MINUTES

KANSAS DUI COMMISSION

June 30, 2010
Room 346-S—Statehouse

Members Present

Senator Thomas C. (Tim) Owens, Chairperson
Representative Janice Pauls, Vice-chairperson
Senator David Haley
Representative Lance Kinzer
Greg Benefiel, Assistant District Attorney, Douglas County
Chris Bortz substituted for Pete Bodyk, Kansas Department of Transportation
Major Mark Bruce, Kansas Highway Patrol
Honorable Jennifer Jones
Wiley Kerr, Kansas Bureau of Investigation
Mary Ann Khoury, Victim Advocate
Deb Stithem substituted for Don Jordan, Secretary, Kansas Department of Social and Rehabilitation Services
Retired Police Chief Ed Klumpp
Sheriff Ken McGovern, Douglas County
Chris Mechler, Court Services Officer
Helen Pedigo, Executive Director, Kansas Sentencing Commission
Ted Smith, substituted for Marcy Ralston, Kansas Department of Revenue
Honorable Peter V. Ruddick, 10th Judicial District
Dalyn Schmitt, Substance Abuse Professional
Les Sperling, President, Kansas Association of Addiction Professionals
Jeremy Thomas, Parole Officer
Doug Wells, Attorney, Kansas Bar Association
Roger Werholtz, Secretary, Kansas Department of Corrections
Karen Wittman, Traffic Safety Resource Prosecutor, Attorney General's Office

Staff Present

Athena Andaya, Kansas Legislative Research Department
Lauren Douglass, Kansas Legislative Research Department
Jennifer Horchem, Kansas Legislative Research Department
Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Sean Ostrow, Office of the Revisor of Statutes
Karen Clowers, Commission Assistant

Others Attending

See attached list.

Wednesday, June 30

The meeting was called to order by Chairperson Owens at 9:10 a.m. The Chairperson updated the Commission on conversations he had with Supreme Court Justice Nuss and Howard Schwartz, Judicial Administrator, regarding issues to consider whether to make the recommendation for district magistrate judges to preside over all driving under the influence (DUI) cases statewide. Mr. Schwartz indicated there are certain points that need to be considered:

- The current jurisdiction from district magistrate judges would need to be expanded;
- The right to appeal of a district magistrate judge to a district judge to avoid trying a case twice;
- There are no district magistrate judges in six judicial districts, which would require district judges to hear the cases; and
- Due to scheduling conflicts, and other issues, district judges in other judicial districts may need to hear some DUI cases.

It was also noted that should district courts assume the caseload for DUI cases, some districts would require additional staffing of judges, clerks, and court officers. A detailed analysis of current and required staffing levels was included (Attachment 1).

Chris Mechler provided the Commission with a list of drug courts currently in operation in Kansas. Ms. Mechler outlined the Supreme Court feasibility study of drug courts. The National Center for State Courts is conducting a feasibility study on implementing drug courts in Kansas. They anticipate submitting a final report with recommendations to the Supreme Court late this summer (Attachment 2).

Les Sperling brought to the Commission's attention a pre-publication copy of a recidivism research study scheduled for publication in 2011 (Attachment 3).

Karen Wittman presented the Commission with information on aggravated battery while DUI. Ms. Wittman explained current statutes and case law regarding reckless driving and aggravated battery issues. She also recommended proposed language on the statute regarding aggravated battery while driving under the influence of alcohol or drugs, including special rule sentencing and other considerations (Attachment 4).

The Commission broke into subcommittees.

The Commission, as a whole, reconvened at 2:00 p.m. The subcommittees gave brief reports on their progress.

Karen Wittman reported on the Law Enforcement/Recordkeeping Subcommittee. The Subcommittee looked at upgrading the ignition interlock law. New suggestions included: video technology, longer restrictions for ignition interlock for violating the use of the device, such as lockout, rolling retest violations, and producing a sample over 0.04. The Subcommittee discussed suspending a person's license and requiring the licensee to "request" the ignition interlock feature. Once approved by the Division of Motor Vehicles, the device could be installed. The Subcommittee also discussed whether the Kansas Department of Health and Environment would be the appropriate agency responsible for approving devices in the State of Kansas to insure that providers are complying with the reporting and monitoring of licensee requirements.

Les Sperling reported the Substance Abuse Subcommittee continued to work with the Revisor regarding KSA 8-1008 addressing the evaluation process of DUI offenders and how to implement the recommendations of the Subcommittee. These include:

- The licensing by the Department of Social and Rehabilitation Services (SRS) of substance abuse counselors who perform alcohol and drug evaluations;
- The providers must meet minimum standards;
- Provide SRS the authority to license individuals; and
- Provide a current, up-to-date listing statewide of providers licensed by the state.

The Subcommittee reviewed the original goal to take an effective program administered on fourth DUI convictions concerning collaboration between SRS and the Kansas Department of Corrections (KDOC) using multidisciplinary teams to supervise, provide appropriate care for offenders, and create an effective program; and moving it to third-time offenders.

Roger Werholtz reported the Criminal Justice Subcommittee discussed the following items and reported on recommendations reached:

- The Subcommittee agreed to modify a previous recommendation that a mechanism be put in place, whereby individuals convicted of a first time DUI or receiving a diversion are not automatically at risk of losing a professional license, registration, or certification. The Subcommittee revised the recommendation that holders of a commercial driver's license not be granted the ability to request a review and possible alternative corrective measures;
- A motion to establish the stationary shelter defense as an affirmative defense failed;
- The Subcommittee considered whether a mandate should be established for video recording of field sobriety tests and breath tests in law enforcement vehicles. While all agreed that it was highly desirable to have these events recorded, there was a great deal of concern about the cost of equipment, storage, and the absence of resources to support such a mandate. The Subcommittee agreed to recommend mandating the installation of video recording equipment in law enforcement vehicles within two years if resources are available to support the mandate. While this is less than a desirable option, it was the Subcommittee's intent to state support for the practice and for resources to put it in place;

- In order to achieve greater uniformity throughout the state, the Subcommittee recommends that any Chapter 8 case or violation of KSA 40-3105, unless accompanied by a Chapter 21 violation or any other felony, will be filed as a traffic (TR) case.

Chairperson Owens indicated several recommendations appear to hinge on whether the third DUI conviction reverts back to a misdemeanor or would become a Class 2 felony. The Commission was polled on the option of recommending the third DUI conviction be reverted back to a misdemeanor. The Commission was in favor of the third conviction being a misdemeanor.

The Chairperson also verified that the Commission agreed that the Kansas Criminal Justice Information Systems be the central repository for all DUI records.

The meeting adjourned at 4:07 p.m. The next meeting was scheduled for August 23, 2010.

Prepared by Karen Clowers
Edited by Athena Andaya

Approved by Commission on:

August 23, 2010
(Date)

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

DUI COMMISSION COMMITTEE GUEST LIST

DATE: June 30, 2010

NAME	REPRESENTING
Travis Lowe	Little Govt Relations
Larry R Baker	LKW
Sarah Hansen	KAAP
Phil Bradley	KLBA
Patrick Vogelsberg	Kenney and Assoc.
Mike Lindblad	Guardian Interlock
LarrieAnn Brown	Wine Dist.
Sean Miller	Capitol Strategies
Michael Albert	Guardian Interlock
Corey F. Kenney	City of Lewisa
Ken Bone	KIDA
Ted Smith	KDOR

Supreme Court of Kansas

Kansas Judicial Center
301 S.W. 10th
Topeka, Kansas 66612-1507

HOWARD SCHWARTZ
Judicial Administrator

(785) 296-4873

June 16, 2010

To: Senator Tim Owens

From: Howard Schwartz

Re: **Driving Under the Influence (DUI) Case Filings in Cities of the First Class and in Other Cities Other Than Cities of the First Class, and Some Considerations of the Impact of District Courts Assuming Jurisdiction Over DUI Cases Filed in Cities Other Than Cities of the First Class**

You have asked several questions regarding DUI cases filed in Kansas cities other than cities of the first class, and whether those cases could be filed and heard in district courts. Municipal courts in cities of the first class would continue to file and hear DUI cases. Following is information intended to answer the questions that were raised in our discussion. As was noted, some additional issues might arise. Please do not hesitate to contact me if you have any additional questions.

