aware of the social ramifications of drinking and driving, more than 53 percent of the respondents expected to drive under the influence in the future. Although this seems a high number, it was down from the survey that was conducted eight years prior. This supports the notion that changes in social and legal ramifications had an affect on people’s decisions to drive after they had been drinking.

Houston (2004) offers some insight into why some people are deterred and others are not. In his research, Houston finds that more socially bonded people are more deterrable. This is an example of social control theory, in that those who have strong bonds with society have more to lose by violating the norms, whereas those who are not socially bonded do not have anything to lose by violating the law and/or social norms. But, if there are not bonds with the community, this shaming would have no effect.

Houston places people into three categories: non-sinners, occasional sinners, and frequent sinners. Non-sinners have strong bonds and therefore are less likely to commit a crime, such as drunk driving. Even though the frequent sinners are subjected to the same social costs, they are not as concerned because they are not as severely affected by such ramifications. As Houston explains, for this reason they assign little weight to societal costs and are unlikely to believe the message that sin poses significant personal risk. Those people who have bonds within society and are subject to the embarrassment and shame that drinking and driving can incur will be less
likely to recidivate. By contrast, people who will suffer the most from the societal backlash will be more likely to obey the norms. Clearly, more research is needed examining the specific bonds, or lack thereof, that drunk drivers hold with society.
CHAPTER THREE: METHODOLOGY

With an arrest rate of 1 for every 135 licensed drivers in the United States, it is clear that drunk driving is a problem. As such, policymakers interested in reducing the drunk driving rates must determine which penalties imposed by the courts are most effective in reducing recidivism. To that end, my goal here is to assess how sanctions differ between courts, in hopes that this will shed light on the quest of sentencing effectiveness. In order to assess the differences, I will examine the use of judicial discretion. As discussed in Chapter Two, under the principle of judicial discretion, judges are given minimum guidelines they must follow, but are able to individualize sentences based on each case. Therefore a judge in one court will have different sentences standards than that in another. In order to determine the differences among judges, I will examine three courts on five major sentencing techniques. Next, because there is evidence in literature that prior arrests have a major effect on sentencing, I will examine those effects on each of the five sentencing variables.

This chapter is separated into three sections: Current Statistics and Laws, Hypotheses and Theory, and the Study Design. The first section will address the current drunk driving rates and Ohio’s sentencing requirements for those who are convicted. The second section will address each of my three hypotheses, as well as the theories that are associated with each. The final section will explain my study design.

Current Statistics and Laws
Drunk driving is a major national problem. In 1997 there were over 1.4 million arrests for drunk driving. As of the last national report in 1997, there were 430,300 men and 82,900 women under correctional supervision for DWI offenses (Bureau of Justice Statistics, 1999). Of the 35 states
with data available, five had arrests rates of 1,200 per 100,000, while 24 states had rates of nearly 900 per 100,000 drivers.

Not surprisingly, state criminal justice systems have been burdened by this phenomenon. In 1997, there were 454,500 Americans on probation, 41,100 in jail, and 17,600 in state prisons for drunk driving (Bureau of Justice Statistics, 1999). This accounts for 14 percent of all probationers, 7 percent of all jail inmates, and 2 percent of all state prisoners. Nearly all offenders arrested in 1997 were required to serve probation, 94 percent were required to pay fines or court costs, 86 percent were required to receive some kind of treatment, 3.4 percent sentenced to prison, and 8 percent were sentenced to jail.

The Drunk Driver

The average person convicted for drunk driving has a much different profile than most other offenders. He is most often a white male (68 percent) with an average age of 37 – five years older that the average of other offenders. Interestingly, the average DWI offender is employed, and is better educated than most other convicted offenders. According to a recent review, 37 percent of DWI offenders on probation, 18 percent of those in jail, and 16 percent of those in prison had attended some college. Among other offenders, 27 percent of those on probation, 15 percent of those in jail, and 13 percent of those in prison had some college education (Bureau of Justice Statistics, 2002). Prior offenses are also prevalent in this population. Of convicted DWI offenders, 33 percent on probation, 61 percent of those in jail, and 62 percent of those in prison reported having at least one prior DWI offense (Bureau of Justice Statistics, 2002). Moreover, these are not generally mild offenses. The average blood alcohol content of a person in jail for DWI is .24 percent (three times the legal limit) while the average of those on probation is .19 percent (more than double the legal limit).
Ohio’s Drunk Driving Sentences

Judges are required by law to issue minimum sanctions on the convicted drunk driver. Those sanctions are dependent on the number of prior drunk driving offenses in the previous six years and the level of the blood alcohol content. The sentencing requirements for those convicted of drunk driving are as follows:

1st Offense
- Administrative License Suspension (ALS) for a prohibited BAC;
- ALS for test refusal = one year license suspension;
- Jail - Minimum of three consecutive days or 3-day driver intervention program;
- Fine - Minimum $250 and not more than $1,000;
- Court License Suspension - 6 months to 3 years.

2nd Offense
- ALS for one year for a prohibited BAC;
- ALS for test refusal = two year license suspension;
- Jail - Minimum of 10 consecutive days or five days jail + minimum 18 consecutive days of electronically monitored house arrest combined
- Fine - Minimum $350 and not more than $1,500;
- Discretionary driver's intervention program;
- Vehicle immobilization and plates impounded for 90 days;
- Court License Suspension - 1 year to 5 years.

3rd Offense
- ALS for two years for a prohibited BAC;
- ALS for test refusal = three year license suspension;
- Jail - Minimum 30 consecutive days to one year;
- Alternative sentence - 15 days or Jail + minimum 55 consecutive days of electronically monitored house arrest combined.
- Fine - Minimum $500 and not more than $2,500;
- Mandatory attendance in an alcohol treatment program paid for by offender;
- Vehicle immobilization and plates impounded for 180 days;
- Court License Suspension - 1 year to 10 years.

4th or More Offense
- ALS for three years for a prohibited BAC;
- ALS for test refusal = five years license suspension;
• Jail - Minimum of 60 consecutive days and up to one year in jail;
• Fine - Minimum $750 and not more than $10,000;
• Mandatory drug/alcohol treatment program paid for by offender;
• Vehicle Forfeiture - Mandatory criminal forfeiture of vehicle operated by offender, imposed by court;
• Court License Suspension - 3 years to Permanent Revocation.

While, Ohio municipal judges are not succumbed to such strict sentencing practices as federal judges, there are still required to follow the suggested guideline, unless an extreme circumstance occurs. In the case of an appeal, a judge must be able to justify why they did not follow the guideline. As seen above, they are given minimum and maximum sentences for each part of the sentence, and given different guidelines for each level of offense. Municipal judges are given more sentencing discretion than federal judges because there is a larger gap between the minimum and maximum penalties they are suggested to assign.