Municipal Court DUI Filing Totals. In FY 2009, a total of 11,065 DUI cases were filed in Kansas municipal courts. This total is somewhat lower than the five year average of DUI filings in Kansas municipal courts, as noted on the following table.

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	Five Year Average
Filings	11,757	11,318	11,207	11,077	11,065	11,285
Dispositions	11,958	11,999	13,646	11,981	11,718	12,260
Jury Trials	655	715	920	694	579	713

Cases Heard in Cities of the First Class and in Cities Other Than Cities of the First Class. In FY 2009, a total of 7,755 DUI cases were filed in cities of the first class, and 3,310 DUI cases were filed in cities other than cities of the first class. In 2008, a total of 7,713 DUI cases were filed in cities of the first class, and 3,364 DUI cases were filed in cities not of the first class.

DUI Commission 2010
June 30, 2010
Attachment 1

Additional detail is included in the attached tables noting the filings, dispositions, and number of jury trials in FY 2009 and FY 2008 in cities of the first class (Attachment A) and in cities other than cities of the first class (Attachment B). For cities other than cities of the first class, the case filing and disposition information has been assigned to the appropriate judicial district so that the impact of having the district courts assume jurisdiction for those cases can be assessed.

Please note that three Kansas cities (Bonner Springs, Mulvane, and Sedgwick), are located on county and judicial district lines. Case filing and disposition information for these cities is included in the judicial district in which the municipal court itself is located. However, it is possible that the judicial districts adjacent to these cities could realize some additional case filings if the cases currently filed in these cities were to be filed in district court. Given the number of filings in these three municipal courts, this fact could be of some consequence in the case of Bonner Springs, but it would not be of any consequence in the case of Mulvane and Sedgwick.

The number of jury trials (which are included in the disposition totals) is also noted for each judicial district. The number of jury trials is significant because each jury trial represents a significant additional commitment of time and resources beyond what is required in bench trials or pleas.

Four Cities of the Second Class Qualify to Be Cities of the First Class. In addition to the twenty-five cities that are currently cities of the first class, four additional cities of the second class qualify to be cities of the first class. These are Derby (with 55 DUI filings in FY 2009), Hays (with 255 DUI filings in FY 2009), Gardner (with 196 DUI filings in FY 2009), and Great Bend (with 42 DUI filings in FY 2009). If these cities would choose to become cities of the first class, it would appear that they could continue to hear DUI cases in their municipal courts. Attachment C, from the *Directory of Kansas Public Officials 2008-2009,* lists the Kansas cities of the first, second, and third class in order of population.

Statutory Basis for Classification of Cities. K.S.A. 13-101 provides the statutory basis for classification of cities as first or second class cities. The statute provides, as follows:

Whenever it shall have been duly ascertained by any census of enumeration taken under any law of the United States or of the state of Kansas or by any city that any city has attained a population of more than fifteen thousand (15,000), such fact shall thereupon, by the governing body of such city, be certified to the governor of the state, who shall thereupon by public proclamation declare such city to be a city of the first class. If the governing body of any city which has attained a population of more than fifteen thousand (15,000) and less than twenty-five thousand (25,000) shall determine by resolution duly adopted that it would be more advantageous for such city to continue to operate as a city of the second class, such governing body shall not be required to so certify the population of such city to the governor and the laws relating to cities of the second class shall continue to be applicable to such city.

District Magistrate Judge Jurisdiction to Hear DUI Cases. If district magistrate judges were to hear all of the DUI cases filed statewide, there are at least three points that need to be considered.

The first point is the jurisdiction of district magistrate judges. K.S.A. 20-302 sets forth the jurisdiction of district magistrate judges, which grants district magistrate judges jurisdiction over misdemeanor charges and allows them "to conduct the preliminary examination of felony charges and to hear felony arraignments . . . ." Because the third conviction for a DUI offense is a felony, the jurisdiction of district magistrate judges would need to be expanded if it is intended that district magistrate judges be able to hear all DUI cases.

The second point that might be considered is the right to appeal the decision of a district magistrate judge to a district judge. K.S.A. 20-302b provides that "any appeal permitted to be taken from an order or final decision of a district magistrate judge shall be tried and determined *de novo* by a district judge, except that in civil cases where a record was made of the action or proceeding before the district magistrate judge, the appeal shall be tried and determined on the record by a district judge." The increased penalties for DUI convictions could provide some incentive to appeal convictions to the next level. Some consideration should be given to this point to avoid essentially trying a case more than once.

The third point is that district magistrate judges are not currently located in six judicial districts, including the 1st (Atchison and Leavenworth Counties) the 3rd (Shawnee County), the 7th (Douglas County), the 18th (Sedgwick County), the 19th (Cowley County), and the 29th (Wyandotte County). For that reason, district judges would need to hear DUI cases in those judicial districts. It should also be noted that, in addition to these six judicial districts, district judges in other judicial districts may need to hear some DUI cases because of scheduling, conflicts, and other issues.

Staffing Considerations. If the district courts were to assume the caseload for DUI cases filed in cities other than cities of the first class, some judicial districts would require additional staffing of judges, clerks, and court services officers. Most notable are the 10th Judicial District (Johnson County), with 980 filings in FY 2009, the 18th Judicial District (Sedgwick County), with 337 filings in FY 2009, and the 23rd Judicial District (Ellis, Gove, Rooks, and Trego Counties), with 286 filings in FY 2009. A more detailed analysis of current and required staffing levels is appropriate.

HS:mr
Attachments

DUI Cases in Cities of the First Class
FY 2008

Cities of the First Class	Filings	Dispositions (Including Jury Trials)	Jury Trials
Wichita	1,520	1,814	60
Overland Park	765	979	34
Kansas City	729	880	43
Topeka	438	394	19
Olathe	880	825	7
Lawrence	497	457	9
Shawnee	249	66	0
Manhattan	431	388	8
Salina	176	293	42
Lenexa	291	360	13
Hutchinson	152	168	68
Leavenworth	111	127	62
Leawood	226	279	4
Emporia	131	126	11
Garden City	81	81	9
Dodge City	282	253	126
Prairie Village	169	147	1
Liberal	113	95	1
Pittsburg	86	114	1
Newton	145	163	1
Junction City	100	68	2
Parsons	18	20	0
Coffeyville	77	185	3
Atchison	16	26	0
Fort Scott	30	25	0
Total	**7,713**	**8,333**	**524**

DUI Cases by Cities of the First Class
FY 2009

Cities of the First Class	Filings	Dispositions (Including Jury Trials)	Jury Trials
Wichita	1,443	1,823	34
Overland Park	946	974	33
Kansas City	496	755	5
Topeka	519	490	18
Olathe	698	700	6
Lawrence	576	318	5
Shawnee	302	248	15
Manhattan	410	467	9
Salina	300	352	33
Lenexa	363	330	16
Hutchinson	125	164	57
Leavenworth	82	81	52
Leawood	186	201	3
Emporia	146	221	8
Garden City	106	69	7
Dodge City	297	267	109
Prairie Village	172	143	1
Liberal	131	130	1
Pittsburg	74	69	3
Newton	138	153	3
Junction City	106	121	5
Parsons	55	29	3
Coffeyville	61	126	3
Atchison	20	39	1
Fort Scott	13	15	0
Total	**7,765**	**8,285**	**430**

2008 Municipal Court DUI Statistics

Judicial District	Cities Other Than Cities of the First Class	Filings	Jury Trials	Dispositions (Including Jury Trials)
1	Basehor	36	4	84
1	Lansing	26	2	20
1	Tonganoxie	52	2	52
Total 1st Judicial District		**114**	**8**	**156**
2	Eskridge	1	0	0
2	Holton	10	0	8
2	McLouth	2	0	2
2	Perry	1	0	1
2	St. Marys	5	0	2
2	Valley Falls	2	0	0
2	Wamego	5	0	4
Total 2nd Judicial District		**26**	**0**	**17**
3	Rossville	1	0	3
Total 3rd Judicial District		**1**	**0**	**3**
4	Burlingame	6	0	5
4	Burlington	12	0	9
4	Carbondale	5	0	8
4	Garnett	14	1	9
4	Osage City	21	0	18
4	Ottawa	86	4	95
4	Overbrook	1	0	1
4	Richmond	1	0	1
4	Scranton	3	0	2
Total 4th Judicial District		**149**	**5**	**148**
Total 5th Judicial District		**0**	**0**	**0**
6	Louisburg	8	1	12
6	Osawatomie	5	1	9
6	Paola	13	4	8
Total 6th Judicial District		**26**	**6**	**29**
7	Baldwin City	36	0	49
Total 7th Judicial District		**36**	**0**	**49**

2008 Municipal Court DUI Statistics

Judicial District	Cities Other Than Cities of the First Class	Filings	Jury Trials	Dispositions (Including Jury Trials)
8	Abilene	23	6	34
8	Chapman	3	0	0
8	Council Grove	7	0	6
8	Enterprise	1	0	2
8	Grandview Plaza	10	0	7
8	Herington	8	2	7
8	Peabody	5	0	5
8	Solomon	6	1	5
Total 8th Judicial District		**63**	**9**	**66**
9	Canton	1	0	1
9	Halstead	3	1	13
9	Hesston	4	0	12
9	Inman	4	0	3
9	Lindsborg	10	0	38
9	Marquette	2	0	2
9	McPherson	94	1	86
9	Moundridge	4	1	5
9	North Newton	8	0	7
9	Sedgwick	6	0	4
Total 9th Judicial District		**136**	**3**	**171**
10	DeSoto	63	1	50
10	Edgerton	1	0	3
10	Fairway	56	2	44
10	Gardner	178	0	236
10	Lake Quivira	6	0	6
10	Merriam	158	6	279
10	Mission	308	4	323
10	Mission Hills	30	0	31
10	Mission Woods	38	0	83
10	Roeland Park	69	0	44
10	Spring Hill	53	2	44
10	Westwood	18	0	38
10	Westwood Hills	4	0	5
Total 10th Judicial District		**982**	**15**	**1186**

2008 Municipal Court DUI Statistics

Judicial District	Cities Other Than Cities of the First Class	Filings	Jury Trials	Dispositions (Including Jury Trials)
11	Altamont	2	0	2
11	Arma	5	0	4
11	Baxter Springs	31	4	28
11	Cherokee	1	0	1
11	Chetopa	3	0	5
11	Columbus	18	0	10
11	Frontenac	8	1	9
11	Galena	14	1	17
11	Mulberry	0	0	2
11	Oswego	1	0	8
11	Weir	1	1	1
Total 11th Judicial District		**84**	**7**	**87**
12	Beloit	4	0	12
12	Concordia	11	3	11
Total 12th Judicial District		**15**	**3**	**23**
13	Andover	52	0	43
13	Augusta	17	1	16
13	Douglass	2	0	17
13	El Dorado	78	0	93
13	Leon	4	0	4
13	Potwin	0	0	15
13	Rose Hill	16	1	19
13	Towanda	5	0	4
Total 13th Judicial District		**174**	**2**	**211**
14	Caney	39	0	11
14	Cedar Vale	1	0	1
14	Cherryvale	2	2	7
14	Independence	43	26	67
14	Sedan	2	0	4
Total 14th Judicial District		**87**	**28**	**90**
15	Atwood	6	0	4
15	Bird City	0	0	0
15	Colby	26	1	26
15	Goodland	9	0	8
15	Hoxie	2	0	2
15	Oakley	3	0	2
Total 15th Judicial District		**46**	**1**	**42**

2008 Municipal Court DUI Statistics

Judicial District	Cities Other Than Cities of the First Class	Filings	Jury Trials	Dispositions (Including Jury Trials)
16	Meade	2	0	1
Total 16th Judicial District		**2**	**0**	**1**
17	Hill City	2	0	2
17	Norton	8	1	11
17	Oberlin	1	1	1
17	Osborne	9	0	4
17	Phillipsburg	8	0	5
17	Smith Center	0	0	1
Total 17th Judicial District		**28**	**2**	**24**
18	Andale	1	0	1
18	Bel Aire	34	0	43
18	Bentley	0	1	2
18	Cheney	2	1	2
18	Clearwater	10	0	8
18	Colwich	12	0	15
18	Derby	48	0	46
18	Garden Plain	0	0	1
18	Goddard	9	0	14
18	Haysville	56	1	40
18	Kechi	1	1	5
18	Maize	92	2	21
18	Mulvane	19	0	26
18	Park City	65	2	45
18	Valley Center	16	0	13
Total 18th Judicial District		**365**	**8**	**282**
19	Arkansas City	70	1	70
19	Burden	0	0	121
19	Udall	4	0	2
19	Winfield	27	2	34
Total 19th Judicial District		**101**	**3**	**227**
20	Ellsworth	1	0	1
20	Great Bend	48	11	81
20	Lyons	0	1	10
20	Russell	19	0	4
20	Sterling	7	0	3
Total 20th Judicial District		**75**	**12**	**99**

2008 Municipal Court DUI Statistics

Judicial District	Cities Other Than Cities of the First Class	Filings	Jury Trials	Dispositions (Including Jury Trials)
21	Clay Center	6	0	9
21	Wakefield	6	0	3
Total 21st Judicial District		**12**	**0**	**12**
22	Blue Rapids	14	2	14
22	Elwood	17	1	15
22	Hiawatha	13	1	13
22	Highland	1	0	1
22	Horton	18	1	5
22	Marysville	53	1	34
22	Sabetha	3	1	4
22	Seneca	7	0	0
22	Troy	13	0	7
22	Waterville	1	1	1
22	Wathena	7	0	6
Total 22nd Judicial District		**147**	**8**	**100**
23	Ellis	11	0	6
23	Hays	264	1	232
23	Plainville	9	0	8
23	Wakeeney	1	0	1
Total 23rd Judicial District		**285**	**1**	**247**
24	Kinsley	4	0	4
24	Ness City	2	0	3
Total 24th Judicial District		**6**	**0**	**7**
25	Holcomb	5	0	1
25	Leoti	4	0	6
25	Scott City	3	0	2
Total 25th Judicial District		**12**	**0**	**9**
26	Elkhart	1	0	1
26	Hugoton	2	0	10
26	Ulysses	17	0	17
Total 26th Judicial District		**20**	**0**	**28**
27	Buhler	1	0	3
27	Haven	1	0	1
27	Nickerson	2	0	2
27	South Hutchinson	19	5	17
Total 27th Judicial District		**23**	**5**	**23**