Hypotheses and Theory

Judges are given a variety of options in the sentencing of an offender. Naturally, this leads to great discretion in sentencing practices. This use of discretion allows the judge to individualize the sentence to each case presented. This use of minimum sentencing along with the allowance of discretion is known as a mix between indeterminate and determinate sentencing. For the state of Ohio, the determinate part of sentencing refers to the minimum jail sentence, fine, and license suspension. The indeterminate element refers to the use of rehabilitation.² While it is understood that judges will not give the exact same sentences with the level of discretion, this study will examine the extent to which discretion is active amongst three different judges.

² One study found that sentencing disparity for the same crime was indicated by 15 percent of his interviewees, as the biggest problem local courts face (Lein, Rickards, and Fabelo, 1992)
**H1**: There will be many differences in the sentencing practices between the rural, suburban, and urban courts. The rural court (Perry County) will have stricter sentences than the urban court (Toledo). Toledo will be less likely to incarcerate and more likely to use rehabilitation tools. Perrysburg will be between Perry County and Toledo in regards to the strictness of sentences.

The context of decision-making is important when examining sentences across jurisdictions. The context can include judicial preference, political environment, and caseload of the court. For example, one judge may feel that rehabilitating the offender is most important, while another may feel that imposing harsh penalties is more effective. As noted earlier, punishment is a political process, and must therefore be examined by studying the demographics of the court in which a judge is operating (Helms and Jacobs 2003). Helms and Jacobs note, findings indicating that community conditions help explain criminal justice outcomes other that sentencing make it difficult to believe that equivalent contextual factors do not influence local trial courts.

The political environment surrounding the court will affect the sentencing style. Criminal courts should respond to local political sentiments (Helms and Jacobs). It is unlikely that a conservative community would elect a lenient judge or that a liberal community would elect a conservative judge. Therefore, judicial ideology is likely to correspond with the community’s ideology. This will be seen in the sentences given to offenders. Conservative judges are more likely to be tough on crime. They incarcerate more offenders and for longer periods of time (Huang et al. 1996; Helms and Jacobs). Likewise, a politically liberal judge is more likely to use rehabilitation. Therefore, a conservative court is more likely to have tougher sentences, while a court in a more liberal environment may be more likely to sentence offenders to rehabilitation. Helms and Jacobs find that conservative ideologies in court environments have
an influence on court decisions about punishments. This shows that the politics surrounding the courts do have influence on the judicial decision making.

The volume of a court is also an indicator to judge’s decisions. In a high volume court that hears several cases a day, a judge will be more likely to give unvarying sentences; in a smaller court, a judge would be able to individualize each sentence (Helms and Jacobs). Ulmer (1997) noted that those sentenced in large courts are less likely to be incarcerated regardless of the severity of the record. That is, the effect of prior record decreases as court size increases. Finally, in a large city or county where jail space is limited, a judge may not sentence offenders to serve jail time; rather give a higher fine or longer license suspension.

A study that sheds light on the differences in sentencing amongst courts is Vigarita (2001). He conducted a study looking at courts from rural, suburban, and urban counties and discussed the differences in sentencing based on jurisdiction. Prior research demonstrates the sentencing decision to be dependent on the nature and political leanings of the courtroom workgroup, the levels of bureaucracy, urbanization, and other external factors. (Vigarita; Myers and Talarico 1986) Notably, he found that those sentenced in large courts are less likely to be incarcerated, regardless of the severity of prior record. This supports Ulmer (1997) who also noted similar findings. Similarly, rural counties are more likely to incarcerate than urban and suburban counties, and the effect of prior record varies significantly across counties. Vigarita also notes that sentencing county significantly affects the decision, and there are strong differences across types of counties with regard to factors that affect the decision. He concludes by saying it would be a surprise to find that there were no differences between types of counties.

\[ H2: \text{ Prior drunk driving convictions will affect the severity of the most recent sentence. Past prior offenses will lead to increased penalties.} \]
Sentencing research consistently shows that besides the current offense charge, prior record is the single best predictor of sentence severity (Gottfredson & Gottfredson, 1987; S. D. Ulmer, 1997; Vigarita 2001). Current policies as well as past studies indicate that the severity of the crime as well as the number of previous offenses generally determines the sentence. This can be seen when looking at Ohio state laws, as the number of prior offenses increase, the severity of the sentence does as well. Days in jail, length of license suspension, and fine all increase according to the Ohio law, as the number of priors increase. Another example of legislation that is based on prior record is the three strikes law. Under this law, the amount of prior convictions a defendant has, determines the sentence length for the most recent offense. Therefore, in this study, I expect to see that the more prior drunk driving arrests one has, the harsher the sentence they will receive.

In one of the few studies in this area, Weinrath and Gartrell (2001) find that offenders with longer sentences often have longer criminal records or a more severe crime, therefore, the longer the record, the more severe the penalty. Vigarita also finds that the prior offense type and prior record generally, has a greater effect on nonviolent offenders. Prior record is a way for judges to determine the risk of the offender. It is thought a person with more prior offenses has a higher risk of reoffending. Judges will therefore increase the penalty. Another reason for increased penalty is retribution; those with multiple priors deserve stricter sentences. Prior record is a key ingredient in determining a sentence. Therefore, the influence of prior record within the legal system produces a cyclical reconfirmation of criminality. (Vigarita)

Study Design

The data for my study consist of 445 cases from three Ohio Courts: Perry County Court,
Perrysburg Municipal Court, and Toledo Municipal Court. These courts were chosen to represent three different geographical areas. Perry County represents the rural demography, Perrysburg represents suburban, and Toledo represents urban areas. This should provide an adequate sample to look for differences across the regions as suggested in my first hypothesis.

As of 2006, Perry County had a total population of 35,313. It is considered to be a rural area, consisting of just 410 square miles. The court is located in the seat of the county, New Lexington, which has a population of 4,617. The county voted 51 percent republican in the last presidential election. The top occupation for men is manufacturing and the top occupation for women is in health care. The per capita average income is $21,211 and it is 98.2 percent Caucasian. The unemployment rate in 2003 was 8.8 percent. Almost 12 percent of the population lives below the poverty line.

Perrysburg Municipal Court is located in Perrysburg, which has a total population of 16,902. It is located in Wood County which has a population of 124,183. Perrysburg is almost nine square miles. Like Perry County, it is somewhat conservative politically, voting 53 percent Republican in the 2004 presidential election. The top occupation for men is management and the most popular job for women is to be a K-12 teacher. The average per capita income is $65,700 and there is a 2.8 percent poverty rate. 94 percent of the population is white, 2 percent is Hispanic and one percent African American. Perrysburg is considered to be suburban.