2008 Municipal Court DUI Statistics

Judicial District	Cities Other Than Cities of the First Class	Filings	Jury Trials	Dispositions (Including Jury Trials)
Total 28th Judicial District		**0**	**0**	**0**
29	Bonner Springs	121	0	65
29	Edwardsville	40	0	5
Total 29th Judicial District		**161**	**0**	**70**
30	Conway Springs	1	0	0
30	Kingman	9	1	9
30	Oxford	1	0	1
30	Pratt	28	3	36
30	Wellington	36	0	49
Total 30th Judicial District		**75**	**4**	**95**
31	Chanute	56	39	84
31	Erie	2	0	1
31	Humboldt	10	0	20
31	Iola	36	1	33
31	LaHarpe	1	0	1
31	Moran	3	0	1
31	Neodesha	2	0	1
31	Yates Center	3	0	2
Total 31st Judicial District		**113**	**40**	**143**
Total Statewide		**3,364**	**170**	**3,645**

2009 Municipal Court DUI Statistics

Jud District	Cities Other Than Cities of the First Class	Filings	Jury Trials	Dispositions (Including Jury Trials)
1	Basehor	46	1	31
1	Lansing	19	0	35
1	Tonganoxie	25	0	26
Total 1st Judicial District		**90**	**1**	**92**
2	Eskridge	0	1	1
2	Holton	8	0	8
2	McLouth	3	0	3
2	Onaga	4	0	3
2	Perry Municipal Court	2	0	3
2	St. Marys	4	0	3
Total 2nd Judicial District		**21**	**1**	**21**
3	Rossville	3	0	2
3	Silver Lake	0	0	0
Total 3rd Judicial District		**3**	**0**	**2**
4	Burlingame	1	0	0
4	Burlington	11	0	14
4	Carbondale	4	0	3
4	Garnett	15	0	12
4	Lebo	1	0	1
4	Lyndon	2	0	2
4	Osage City	8	0	9
4	Ottawa	46	5	45
4	Scranton	5	0	3
4	Wellsville	2	0	1
Total 4th Judicial District		**95**	**5**	**90**
Total 5th Judicial District		**0**	**0**	**0**
6	Blue Mound Municipal Court	0	0	1
6	Linn Valley	1	0	0
6	Louisburg	7	0	2
6	Osawatomie	14	0	12
6	Paola	14	0	12
Total 6th Judicial District		**36**	**0**	**27**

2009 Municipal Court DUI Statistics

Jud District	Cities Other Than Cities of the First Class	Filings	Jury Trials	Dispositions (Including Jury Trials)
7	Baldwin City	15	0	20
Total 7th Judicial District		**15**	**0**	**20**
8	Abilene	23	2	31
8	Chapman	3	0	6
8	Council Grove	13	1	13
8	Florence	1	0	0
8	Grandview Plaza	13	0	16
8	Herington	10	2	7
8	Marion	1	0	1
8	Peabody	6	0	6
8	Solomon	4	1	2
Total 8th Judicial District		**74**	**6**	**82**
9	Burrton Municipal Court	2	0	5
9	Halstead	10	0	8
9	Hesston	6	0	5
9	Inman	2	0	1
9	Lindsborg	14	0	19
9	Marquette	0	0	1
9	McPherson	73	6	78
9	Moundridge	3	0	2
9	North Newton	6	0	6
9	Sedgwick	2	0	1
Total 9th Judicial District		**118**	**6**	**126**
10	DeSoto	60	3	37
10	Edgerton	3	0	2
10	Fairway	46	2	37
10	Gardner	196	1	258
10	Lake Quivira	2	0	0
10	Merriam	114	1	75
10	Mission	408	7	462
10	Mission Hills	48	0	34
10	Mission Woods	17	0	48
10	Roeland Park	31	1	46
10	Spring Hill	30	1	34
10	Westwood	23	0	39
10	Westwood Hills	2	0	3
Total 10th Judicial District		**980**	**16**	**1,075**

2009 Municipal Court DUI Statistics

Jud District	Cities Other Than Cities of the First Class	Filings	Jury Trials	Dispositions (Including Jury Trials)
11	Altamont	4	0	0
11	Arma	1	0	2
11	Baxter Springs	33	9	41
11	Cherokee	2	0	0
11	Chetopa	9	0	11
11	Columbus	15	1	18
11	Frontenac	3	0	3
11	Galena	10	0	11
11	Oswego	5	0	1
Total 11th Judicial District		**82**	**10**	**87**
12	Beloit	10	0	6
12	Concordia	5	0	8
12	Washington	4	0	4
Total 12th Judicial District		**19**	**0**	**18**
13	Andover	70	0	61
13	Augusta	47	3	37
13	Benton	3	0	1
13	Douglass	7	0	15
13	El Dorado	73	0	87
13	Leon	3	0	3
13	Rose Hill	18	0	16
13	Towanda	2	0	2
Total 13th Judicial District		**223**	**3**	**222**
14	Caney	10	0	20
14	Cedar Vale	0	0	1
14	Cherryvale	8	0	2
14	Independence	49	25	53
14	Sedan	3	0	4
Total 14th Judicial District		**70**	**25**	**80**
15	Atwood	2	0	3
15	Colby	12	0	16
15	Goodland	13	0	12
15	Hoxie	2	0	1
15	Oakley	4	0	3
15	Sharon Springs	1	0	1
15	St. Francis	2	0	0
Total 15th Judicial District		**36**	**0**	**36**

2009 Municipal Court DUI Statistics

Jud District	Cities Other Than Cities of the First Class	Filings	Jury Trials	Dispositions (Including Jury Trials)
16	Meade	2	0	3
Total 16th Judicial District		**2**	**0**	**3**
17	Hill City	1	0	1
17	Logan	1	0	1
17	Norton	16	0	9
17	Oberlin	3	1	3
17	Osborne	2	0	2
17	Phillipsburg	6	1	6
17	Smith Center	2	0	2
Total 17th Judicial District		**31**	**2**	**24**
18	Andale	1	0	1
18	Bel Aire	25	0	27
18	Cheney	2	0	2
18	Clearwater	7	1	11
18	Colwich	7	0	11
18	Derby	55	0	67
18	Garden Plain	1	0	0
18	Goddard	26	0	25
18	Haysville	84	5	65
18	Kechi	2	0	3
18	Maize	21	4	9
18	Mulvane	20	1	19
18	Park City	56	5	46
18	Valley Center	30	0	53
Total 18th Judicial District		**337**	**16**	**339**
19	Arkansas City	81	1	88
19	Burden	0	0	19
19	Udall	4	0	2
19	Winfield	34	0	39
Total 19th Judicial District		**119**	**1**	**148**
20	Great Bend	42	4	66
20	Lyons	16	3	17
20	Russell	10	0	10
20	Sterling	12	0	11
20	Wilson	1	0	0
Total 20th Judicial District		**81**	**7**	**104**

2009 Municipal Court DUI Statistics

Jud District	Cities Other Than Cities of the First Class	Filings	Jury Trials	Dispositions (Including Jury Trials)
21	Clay Center	14	0	11
21	Wakefield	5	1	6
Total 21st Judicial District		**19**	**1**	**17**
22	Blue Rapids	16	2	16
22	Elwood	10	0	7
22	Hiawatha	36	1	26
22	Highland	2	0	2
22	Horton	13	0	14
22	Marysville	20	1	20
22	Sabetha	6	0	4
22	Seneca Municipal Court	2	0	2
22	Troy	6	0	7
22	Waterville	1	0	1
22	Troy	6	0	6
Total 22nd Judicial District		**118**	**4**	**105**
23	Ellis	7	0	12
23	Hays	255	5	209
23	Plainville	21	0	19
23	Wakeeney	3	0	0
Total 23rd Judicial District		**286**	**5**	**240**
24	Kinsley	1	0	1
24	Ness City	1	1	1
Total 24th Judicial District		**2**	**1**	**2**
25	Holcomb	3	0	3
25	Leoti	4	0	5
25	Scott City	7	0	8
Total 25th Judicial District		**14**	**0**	**16**
26	Elkhart	3	0	3
26	Hugoton	8	0	7
26	Ulysses	14	0	15
Total 26th Judicial District		**25**	**0**	**25**
27	Buhler	2	0	2
27	Haven	1	0	2
27	Nickerson	8	0	4
27	South Hutchinson	23	6	21
Total 27th Judicial District		**34**	**6**	**29**

2009 Municipal Court DUI Statistics

Jud District	Cities Other Than Cities of the First Class	Filings	Jury Trials	Dispositions (Including Jury Trials)
Total 28th Judicial District		**0**	**0**	**0**
29	Bonner Springs	132	0	137
29	Edwardsville	57	0	22
Total 29th Judicial District		**189**	**0**	**159**
30	Conway Springs	12	0	7
30	Kingman	15	2	15
30	Pratt	38	1	34
30	Wellington	41	0	52
Total 30th Judicial District		**106**	**3**	**108**
31	Chanute	38	28	74
31	Erie	2	1	4
31	Humboldt	5	0	12
31	Iola	37	0	36
31	LaHarpe	0	0	1
31	Moran	2	0	2
31	Toronto	0	1	5
31	Yates Center	1	0	2
Total 31st Judicial District		**85**	**30**	**136**
Total Statewide		**3,310**	**149**	**3,433**

Cities of the First Class:
Population in Descending Order

Wichita	361,420
Overland Park	169,403
Kansas City	142,320
Topeka	122,642
Olathe	118,034
Lawrence	89,852
Shawnee	59,958
Manhattan	51,748
Salina	46,458
Lenexa	45,681
Hutchinson	40,668
Leavenworth	34,787
Leawood	31,012
Emporia	26,662
Garden City	26,629
Dodge City	25,737
Prairie Village	21,422
Liberal	20,128
Pittsburg	19,536
Newton	18,017
Junction City	15,576
Parsons	11,122
Coffeyville	10,349
Atchison	10,078
Fort Scott	7,915
Total	1,527,154

Cities of the Second Class:
Population in Descending Order

Derby	22,058
Hays	20,106
Gardner	16,462
Great Bend	15,557
McPherson	13,487
Ottawa	12,828
El Dorado	12,596
Winfield	11,539
Arkansas City	11,168
Merriam	10,790
Lansing	10,680
Haysville	10,193
Andover	9,898
Mission	9,743
Independence	9,277
Chanute	8,854
Augusta	8,683
Wellington	7,812
Park City	7,588
Bonner Springs	7,069
Roeland Park	6,951
Bel Aire	6,704
Pratt	6,406
Abilene	6,305
Valley Center	6,297
Iola	5,843
Mulvane	5,835
Ulysses	5,630
De Soto	5,369
Paola	5,368
Concordia	5,171
Colby	4,826
Osawatomie	4,533
Clay Center	4,365
Goodland	4,349
Russell	4,281
Wamego	4,265
Baxter Springs	4,202
Fairway	3,832
Hesston	3,701
Larned	3,675
Beloit	3,645
Scott City	3,494
Lyons	3,471
Hugoton	3,412
Holton	3,312
Lindsborg	3,262
Columbus	3,222
Garnett	3,207
Frontenac	3,194
Hiawatha	3,188
Galena	3,163
Marysville	3,103
Kingman	3,056
Hoisington	2,889
Osage City	2,846
Girard	2,753
Norton	2,680
Hillsboro	2,666
Neodesha	2,650
Burlington	2,641
Eureka	2,607
Sterling	2,539
Sabetha	2,493
Fredonia	2,424
Herington	2,421
Phillipsburg	2,372
Cherryvale	2,263
Council Grove	2,253
Anthony	2,203
Seneca	2,027
Caney	1,985
Minneapolis	1,985
Oswego	1,983
Elkhart	1,940
Ellis	1,913
Marion	1,897
Halstead	1,886
Belleville	1,864
Humboldt	1,854
Horton	1,810
Kinsley	1,462
Harper	1,412
Yates Center	1,390
Osborne	1,377
Chetopa	1,224
Lincoln	1,222
Caldwell	1,161
Nickerson	1,146
Weir	741
Florence	605
Mulberry	573
Scammon	469
Total	461,651

Cities of the Third Class:
Population in Descending Order

Eudora	6,077 *
Spring Hill	5,065 *
Edwardsville	4,463
Baldwin City	4,202
Tonganoxie	4,156
Rose Hill	3,959
Louisburg	3,787
Basehor	3,729
Goddard	3,697
Mission Hills	3,537
Ellsworth	2,881
Maize	2,872
South Hutchinson	2,541
Clearwater	2,337
St Marys	2,244
Lakin	2,115
Ellinwood	2,048
Cheney	1,988
Cimarron	1,969
Medicine Lodge	1,962
Ogden	1,878
Oakley	1,870
Holcomb	1,856
Plainville	1,822
Douglass	1,790
Edgerton	1,788