Toledo Municipal Court is located in Toledo, which has a total population of 313,619. It is located in Lucas County, which has a total population of 445,281. Toledo consists of 80 square miles. It voted 60 percent Democrat in the 2004 elections. The average income is $33,044 with 23 percent of population living below poverty line. The population consists of 68 percent White, 24 percent African American, and 6 percent Hispanic. The most common occupation for
Toledo men is production. The most common occupation for women is nursing. Of the 445 cases 201 came from Toledo’s Municipal Court.

After reviewing the demographics of the three court locations, it is easy to see that the courts have similarities and differences. For example, Perry County and Perrysburg both voted conservatively in the 2004 presidential election, which is an indicator that they are more likely to have more conservative, stricter punishments. Furthermore, Perrysburg and Toledo are both municipal courts. All three courts come from a majority Caucasian population, although Toledo has the highest minority population with 32 percent, Perrysburg has 6 percent, and Perry County has a 2 percent minority population.

There are many important differences among the three courts—most notably in income disparity and population being the most noticeable. Perrysburg’s average income of $65,700 is three times that of Perry County. While, Toledo is in between with $33,000 as the average income. With regard to population, Toledo is almost 19 times the size of Perrysburg and almost ten times the size of Perry County, with a population of over 313,000. This indicates that the Toledo court processes many more court cases than either Perrysburg or Perry County, which may lead to a difference sentencing and less judicial discretion.

After reviewing literature and using the demographics of each court, I expect that Perry County Court will sentence more conservatively than Toledo, offering stricter sentences. I also expect that Toledo will utilize alternative sentencing methods, such as rehabilitation. I anticipate to see Perrysburg somewhere in the middle between Perry County and Toledo with regards to sentence severity.

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3 The difference between a municipal court and a county court is that a municipal court serves only the city that it is in, whereas, a county court serves the entire county.
Case Selection

The cases selected were cases in which the sentencing took place in 2006. All of the cases from 2006 were used for Perry County Court and Perrysburg Municipal court. Of the 445 cases 201 came from Toledo’s Municipal Court. But, because of the high volume of cases from Toledo, 201 cases were randomly selected. Of the remaining 244 cases, 170 came from Perrysburg and 84 came from Perry County Court.

The Variables

There were 15 variables taken from each of the 445 cases. The variables were separated into three categories: pre-sentencing, sentencing disposition, and prior sentence disposition.

Pre-sentencing Variables

The Pre-sentencing variables gave a demographic look at each case as well as the arrest information. The variables included were: case number, court, sex, number of priors, refusal to take a breathalyzer, the type of Blood Alcohol test administered, and blood alcohol content. This information was important in order to draw conclusions when applied to the sentencing disposition.

The variables were coded as follows. The courts were coded 1 for Perry County Court, 2 for Perrysburg Court, and 3 for Toledo Municipal Court. Sex was coded 0 for Male and 1 for Female. The number of priors was not coded. If they did not refuse the breathalyzer it was coded 0, those who refused were coded 1, and a 2 was coded for those missing the information. The blood alcohol content measurement was coded 1 for a breathalyzer test, 2 for urine test, and 3 for a blood test. The blood alcohol content was not coded.
Sentencing Disposition Variables

There were eight variables used in reference to the sentence disposition. The variables included were jail time in days, fine amount in dollars, and the use of an ignition interlock device (which prohibits the vehicle from starting if alcohol is detected on driver’s breath). Also used was days of rehabilitation, outpatient rehab in days (which included weekly AA meetings, and other weekly meetings with a counselor), and inpatient rehab in days (which refers to an offender being admitted to a facility to receive a treatment/education). Finally, license suspension in days, and the use of probation, both reporting and non-reporting were analyzed. The variables enabled comparison between the different courts, as well as an overall outlook as to current sentencing practices.

Jail and fine were not coded; rather the time sentenced in days and dollars fined was listed. Ignition interlock was coded 0 for not sentenced and 1 for sentenced to use the device. Rehabilitation was coded 0 for not sentenced, 1 for those sentenced to inpatient, 2 for those sentenced to outpatient, 3 for those sentenced to receive an alcohol assessment, and 4 for those who were sentenced to a combination of inpatient and outpatient treatment. Outpatient and inpatient rehab were not coded; rather the amount in days was listed. License suspension was also listed in days. Probation was coded 0 for no sentence to probation, 1 for non-reporting probation, and 2 for reporting probation.

Prior Sentencing Dispositions

From the 445 cases, 85 had prior drunk driving convictions. Unless the prior conviction took place in the same court as the current conviction, the sentencing disposition was unavailable. Therefore, about half (42) cases had a prior sentencing disposition available. There were four
variables used from those 42 cases. They were: previous jail time, previous rehabilitation, previous ignition interlock, and previous fines.

Previous jail sentence was listed in days served. Rehabilitation was coded 0 for not sentenced, 1 for inpatient, and 2 for outpatient. Previous sentence for ignition interlock was coded 0 for not sentenced, and 1 if they were.\footnote{Note: there were not any who were required to use the device in a prior sentence.} Lastly, fines were listed in dollars fined.

**Statistical Analysis**

In order to test the hypotheses, I used two main approaches in the data analysis. The first was to make court the independent variable using the sentencing variables as dependent. The next approach was to make the number of prior convictions the independent variable and use the sentencing variables as dependent variables.

Frequencies were run to draw conclusions on the number of cases and the characteristics of the cases. With sentencing variables held as the dependent variables, means comparisons and crosstabulations were ran using the courts. This provided a look at the differences among courts in relation to the sentencing practices. Correlations were also used to show a relationship between the sentencing characteristics and the three courts. This helped to draw conclusions about the possible difference of sentencing amongst the courts.

The second analysis included holding the number of prior convictions as the independent variable, and using the sentencing dispositions as the dependent variables. This would help to prove or disprove the hypothesis that current sentencing severity was dependent on the prior number of convictions. Here, crosstabulations as well as mean comparisons were used to show a disparity in the sentence with an increase in prior convictions. Lastly, correlations were run to show any correlation between the variables.
Chapter 3 reviewed the methods of my study, including current drunk driving statistics, how the data was collected, and my hypotheses. It also examined the variables used and methods in which they were analyzed. The following chapter will discuss my findings from the data analysis.
CHAPTER FOUR: FINDINGS

Policy makers have shown great interest in finding which drunk driving laws are the most effective. Along with this, there is a pressing need to determine the impact of judicial discretion. As discussed earlier, judges now have the discretion to impose a variety of sentences depending on the severity of the crime, the number of prior offense, and personal beliefs of the effectiveness of penalties. One key dimension of discretion involves the use of penalties versus rehabilitation.