Syracuse	1,768
Wellsville	1,731
Kechi	1,703
WaKeeney	1,700
Oberlin	1,680
Smith Center	1,663
Sedgwick	1,631
Moundridge	1,629
North Newton	1,573
Meade	1,553
Belle Plaine	1,550
Arma	1,521
Sublette	1,509
Westwood	1,478
Stockton	1,408
Hill City	1,400
Carbondale	1,392
Greensburg	1,383
Colwich	1,382
Leoti	1,372
Silver Lake	1,370
Johnson City	1,364
Towanda	1,354
Pleasanton	1,337
Buhler	1,325
St Francis	1,310
Wathena	1,293
Chapman	1,284
Ness City	1,283
La Crosse	1,234
Peabody	1,219
Conway Springs	1,206
Inman	1,191
Victoria	1,191
St John	1,188
Sedan	1,179
Haven	1,161
Valley Falls	1,158
Erie	1,150
Auburn	1,143
Elwood	1,132
LaCygne	1,131
Satanta	1,124
Washington	1,114
Hoxie	1,107
Plains	1,107
Oskaloosa	1,106
Atwood	1,092
Oxford	1,079
Rossville	1,063
Altamont	1,056
Solomon	1,053
Stafford	1,043
Blue Rapids	1,022
Dighton	1,020
Troy	1,007
Lyndon	999
Grandview Plaza	994
Burlingame	970
Highland	945
Pomona	943
Riley	939
Lake Quivira	935
Montezuma	934
Overbrook	934
Americus	933
Kiowa	931
Lebo	931
Cottonwood Falls	901
Downs	899
Burrton	890
Spearville	863
Ashland	862
Jetmore	855
Wakefield	854
Mount Hope	853
Perry	852
Andale	841
Garden Plain	836
Deerfield	812
McLouth	811
Benton	809
Quinter	809
Mankato	807
Mound City	804
Eastborough	799
Canton	797
Enterprise	797
Galva	797
Frankfort	779
Madison	765
Wilson	765
Coldwater	756
Howard	755
Alma	752
Udall	746
Westmoreland	739
Bucklin	726
Cherokee	722
Meriden	716
Tribune	694
Scranton	683
Sharon Springs	682
Clyde	680
Onaga	669
Claflin	659
St Paul	655
LaHarpe	648
Lecompton	646
Leon	640
Whitewater	635
Minneola	630
Cedar Vale	623
Waterville	616
Bennington	598
Pretty Prairie	594
Marquette	589
Linn Valley	584
Hoyt	581
Attica	580
Nortonville	577
Hanover	576
Effingham	573
Haviland	569
Eskridge	563
Leroy	559
Ozawkie	559
Winchester	555
Waverly	554
Fowler	551
Strong City	543
Gas	541
Logan	535
Burden	533
Protection	529
Moran	526
St George	525
Goessel	516
Little River	516
Kismet	514
Kanopolis	511
Olpe	507
Richmond	505
White City	505
Hartford	502
Norwich	501
Clifton	499
Maple Hill	498
Bentley	496
Centralia	492
Thayer	488
Glasco	485
Macksville	483
Argonia	479
Kensington	470
Altoona	469
Miltonvale	467
Cawker City	463
Cunningham	459
Dearing	449
Chase	448
Holyrood	448
Lewis	447
Assaria	446
Leonardville	441
Delphos	438
Arlington	433
Potwin	433
Quenemo	431
Almena	429
Turon	428
McCune	427
Moline	427
Axtell	423
Milford	422
Rolla	421
Alta Vista	419
Edna	417
Bird City	416
Lucas	415
Jewell	413
Mound Valley	409
Melvern	408
Gypsum	400
New Strawn	397
Glen Elder	393
Arcadia	389
Linwood	389
Linn	379
Colony	374
Jamestown	374
Longton	366
Westwood Hills	363
Hope	359
Mayetta	359

1-20

Chautauqua	98
Palmer	98
Cambridge	97
Mahaska	97
Plevna	97
Cullison	96
Belpre	95
Englewood	95
Mapleton	95
Reserve	95
Roseland	95
Vermillion	95
Bunker Hill	93
Liberty	93
Gove	91
Raymond	91
Longford	90
Wheaton	90
Gem	88
Savonburg	87
Willowbrook	87
Coolidge	86
Huron	86
Powhattan	86
Havana	84
Ramona	84
Willard	84
Leona	83
Oketo	82
Dunlap	80
Earlton	78
Narka	78
Hunnewell	77
Timken	76
Aurora	74
Spivey	74
Sun City	74
Bluff City	73
Elgin	72
Langdon	71
New Albany	71
Parkerville	71
Randall	71
Hunter	70
Agenda	68
Coyville	68
Labette	67
Alexander	66
Elsmore	66
Oneida	66
Willis	65
Lost Springs	63
Clayton	61
Olivet	61
Paradise	60
Climax	59
Galatia	59
Seward	59
Matfield Green	58
Wallace	57
Wilmore	56
Susank	55
Vining	55
Danville	54
Menlo	52
Bushong	51
Cedar Point	51
Hamlin	50
Byers	49
Elmdale	48
Athol	45
Waldo	45
Dresden	44
Edmond	43
Richfield	42
Brownell	41
Speed	40
Carlton	37
Radium	37
Mildred	35
Oak Hill	34
Webber	32
Hollenberg	28
Russell Springs	28
Lone Elm	26
Penalosa	25
Cedar	23
Bassett	21
Latimer	20
Scottsville	19
Waldron	15
Frederick	11
Freeport	7
Total	280,268

*Pursuant to K.S.A. 14-101, a city with a population in excess of 5,000 must become a city of the second class. These cities are in the process of making the necessary administrative changes.

DUI Commission 2010
6-30-10
Attachment 2

Matrix of Kansas Drug Courts

	Chase, Lyon County 5th JD Emporia	Cowley County 19th JD Winfield	Johnson County- 10th JD - Olathe	Potawatomi Nation	Sedgwick County 18 JD - Wichita	Shawnee County 3rd JD - Topeka	City of Wichita	Wyandotte County 29th JD - KS City
Date Established	**2004**	**2009**	**2001**	**2009**	**2008**	**1994**	**2006**	**2004**
Post Adjudication	X	X		X	X			
Pre - Adjudication			X	X		X		X
Probation Violation							X	
SB-123	X	X						
Non SB-123	X (Self Pay)	X (Self Pay)		X	X	X		
Misdemeanors			X	X			X	X
Felonies	X	X	X	X	X	X		X
Adult	X	X		X	X	X	X	
Juvenile			X				X	X
Fee	300 (SB 123)	300 (SB 123)			$360.00	$300.00		
Drug Testing Fee	300 (SB 123)	300 (SB 123)			$20/week	If Positive	$300.00	
Length	12 mos	12-18 mos	12 mos	15-18 mos	18-24	12 months	12 month	12month
Assessment Tool	LSI-R	SASSI & ASI & LSI-R			LSI-R			YLSI
Capacity		30	120	30	60	40	65	
Cost					$7,822.00	$3,600.00	1215 (BJA Grant)	
Evaluated		no		no	no		No	Yes (2007)
Budget		$9,146.00	$74,519					

BEHAVIOR DATA SYSTEMS
RISK EVALUATION & SCREENING INSTRUMENTS

April 19, 2010

Ms. Deborah Stidham, Director
Addiction and Prevention Services
Dept. of Social and Rehabilitation Svcs.
915 SW Harrison St.
Topeka, KS 66612

Dear Ms. Stidham:

I know you are very busy so I will keep this brief. Enclosed is a pre-publication copy of the Driver Risk Inventory-II (DRI-II) DUI/DWI offender recidivism research study that will be published next year.

I thought you would be interested in the research report that has been accepted for publication in the journal "Substance Use & Misuse." It will be published in 2011. This research is the first publication in a nine year recidivism longitudinal research study we have undertaken in Florida. Ms. Barbara Lauer (Bureau of Driver Education) and her staff's cooperation made this recidivism study possible.

The title of this research is "Predicting Multiple DUI Offenders Using the Florida DRI, 2007-2008." Mr. Nick Bishop is a Ph.D. candidate at Arizona State University. We though the journal's name "Substance use & Misuse" was particularly appropriate.

This is one of the very few, if not the only, DUI/DWI offender recidivism research studies we are aware of.

Hope you find it interesting.

Sincerely,

Herman Lindeman, Ph.D.

Herman Lindeman, Ph.D.
BDS Founder & President

•Telephone: (800) 231-2401 •Fax: (602) 266-8227 •E-mail:

Substance Use & Misuse
2011 Pre-Publication Copy

Predicting Multiple DUI Offenders Using the Florida DRI, 2007-2008

Nicholas J. Bishop, M.A. Sociology

3-2

Abstract

Objective: Multiple DUI recidivists pose the greatest threat to the safety of American roadways. Using a dataset employing the Driver Risk Inventory (DRI), this article seeks to determine predictors of multiple DUI recidivism.

Methods: A Poisson regression analysis was used to predict number of self reported lifetime DUI arrests. Poisson regression allowed for the standardization of regression estimates by time, controlling for the fact that older individuals have a greater amount of time to accumulate DUI arrests. Nested-model testing allowed for determination of the contribution of each DRI scale to the model fit.

Results: The inclusion of each of the six behavioral scales in the DRI significantly predicted the expected count of lifetime DUI arrests. Offenders with greater percentile scores on alcohol risk, driver risk, drug risk, and stress risk had a greater number of expected lifetime DUI arrests than those with lower percentile scores. Those who met the DSM-IV substance abuse/dependency classification had a greater predicted amount of lifetime DUI arrests and those who were less truthful had a greater predicted number of lifetime DUI arrests. When controlling for stress coping, the relation between being male and having a greater expected count of DUI arrests lost statistical significance, suggesting that stress coping behaviors mediated the relationship between DUI recidivism and gender.

Conclusions: Properly identifying multiple DUI recidivists requires multi-dimensional behavioral scales that capture the heterogeneous nature of DUI offenders. Controlling for stress coping behaviors calls into question the traditional assumption that males have a greater risk of DUI recidivism.

Introduction

Of the entire population of drunken drivers, individuals who repeatedly drive under the influence of alcohol pose the greatest risk to public health. Approximately 35 to 40% of fatally injured drunk drivers have at least one previous arrest for driving while impaired (Lapham et al., 2000). Alcohol related fatalities account for around 40% of all traffic fatalities (Yi et al., 2006) and alcohol-related automotive accidents are estimated to cost state and federal government around $40 billion annually (Blincoe et al., 2002). Throughout the United States, around 35% of all DUI convictions are for drivers with at least one other DUI conviction within the previous 7 years (Schell et al., 2006). The cost of those who repeatedly drive under the influence of alcohol is great for all parties involved.

Effective prevention of drunk driving and, more importantly, repeated drunk driving, is a common goal for public health and law enforcement agencies. Most state law enforcement agencies screen DUI offenders to identify individuals who pose a safety hazard to both themselves and the public. Post-conviction DUI screening allows agencies to direct specific treatment options towards individuals who will benefit most from the various types of treatment options available. The continued testing and refinement of DUI risk assessment scales is an important step in reducing the number of drunken drivers on American roads.

This research employs a popular DUI/DWI offender assessment instrument, the Driver Risk Inventory (DRI; Behavior Data Systems, Ltd.) to examine individual characteristics that predict a self-reported count of lifetime DUI arrests in a sample of DUI offenders from the State of Florida between 2007 and 2008. In addition to

measurement of both demographic and criminal history characteristics that are important when identifying DUI recidivists, the DRI provides 6 standardized behavioral scales measuring alcohol use risk, drug use risk, driver risk, stress coping abilities, truthfulness and an alcohol abuse/dependency classification. The DRI is Florida's statewide DUI offender test and numerous other states mandate or require the DRI for their DUI/DWI offender testing. Measurements from the DRI are used to predict the average number of self-reported DUI arrests, using Poisson regression models specifically designed to handle the non-normality of count-type data.

Literature Review

The DUI recidivism literature abounds with the identification of individual characteristics that predict recidivism status. Taking account of the characteristics of individual offenders requires a multi-faceted approach that obtains information on the demographic, behavioral, and criminal history profiles of DUI offenders. Previous research supports the necessity of approaching DUI offenders as a heterogeneous group upon whom the use of simplified techniques to predict recidivism status will inevitably produce inaccurate results (Nochajski and Stasiewicz, 2006).

DUI Recidivism

Most commonly, recidivism is defined as having two or more DUI arrests. DUI relapse can be defined as driving under the influence of any amount of alcohol or drugs (Nochajski and Stasiewicz, 2006), but this definition is too narrow to be useful for the prevention of DUI recidivism. The differentiation between one-time DUI offenders and DUI recidivists, regardless of the number of lifetime DUI's is important, but the identification of those who have the greatest number of DUI's produces results that can

be used to identify those who pose the greatest risk to themselves and others. A DUI recidivist will be defined henceforth as having been arrested for 2 or more drunk driving offenses and the term multiple DUI recidivist will identify those with more than 2 DUI arrests. DUI recidivism will be used generally to refer to both groups throughout the article, referring to multiple DUI recidivists only when necessary.

Properly identifying recidivists poses problems to the measurement and definition of DUI recidivism. Official driving records can be used to identify DUI recidivists, but numerous methodological issues reduce the efficacy of this type of identification (Nochajski and Stasiewicz, 2006). When using official driving records, possible recidivists are lost to attrition through death or moving out of the region where previous DUI's have been recorded. Also, DUI convictions remain on one's driving record for a variable amount of time between states and counties, reducing the number of individuals who can be identified as recidivists. In addition, inconsistent law enforcement strategies and policies produce variation in the number of drunk drivers arrested in a given location or over a given amount of time, reducing the comparability of recidivism status across locations and times. Finally, multiple recidivists represent an even tougher group to measure, increasing the likelihood of the above identification problems with each subsequent DUI arrest.

A common criticism of research on DUI recidivism has been that most instruments do not control for the truthfulness of the respondents (Chang et al., 2002; Popkin et al., 1988). Those experiencing alcohol-related problems may respond inaccurately in hopes of reducing the amount of rehabilitation they will receive (Nochajski and Stasiewicz, 2006; Vingilis, 1983). Research has shown that those with

one or more DUI offense are more likely to "fake good" or respond defensively than those with no DUI offenses (Caviaola et al., 2003). In addition, first time DUI offenders who did not recidivate over a period of 12 years were shown to answer more truthfully than those who did recidivate within the 12 years (Caviaola et al., 2007). Thus self-report of DUI recidivism can be a good measure of recidivism status, given the truthfulness of the respondent is taken into account. Using the truthfulness scale in the DRI to control for response bias will be considered later.

Demographics

Commonly used demographic indicators in the DRI include gender, age, ethnicity, marital status and education. Previous research agrees that males are more likely to be DUI recidivists than females and that older individuals are more likely to be recidivists (Caviaola et al., 2003; C'de Baca et al., 2002; Lapham et al., 2000; Peck et al., 1994). The relationship between ethnicity and recidivism status seems to be region-specific, where most repeat offenders in the Northeast, Northwest, Midwest, and South tend to be White, and the majority of DUI recidivists in the Southwest are Hispanic or Native American (Chang et al., 1996; Nochajski and Stasiewicz, 2006). Regarding marital status, those who are single, divorced, separated, or widowed are more likely to be DUI recidivists than are those who are married (C'de Baca et al., 2002; Nochajski and Stasiewicz, 2006). Finally, those with lower than a college education are more likely to be repeat DUI offenders than those with a college education (Nochajski and Stasiewicz, 2006; Nochajski et al., 1994).

Behavioral Factors

Alcohol use problems are the behavioral characteristics most proximally associated with DUI recidivism. Alcohol use ranges from abstinence to dependence (Maisto and Saitz, 2003) and severity of alcohol use problems are related to the frequency of use, quantities consumed, and the outcomes of alcohol use. Those considered problem drinkers consume risky amounts of alcohol and may or may not be experiencing problems associated with alcohol use, but have not been officially diagnosed with an alcohol use disorder (Maisto and Saitz, 2003). The Diagnostic and Statistical Manual of Mental Disorders is the most common tool used to classify an alcohol use disorder (DSM IV; APA, 1994).

Drug use is another behavioral characteristic associated with DUI recidivism, although drug use has been far less utilized to explain DUI recidivism. Drug use has been shown to account for a large proportion of persons reporting at least one driving while intoxicated conviction (Albery et al., 2000). Marijuana use has been shown to be related to self report driving under the influence (Ames et al. 2002) and Swedish DUI offenders who reported driving under the influence of drugs has twice the re-arrest rate of drunken drivers (Christophersen et al., 2002).