To assess the differences in judicial sentencing patterns, I used 445 valid cases collected from three different Ohio courts. The data used was from January 1, 2006 to August 1, 2007. The cases included are those in which the defendant was found, or pled, guilty and received a sentence from the judge. There were 112 female defendants (25 percent) and 333 male (75 percent) defendants. Of the 445 offenders, 362 did not have a previous DUI, 69 had one prior arrest, and 14 offenders had two prior arrests. Table 1 shows the demographics of the cases collected from each court.
<table>
<thead>
<tr>
<th></th>
<th>Perry County</th>
<th>Perrysburg Municipal</th>
<th>Toledo Municipal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Total Cases</td>
<td>84</td>
<td>160</td>
<td>201</td>
</tr>
<tr>
<td>Male</td>
<td>72</td>
<td>120</td>
<td>143</td>
</tr>
<tr>
<td>Female</td>
<td>12</td>
<td>40</td>
<td>58</td>
</tr>
<tr>
<td>Number of Defendants with a</td>
<td>27</td>
<td>37</td>
<td>19</td>
</tr>
<tr>
<td>Drunk Driving Prior</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Table 1. Case Demographics by Court**
As seen above, more than twice as many cases were collected from Toledo than from Perry County. As noted earlier, this was a function of the discrepancy of caseloads that each court hears. It is interesting that while Toledo has twice as many cases, there is quite a difference in the number of cases that have a prior arrest. More than 32 percent of offenders from Perry County court have a prior drunk driving arrest, whereas only 9 percent have had a prior arrest with Toledo.\(^5\) When looking at the sex of the defendants, 85 percent from Perry County Court, 75 percent from Perrysburg, and 71 percent from Toledo were male, all roughly equal proportions.

In order to further analyze the data, subcategories were created and individually analyzed using the sanction as the dependent variable. Those dependent variables include: incarceration, license suspension, fine, rehabilitation, and ignition interlock.

### Variable by Court

The following pages will be broken into two sections. The first section will review the data of each variable by court. The second section will review data in relation to prior record and each of the five variables. The goal is to reflect on the discretion used by each judge in sentencing practices and to draw conclusions based on my findings as well as previous findings on the impact of prior offense record on each sentence.

#### Jail

Prison sentences stem from only the most extreme drunk driving arrests. While jail terms are saved for first or second time offenders often serving only days or months. Out of the 445

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\(^5\) It must be noted that prior information was readily available for cases from Perry County Court, Toledo only had available the number of prior arrests with Toledo Court specifically.
offenders, 274 were not required to serve any jail time. The remaining 41 percent of offenders served from one day to 360 days in jail. Table 2 shows the frequency of the sentences.

---

6 In Ohio, a first offense warrants either three days in jail or a three-day driver intervention program.
Table 2. Frequency of Sentenced Jail Time in Days

<table>
<thead>
<tr>
<th>Days in Jail</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-30</td>
<td>157</td>
<td>92</td>
</tr>
<tr>
<td>31-60</td>
<td>4</td>
<td>1.7</td>
</tr>
<tr>
<td>61-90</td>
<td>3</td>
<td>1.3</td>
</tr>
<tr>
<td>91-120</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>121+</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>171</td>
<td>100.0</td>
</tr>
</tbody>
</table>
Aside from no jail, the three most frequent sentences were 3 days, 10 days, and 30 days in jail. This is consistent with Ohio law in that a first offense warrants 3 days in jail, a second requires 10 days in jail, and a third offense warrants 30 days in jail. As seen in Figure 1, when comparing the three courts to jail sentences, there was a large discrepancy. Perry County Court issued jail sentences that were more than five times the sentence of Toledo Court. There average jail sentence was 16 days whereas, Toledo’s was 3 days in jail.
License Suspension

Of the 445 offenders, 62 (13.9 percent) were not sentenced to any kind of license suspension. This is interesting, as Ohio law requires an automatic suspension of six months for a first offense. Therefore, the judges waived the suspension, overriding the guidelines. The 383 that were issued license suspension were sentenced to suspensions ranging from 30 days to 3,653 days. Of the varying degrees of suspensions, 180 days was the most commonly used at 222 times, which indicates the suggested sentence for a first offense. Table 3 shows the frequency of suspensions for all three courts.
### Table 3. Frequency of License Suspension

<table>
<thead>
<tr>
<th>Number of Days Suspended</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-60</td>
<td>3</td>
<td>.7</td>
</tr>
<tr>
<td>61-120</td>
<td>9</td>
<td>2.3</td>
</tr>
<tr>
<td>121-180</td>
<td>225</td>
<td>59</td>
</tr>
<tr>
<td>181-240</td>
<td>2</td>
<td>.5</td>
</tr>
<tr>
<td>241-300</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>301-365</td>
<td>81</td>
<td>21</td>
</tr>
<tr>
<td>365+</td>
<td>63</td>
<td>16.5</td>
</tr>
<tr>
<td>Total</td>
<td>383</td>
<td>100.0</td>
</tr>
</tbody>
</table>
There was a substantial difference in the length of suspension based on the sentencing court. As seen in Figure 2, Perry County Court issues suspensions four times the length of Toledo Court. Even more striking, Perrysburg issued suspensions five times that of Toledo. The average license suspension of the courts combined was 326 days.
Figure 2. Average Days of License Suspension by Court

<table>
<thead>
<tr>
<th>Court</th>
<th>Days of Suspension</th>
</tr>
</thead>
<tbody>
<tr>
<td>Perry County Court</td>
<td>425</td>
</tr>
<tr>
<td>Perrysburg Municipal Court</td>
<td>506</td>
</tr>
<tr>
<td>Toledo Municipal Court</td>
<td>102</td>
</tr>
</tbody>
</table>
One factor that might contribute to the differences in suspension is refusal of breathalyzer. There is a vast difference among those who refused the breathalyzer and those who did not. As Figure 3 shows those who refused had an average of 722 days suspended, while those who did not refuse had an average of 292 days suspended. One explanation is Ohio law requires an automatic suspension of 90 days to five years.\footnote{It varies based on the number of prior drunk driving offenses.}
Figure 3. Average License Suspension Based on Refusal of Breathalyzer

- Refused Breathalyzer: 722 days
- Took Breathalyzer: 292 days
This may also be related to the finding that there is a significance of .029 between those who refuse a breathalyzer and their number of prior arrests. Indicating that someone with a prior arrest is more likely to refuse a breathalyzer, and therefore receive a longer license suspension.

Fines

The minimum fine constituted by Ohio law for a drunk driver is $250. However 7 of our 445 offenders were not assessed a monetary value. This is most likely because the judge suspended the fine as long as there were no more infractions. The other 438 were penalized anywhere from $50 to $1,000. The average fine was $335, an increase of $85 from the national average of $250 (Taxman 1998).
Table 4. Frequency of Fine Amount in Dollars

<table>
<thead>
<tr>
<th>Fine Amount in Dollars</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0-250</td>
<td>195</td>
<td>43.8</td>
</tr>
<tr>
<td>$251-500</td>
<td>226</td>
<td>50.8</td>
</tr>
<tr>
<td>$501-750</td>
<td>21</td>
<td>4.7</td>
</tr>
<tr>
<td>$751-1,000</td>
<td>3</td>
<td>.7</td>
</tr>
<tr>
<td>Total</td>
<td>445</td>
<td>100.0</td>
</tr>
</tbody>
</table>
Table 4 shows the frequency of the various fine amounts. A fine of $250 was given most often at 162 times. The average fine for a first offense was $309, for a second offense $424, and the average for a third offense was $571. There was a large variation in fine amount in relation to the different courts. Figure 4 shows that Perry County Court had an average fine of $504 dollars, which is almost twice that of Toledo at $257.

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8 Ohio law states that for a first offense the fine is $250-$1000. A second offense in six years indicates a fine of $350-$1,500. A third offense results in a fine from $550-$2,500
Figure 4. Average Fine Amount by Court

- Perry County Court: $504
- Perrysburg Municipal Court: $344
- Toledo Municipal Court: $257
Rehabilitation

While rehabilitation is often thought of as a punishment given at sentencing, it is used to help change the way a person thinks. In Ohio, rehabilitation is not a required part of sentences until the third offense in six years. This makes rehabilitation a discretionary sentence that judges may choose to use. In the state of Ohio a treatment program may be substituted for a jail sentence.

Figure 5 shows that 92 offenders were not sentenced to rehabilitation, 280 were sentenced to inpatient treatment, 61 were sentenced to outpatient treatment, 7 were sentenced to get an alcohol assessment, and 6 were sentenced to a combination of inpatient and outpatient.
Figure 5. Rehabilitation Sentences

- No Rehabilitation: 92
- In-Patient Treatment: 280
- Out-Patient Treatment: 61
- Alcohol Assessment & Combination of Treatment: 13
This indicates that 80 percent were sentenced to a form of rehabilitation. This is consistent with, but not quite as high, as the national average of 86 percent.

Interestingly, with the exception of three cases, all of the inpatient treatment programs sentenced (N=277) were three-day driving intervention programs, most of which were used in lieu of jail. These driver intervention programs, known as DIP, are a three-day alcohol assessment, education, and training session. This is consistent with the suggestion that alcohol education and treatment can be especially important with first time offenders because there is a higher chance that they will not re-offend after receiving treatment (Taxman 1998).

There were 73 cases that were sentenced to outpatient treatment. The number of days ranged from 2 to 730 days of outpatient treatment. Often times this meant weekly Alcoholics Anonymous meetings or bi-weekly meetings with a counselor. It is important to note that the numbers may be misleading, as a 180-day rehab sentence may be to attend an AA meeting once a week.

When looking across the three courts, again there are differences in the sentence of offenders to rehabilitation. Figure 6 shows the percentage of offenders sentenced to attend rehabilitation. A majority of the sentences were inpatient treatment programs. Perry County sentenced 75 to attend inpatient treatment, Perrysburg sentenced 94, and Toledo sentenced 133 to attend inpatient treatment programs. The discrepancy between those sentenced to inpatient rehabilitation and those sentenced to outpatient rehabilitation may be a result of Ohio sentencing guidelines. Under the law, judges are able to sentence offenders to inpatient rehabilitation in lieu of incarceration.

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9 The three exceptions came from Perry County Court in which a lengthier rehabilitation requirement was given, one being 15 days and two 90 day treatment programs.
Figure 6. Offenders Sentenced to Rehabilitation by Court

<table>
<thead>
<tr>
<th>Court</th>
<th>Percent Sentenced to Rehabilitation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Perry County Court</td>
<td>96%</td>
</tr>
<tr>
<td>Perrysburg Municipal Court</td>
<td>89%</td>
</tr>
<tr>
<td>Toledo Municipal Court</td>
<td>67%</td>
</tr>
</tbody>
</table>
**Ignition Interlock**

The data analysis of ignition interlock is much smaller than the other variables, because only one of the three courts, Perrysburg, used the device as a part of its sentencing. Of the 445 cases, only 39 were required to use ignition interlock. Perrysburg sentenced 39 of its offenders to use the ignition interlock device as part of probation.

**Prior Convictions**

Prior literature suggests that prior conviction information has an effect on the severity of the sentence. Therefore, I will examine each of the previous five variables used, in relation to prior arrest information. The findings include all of the cases in which the defendant has a prior DUI conviction.

**Incarceration**

Another factor that may help to explain differences among jail sentences is the offender’s number of prior offenses in the past six years. Table 5 shows the average jail sentence in relation to prior DUI arrests. With strong correlation significance, the more priors one has, the more jail time they will be sentenced in jail. According to Ohio law, the jail sentence increases as the number of prior arrests increase. This is evident when looking at the table.
Table 5. Average Days in Jail by Prior Offense

<table>
<thead>
<tr>
<th>Number of Prior Drunk Driving Arrests</th>
<th>Average Number Days</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>3</td>
<td>362</td>
</tr>
<tr>
<td>1</td>
<td>19</td>
<td>69</td>
</tr>
<tr>
<td>2</td>
<td>90</td>
<td>14</td>
</tr>
<tr>
<td>Total</td>
<td>14</td>
<td>445</td>
</tr>
</tbody>
</table>
The average jail sentence for the first offense is 3 days which corresponds with the sentencing guidelines, and the average of 90 days for a third arrest also corresponds with the guidelines. It is interesting that the average is 19 days for a second offense, as the minimum suggested is 10. The judges sentenced much higher than the suggested length for a second offense.

*License Suspension*

The same can be said about the length of license suspension in relation to priors. As the number of prior offenses increase, the length of the suspension increases. Figure 7 shows this evaluation.
Figure 7. Average License Suspension by Prior
As the figure shows, the average license suspension of those with no prior drunk driving arrests was 216 days. The average for those with one prior was 674, and the average for those with two priors jumps to 1460 days suspended. These numbers indicate that the average length of suspensions is higher than the minimum recommended by the state. Table 6 shows that while fine amount and jail sentence have some correlation with prior offense, license suspension shows the strongest correlation with prior arrests.
Table 6. Correlations of Variables with Number of Prior Arrests

<table>
<thead>
<tr>
<th>Prior Arrests</th>
<th>Fine Amount</th>
<th>Jail Sentence</th>
<th>License Suspension</th>
<th>Blood Alcohol Content</th>
<th>Rehabilitation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pearson Correlation</td>
<td>.425**</td>
<td>.449**</td>
<td>.616**</td>
<td>.156*</td>
<td>.109*</td>
</tr>
<tr>
<td>N</td>
<td>445</td>
<td>445</td>
<td>445</td>
<td>264</td>
<td>445</td>
</tr>
</tbody>
</table>

*. Correlation is significant at the .05 level.
**. Correlation is significant at the .001 level.
Fines

Fines may be given at every level of a drunk driving conviction. The average fine throughout the United States for drunk driving is $250. If following the suggesting guidelines, as the number of prior offenses increase, the fine should increase. Table 7 shows the average fine amount by prior offense.
Table 7. Average Fine Amount by Prior Offenses

<table>
<thead>
<tr>
<th>Number of Prior Drunk Driving Arrests</th>
<th>Average Fine in Dollars</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>$309</td>
<td>362</td>
</tr>
<tr>
<td>1</td>
<td>$424</td>
<td>69</td>
</tr>
<tr>
<td>2</td>
<td>$571</td>
<td>14</td>
</tr>
<tr>
<td>Total</td>
<td>$335</td>
<td>445</td>
</tr>
</tbody>
</table>
Interestingly, the average fine for all level of offenses is higher than the suggested amount given by Ohio guidelines. The suggested amount for a first offense is $200, $300 for a second offense, and $500 for a third offense. The fines for a driver with one prior strayed the most from guidelines.

Rehabilitation

Rehabilitation is the variable that can’t be predicted by the suggested guidelines. This is because in Ohio, judges are not required to sentence offenders to treatment programs until a third offense. Until that point, it is a discretionary decision to sentence an offender to rehab. While it is not required, judges may sentence offenders to 3-day treatment programs in lieu of jail. This can be beneficial for both the defendant and the court, as the defendant gets education and treatment and the court saves room in the jail for more serious offenses.
Figure 8. Percent of Offenders Sentenced to Rehabilitation by Prior

- No Prior: 82%
- One Prior: 71%
- Two Priors: 64%
The chart shows that a majority of offenders are sentenced to rehabilitation. This is interesting because treatment is not required until a third offense. Interestingly, a third offense would be expected to have high rates of rehabilitation. Whereas, the opposite is true, a third offense has the least amount of rehabilitative sentences. Judges are required to sentence offenders to rehabilitation on a third offense, but are not required on a first or second. Therefore, the chart paints an interesting picture as first time offenders are more likely to receive rehabilitation.

*Ignition Interlock*

There is limited data on ignition interlock, as only Perrysburg Municipal Court used the device. Of the 39 offenders sentenced to use ignition interlock, seven of them had one prior arrest. The other 32 did not have a prior offense and none of the offenders sentenced to use the device had two prior offenses.
CHAPTER FIVE: ANALYSIS AND CONCLUSIONS

This study revealed many interesting findings of sentencing and the use of judicial discretion. In fact, there is much to be said about the sentencing practices of the three courts examined in this study. The following pages will be an analysis of unexpected findings as well as the findings of my hypotheses.

The blood alcohol content of the offender had a significant effect on the sentencing disposition. Blood alcohol content and fine amount was moderately significant at .001 levels. This is interesting because it shows that the higher the BAC, the higher the fine will be. One explanation of this is that those who have high blood alcohol content are often reoffenders and will therefore, receive a higher fine. The same holds true for the significance between blood alcohol content and a jail sentence. The blood alcohol content was also moderately significant in the days of license suspension. This may be because the state of Ohio has a minimum suspension for those who are labeled to have a high BAC, which is .015 or higher. It would therefore make since for those who have a high BAC to have a longer suspension.

Another interesting finding is those who refused the breathalyzer were more likely to have a prior. Therefore, it would be assumed that those who refused would have tougher sentences, based on the prior arrest. Interestingly, this was true only in rehabilitation and fine amount.

\textit{H1: There will be many differences in the sentencing practices between the rural, suburban, and urban courts. The rural court (Perry County) will have stricter sentences than the urban court (Toledo). Toledo will be less likely to incarcerate and more likely to use rehabilitation tools. Perrysburg will be between Perry County and Toledo in regards to the strictness of}
sentences.

This hypothesis was supported in my data analysis. There were outstanding differences in the sentencing dispositions among the courts, especially between Perry County Court and Toledo Municipal Court. Every sentencing variable showed a great disparity amongst courts. Using fines for example, Perry County Court’s average fine was twice that of Toledo’s average fine. Perry County’s average jail sentence was five times that of Toledo and the average license suspension was three times that of Toledo. It was expected that there would be a difference in sentencing practices, but this disparity is much larger than expected.

Perry County offered much stricter sentences for four of the five variables used. The only variable in which Perry County did not offer the strictest sentence is license suspension, and Perrysburg issued the longest suspensions at 506 days. Toledo issued the most lenient sentences. When examining each variable, they had the most lenient sentences. Toledo was also less likely to sentence offenders to incarceration, which supported previous findings and literature, as it is an urban court. Not only were they less likely to sentence incarceration, when they did sentence offenders to incarceration, the average was three days as opposed to Perry County at 16 days.

One explanation of the disparity in sentences may be that Perry County had more reoffenders sentenced than Toledo, resulting in a tougher sentence. Another explanation is that Toledo processes many more cases than Perry County and is not afforded the time to individualize sentences. This is supported by Vigarita (2003), who found that those sentenced in large courts are less likely to be incarcerated, regardless of the severity of prior record. Rather, there is a standardized sentence and the goal is to get the defendants in and out. While explaining the disparity in the other sentencing variables may be more difficult, there are two possible reasons for the disparity in jail sentences. The first is that Toledo is more likely to sentence an
offender to complete a three-day driver intervention program in lieu of jail, therefore keeping more drunk drivers out of jail. The second reason is that Toledo has a much larger population and is limited in the jail space available. They would want to reserve the jail beds for more serious crimes, such as index crimes.

While, my hypotheses suggests that Toledo would be more likely to sentence offenders to rehabilitation, Perry County Court was the most likely to sentence offenders at a rate of 96% to rehabilitation. Toledo’s average inpatient rehabilitation sentence is three days, while Perry County Court is six days. The three day inpatient sentence is most often in lieu of incarceration. Though, Perry County Court is likely to sentence offenders both to incarceration and rehabilitation. Again, Perrysburg fell in the middle in sentencing offenders to rehabilitation.

Interestingly, using each variable, Perry County Court issued sentences well above the recommended sentence according to Ohio guidelines. Toledo, in three of the five variables, was below the recommended sentence and Perrysburg, was the most likely to be closest to the recommended sentence. These outstanding differences are an example of judicial discretion. Each judge had a different sentencing technique that lead to differences across the courts. This finding is supported by the literature. Because the guidelines offer minimum and maximum sentences, judges are given room to individualize sentences and stray from the guidelines.

My findings support the theory that conservative judges are more likely to be tough on crime. They incarcerate more offenders and for longer periods of time (Huang et al. 1996; Helms and Jacobs), which is seen in Perry County Court. Perry County Court was more likely to sentence offenders to incarceration and sentenced offenders to much longer periods in jail than Toledo. My findings support what Vigarita found, that there are distinct differences across counties in regards to judicial discretion and sentencing.
H2: *Prior drunk driving convictions will affect the severity of the most recent sentence. Past prior offenses will lead to increased penalties.*

This hypotheses was supported in the findings. The severity of each variable increased as the number of prior offenses increased. Incarceration, fine, and license suspension had significant increases as prior offense increased. Ignition interlock showed little effect, as only one court utilized the device. The increase in severity follows the guidelines given to judges in sentencing drunk drivers. While, it did not occur in every case, the judges seemed to follow the guidelines and increase penalty with prior offenses.

While, it was expected that length of jail, amount of fine, and length of license suspension would increase with the number of priors, it was also expected that length of rehabilitation would also increase with the number of prior offenses. Interestingly, when reviewing the effects of priors on rehabilitation, I found that first time offenders are more likely to be sentenced to rehabilitation than second or third offenders. This is interesting because a third offense requires that judges sentence offenders to rehabilitation. After a first or second offense, it is a discretionary decision. One would therefore, expect to see all third time offenders sentenced and fewer first time. The opposite occurred, indicating that judges may lose faith in rehabilitation after a first attempt.

While there are mandatory sentencing guidelines for jail time, fine, and license suspension based on the number of priors the defendant had. These mandatory laws are supposed to limit the amount of judicial discretion that is used, which supports Weinrath and Gartrell’s (2001) findings that offenders with longer sentences often have longer criminal records or a more severe crime, demonstrating, the more prior drunk driving arrests the more severe the penalty. Rather, there were several cases in which the judge did not sentence offenders to the minimum
guidelines. In some cases fines were waived, there was no license suspension issued, or jail time was waived not in lieu of rehabilitation. Therefore, as priors should increase the severity of the penalty, it was not true in all cases.

Conclusions

This study was designed to examine the sentencing practices of judges, the use of judicial discretion, and how that affects drunk driving rates. Taken together, the findings from this study paint an interesting picture of judicial discretion. This study made clear that judges, although practicing under the same law, could offer very different sentences on drunk driving cases. When examining the three courts, there were substantial differences in sentencing practices, suggesting that there are many contributing factors to a judges sentencing practices, including judicial preference, political environment, and caseload of the court. I am therefore able to conclude that judicial discretion is alive and well. This study also supports the prediction that prior drunk driving arrests will affect the severity of the current sentence. As the number of priors increase that severity of the sentence increases. Overall, the result of the study supports the theoretical predictions. The following pages will assess the study in relation to its limitations, room for future research, and its policy implications.

Study Limitations

In order to fully understand judicial discretion, I would need to examine every factor that influences judicial decision making. This was impossible for this project. I can only draw conclusions based on geographic location, political environment, and size of the court. In order to fully understand the context of decision making, I would need to analyze both internal and external factors that include: prosecutorial relationship, defendant characteristics (aside from
Another limitation of the study is the size of the data set. While three courts and 445 cases were used, only 85 of those cases had prior convictions. Of those 85 cases, I was only able to get the prior sentencing disposition from 42 cases. In order to be able to draw formative conclusions, I needed a much larger data set. Unfortunately, for the scope of this project, I was unable to get a larger data set. To fully examine the recidivism rates and sentencing, I would need to follow the defendants over a much longer time period. A time-series study would need to be conducted, taking those who were sentenced in 2006 and 2007, and follow them for years to come.

Another problem I found is the lack of evidence and prior research of the success rate of each individual sanction. In order to be able to successfully determine which penalty is the most effective, I need to be able to draw on prior research. Most research and studies show the penalties that are in place, but without the successfulness of the penalties. One reason for this is there is no way to perform a controlled study on offenders. There are variables that would affect the success of penalties. One example would be alcohol addiction, a person could receive any punishment, but if they have an addiction, the deterrence affects will be reduced. Also, because penalties are not given in isolation, it is therefore hard to control for the effects of the penalty being studied. A person may be sentenced to jail and rehabilitation; it would therefore be difficult to determine which of those was most effective in preventing a reoffense.

Future Research

While drunk driving is declining nationwide, there are still an outstanding number of people arrested each year. It is in policy makers’ best interest to find a successful penalty. More studies such as this one, which look specifically at sentencing and the effects, are needed to determine
what penalties reduce recidivism. There is also much need for long-term studies of different penalties and recidivism rates. Many studies do a one to two year follow-up and then make a conclusion. I argue that a longer follow up period is necessary to truly determine the effectiveness of penalties.

While the findings of this study are limited, data suggests that incarceration has an effect on recidivism rates. There was limited information available on the prior sentencing dispositions, which affected my ability to draw any key conclusions as to the affect of prior sentencing on recidivism rates. Only 42 cases had available the prior disposition. The only variable that showed to have any affect on recidivism was a prior jail sentence. This upholds the idea that recent mandatory jail sentences are a result of the perception that incarceration is an effective deterrent.

New sentencing methods are introduced in each state every year. It would therefore be useful to study the different sentencing practices across states and measure the recidivism rates. Because states are able to have different sentencing requirements, it would be to a researcher’s advantage to do a cross-state study. This would give a better analysis of exactly which penalties are effective in which states. Once that information is found, it would then be important to examine the characteristics of the states population, causing that particular method to be effective. Those variables may include education, race, sex, and population density. That would then help for administrators to impose sanctions that reduce rates for their demographics.

Finally, I think that further examination of judicial discretion is needed. While a state can have a minimum sentencing guideline, a judge has much power on the sentence imposed. It would be valuable to know the most influential factors on a judge. Further studies on the impact of the political and courtroom environment on judicial decisions, could help to determine and
predict sentencing practices. As seen in prior literature, there have been judges that have used their discretion to an advantage and created successful drunk driving programs that reduce recidivism (Weinrath and Gartrell, 2001; Lapham, Kapitula, C’de Baca, McMillan, 2006). Further analysis of such programs would bring to light effective sanctions, as well as effective combinations of sanctions.

**Policy Implications**

The first implication is that judicial discretion is in practice and can lead to varying sentences for the same offense. With current cases such as *Kimbrough v. U.S.* and *Gall v. U.S.*, in which the Supreme Court ruled to give judges more discretion when sentencing crack cocaine cases, it is clear judicial discretion is a hot topic. Judicial discretion has come and gone in the limelight of politics and the criminal justice system, over past decades. Despite the fact that judicial discretion is an increasingly important and controversial area of American public policy, there is a great deal that we do not know about how it functions. This study implies that there is a need to further examine the uses of discretion. While I attempt to fill in some blanks regarding the differences in sentences for the exact same crime in three Ohio courts – one urban, one suburban, and one rural, there is much more to be done. I show that differences exist and are likely, a result of the social, economic, and political profiles of the areas served by these three courts. This helps to frame future research into the causes and effects of judicial discretion.

Also as past studies have shown, and this study finds, deterrence is a forerunner in solutions for drunk driving. Kenkel (1993) states the a policy of deterrence can be thought of as a way of imposing a tax because it creates costs for the potential drunk driver in the form of fines, jail sentences, and loss of driving privileges. As jail sentences act as a deterrent, they have shown to be an effective penalty in reducing recidivism. It is important to note that, order for deterrence
to be effective, the drunk driver perceives the probability of arrest and conviction as high. For that reason, policies such as sobriety checkpoints, anti-plea bargaining, and mandatory first offense sentences need to continue to be utilized in order to increase the probability of arrest.

While deterrence has shown effective, because of the limitations of the study, I do not feel rehabilitation should be pushed aside. There is strong evidence found in previous literature that rehabilitation is successful in reducing recidivism (Taxman and Piquero, 1998; Pratt, Holsinger, and Latessa, 2000; Mann, Vingilis, and Steward 1988). Many argue that rehabilitation is an effective solution, as over half of convicted drunk drivers re-offend. Nichols (1990) finds that therapeutic interventions and education programs are the two most effective forms of punishment. While, Taxman and Piquero (1998) finds that Alcohol education and treatment can be especially important with first time offenders because there is a higher chance that they will not re-offend after receiving treatment.

There is something to be said for the current policies that are in place, as drunk driving and recidivism rates have been decreasing. This is in part to the deterrence and treatment of offenders, and also a result of the changing attitudes toward drunk driving. In order for policies to continue to work, the social acceptance of drunk driving must continue to decrease.
REFERENCES


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Voas, R; Blackman, K; Tippetts, A; Marques, P. (2002) “Evaluation of a program to motivate impaired driving offenders to install ignition interlocks” Accident Analysis and Prevention, 34:449-455.


APPENDIX 1

OHIO’S DUI LAWS

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Administrative License Suspension (ALS)

If you are stopped for drunk driving and you refuse to take the sobriety test, or if your test results exceed the legal limit of Blood Alcohol Concentration (BAC), the officer can take your driver's license on the spot, and the suspension begins immediately.

Depending on previous offenses or refusals, you can have your license automatically suspended for a period of 90 days to five years.

The administrative suspension is independent of any jail term, fine or other criminal penalty imposed in court for a DUI offense.

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1st Offense

Administrative License Suspension (ALS) for a prohibited BAC;

ALS for test refusal = one year license suspension;

Jail - Minimum of three consecutive days or 3-day driver intervention program;

Fine - Minimum $200 and not more than $1,000;

Court License Suspension - 6 months to 3 years.

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2nd Offense

ALS for one year for a prohibited BAC;

ALS for test refusal = two year license suspension;

Jail - Minimum of 10 consecutive days or five days jail + minimum 18 consecutive days of electronically monitored house arrest combined, not to exceed 6 months;

Fine - Minimum $300 and not more than $1,500;

Discretionary driver's intervention program;
Vehicle immobilization and plates impounded for 90 days;
Court License Suspension - 1 year to 5 years.

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3rd Offense

ALS for two years for a prohibited BAC;
ALS for test refusal = three year license suspension;
Jail - Minimum 30 consecutive days to one year;
Alternative sentence - 15 days or Jail + minimum 55 consecutive days of electronically monitored house arrest combined, maximum of one year;
Fine - Minimum $500 and not more than $2,500;
Mandatory attendance in an alcohol treatment program paid for by offender;
Vehicle immobilization and plates impounded for 180 days;
Court License Suspension - 1 year to 10 years.

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4th or More Offense or Motor Vehicle Related Felony

ALS for three years for a prohibited BAC;
ALS for test refusal = five years license suspension;
Jail - Minimum of 60 consecutive days and up to one year in jail;
Fine - Minimum $750 and not more than $10,000;
Mandatory drug/alcohol treatment program paid for by offender;
Vehicle Forfeiture - Mandatory criminal forfeiture of vehicle operated by offender, imposed by court;
Court License Suspension - 3 years to Permanent Revocation.
## APPENDIX 2

### Summary of Variables by Court

<table>
<thead>
<tr>
<th></th>
<th>Perry County Court</th>
<th>Perrysburg Municipal Court</th>
<th>Toledo Municipal Court</th>
<th>Total Number of Cases Sentenced</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Cases</td>
<td>84</td>
<td>160</td>
<td>201</td>
<td>445</td>
</tr>
<tr>
<td>Sex of Defendant Male/Female</td>
<td>72/12</td>
<td>120/40</td>
<td>143/58</td>
<td>335/110</td>
</tr>
<tr>
<td>Number of Defendants with a Drunk Driving Prior</td>
<td>27</td>
<td>37</td>
<td>19</td>
<td>83</td>
</tr>
<tr>
<td>Refused Breathalyzer</td>
<td>20</td>
<td>48</td>
<td>86</td>
<td>154</td>
</tr>
<tr>
<td>Average Jail Sentence in Days</td>
<td>16</td>
<td>10</td>
<td>6</td>
<td>171</td>
</tr>
<tr>
<td>Average Fine</td>
<td>504</td>
<td>344</td>
<td>257</td>
<td>338</td>
</tr>
<tr>
<td>Average License Suspension in Days</td>
<td>425</td>
<td>506</td>
<td>142</td>
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<td>Number Sentenced to Rehabilitation</td>
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<td>94</td>
<td>133</td>
<td>302</td>
</tr>
<tr>
<td>Number Sentenced to Inpatient Rehabilitation</td>
<td>60</td>
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<td>132</td>
<td>282</td>
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<tr>
<td>Number Sentenced to Outpatient Rehabilitation</td>
<td>25</td>
<td>46</td>
<td>1</td>
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<tr>
<td>Sentenced to use Ignition Interlock</td>
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<td>39</td>
<td>0</td>
<td>39</td>
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