Little previous research has explored the relationship between stress coping and DUI recidivism. Amounts of perceived stress and stress coping abilities have been found to be related to driving under the influence (Bradstock et al., 1984). Repeat DUI offenders have been shown to have higher scores on measures of hostility, sensation seeking, poor emotional adjustment, assertiveness, mania, and depression compared to first time offenders (McMillen et al., 1992). Depression has been positively related to

self-predicted probability of relapse (Dill et al., 2007). Inability to cope with stress may influence one's likelihood of problem drinking and driving under the influence.

Driving Behavior and Criminal History

DUI recidivists tend to have poorer driving records than non-recidivists (Peck et al., 1993). Repeat DUI offenders are more likely to have both a greater amount of traffic violations and have been involved in a greater number of automobile crashes than one time DUI offenders (Nochajski and Wieczorek, 2000; Nochajski and Stasiewicz, 2006). These findings have been supported with longitudinal research, showing that DUI offenders have worse driving records both before and after their first DUI arrest (Caviaola et al., 2007).

Risky driving behavior seems to be associated with DUI recidivism, although few studies focus upon the link between driving behavior and alcohol use. Aggressive drivers report more traffic violations and a higher frequency of driving under the influence than those with less risky driving profiles (Malta et al., 2005). Donovan and colleagues (1985) have shown that bad drivers and DUI offenders have similar behavioral and personality characteristics. Those with a poor driving history and those who repeatedly drive aggressively are likely more visible to law enforcement, increasing the probability of being pulled over and subsequently arrested for DUI (Nochajski and Stasiewicz, 2006).

In addition to driving behavior, criminal history for non-driving/DUI related offenses has been shown to differentiate between single offenders and DUI recidivists (Peck et al. 1993). Criminal behavior has been linked to DUI recidivism (Nochajski et al., 1993; Nochajski et al., 1997; Nochajski and Stasiewicz, 2006) and represents an important indicator of risky behavior.

Methods

This study employs data collected using the DRI by the state of Florida between January 1st, 2007 and December 31st, 2008. In addition to measurement of characteristics that predict DUI recidivism such as gender, ethnicity, education, and blood alcohol content at time of arrest, the DRI contains 6 scales measuring alcohol use risk, driving risk, drug use risk, stress coping risk, a truthfulness percentile score and finally a substance abuse/dependency classification derived from the DSM-IV. Previous reviews of DUI screening instruments advocate that the DRI has adequate concurrent validity for identifying alcohol use disorders or problem drinkers (Chang et al., 2002; Popkin, et al., 1988). The DRI has been also been shown to distinguish between first- and multiple-DUI offenders (Leshowitz and Meyers, 1996). All DRI scales have been shown to have acceptable reliability ($\alpha > .80$; Chang et al., 2002; Popkin, et al, 1988). Further information on the DRI can be found on the Behavior Data Systems, Ltd. website, www.bdsltd.com. The test booklet and answer sheet containing the original questions from which the DRI scales are developed can be viewed at www.online-testing.com.

DRI Scale Interpretation

The DRI scales that measure alcohol use risk, driving risk, drug use risk, stress coping risk, and truthfulness construct a percentile score for the respondent's unique set of responses. The given percentile score corresponds to the percentage of scores that fall below the given value in the frequency distribution of that scale. Percentile scores between 0 and 39% represent a low risk, percentile scores between 40 to 69% represent a medium risk, scores between 70 and 89% represent a problem risk and those with percentile scores between the 90th and 99th percentile are identified as having a severe

problem concerning the given scale topic (Behavior Data Systems, 2007). The sixth DRI scale is the substance abuse/dependency classification scale based on DSM-IV classification criteria. The substance abuse/dependency classification is a binary measure of whether the respondent does or does not meet the substance abuse/dependency criteria outlined in the DSM-IV.

The alcohol scale in the DRI measures the respondent's alcohol use behavior and severity of abuse. The DRI defines alcohol as beer, wine, and other liquors. Questions regarding alcohol use and abuse across the lifecourse are incorporated into the alcohol risk scale, allowing differentiation between those with a history of alcohol abuse but who state that they currently abstain from alcohol use, and those who currently abuse alcohol. An elevated alcohol risk percentile score (70^{th} to 80^{th} percentile) indicates an emerging drinking problem where scores in the 90^{th} to 99^{th} percentile identify established and serious drinking problems.

The DRI driver risk scale is designed to identify aggressive, irresponsible or careless drivers. Respondents with elevated driver risk scores (70^{th} to 89^{th} percentile) identify problem prone drivers who would likely benefit from driving improvement programs and respondents with the highest percentile scores (90^{th} to 99^{th}) are dangerous drivers who pose a threat to public safety while driving. The National Highway Traffic Administration states that the DRI is the only major DUI/DWI test that measures driver risk (Popkins et al., 1988)

The DRI drug risk scale measures the offender's drug use and severity of drug use. Drugs are defined in the DRI as marijuana, ice, crack, cocaine, amphetamines, barbiturates and heroin. Similar to the alcohol risk scale, the DRI drug risk scale takes

special precautionary measures to differentiate between current drug users and recovering drug users. An elevated drug risk scale score (70^{th} to 89^{th} percentile) identifies those with emerging drug problems and those with drug risk score identified as a severe problem (90^{th} to 99^{th} percentile) identifies repeated drug users and drug abuse.

The stress coping risk scale found in the DRI measures the offender's ability to cope effectively with stress, tension and pressure. Stress coping risk percentile scores in the problem risk range (70^{th} to 89^{th} percentile) identifies individuals who would benefit from stress management intervention programs where those with percentile scores in the 90^{th} to 99^{th} percentile represent a severe stress risk problem and should be referred to a mental health specialist for further evaluation.

The truthfulness scale in the DRI identifies how truthful the respondent was when taking the DRI and can be used to recognize those who attempt to "fake good". DRI truthfulness scale scores at or below the 89^{th} percentile suggest that all other DRI scale measurements were completed in a truthful manner and should be reviewed accordingly. Respondents who have truthfulness scales scores that fall between to 70^{th} and 89^{th} percentile are recognized as having potential lapses in truthfulness and thus necessitate having the other DRI scales truth corrected. This transformation produces DRI-scales that are less biased than if they were not truth corrected. Offenders who have a truthfulness percentile score at or above the 90^{th} percentile are defined as being un-truthful. Responses from individuals with a truthfulness percentile score of 90% or above must be interpreted with extreme caution since the responses given by these individuals are likely biased by minimizing problems or not clearly understanding the questions presented in the DRI.

The substance abuse/dependency scale found in the DRI differentiates between offenders with behaviors representing substance abuse and substance dependency and offenders with non-pathological substance use behaviors. The DRI substance abuse/dependency scale is constructed in accordance with the Diagnostic and Statistical Manual Disorders version 4 classification criteria. When a DUI/DWI offender admits to one of the four DSM-IV abuse symptoms, the offender is classified in the substance abuse category. When the respondent admits three of the seven DSM-IV dependency symptoms, the offender is classified in the substance dependency category. Where the DRI alcohol and drug risk scales measure the severity of alcohol and drug use, the DRI substance abuse/dependency scale differentiates between those who abuse alcohol and/or are alcohol dependent and non-pathological substance users. The DRI substance abuse/dependency scale usually incorporates the number of lifetime DUI's into its construction, but for the purposes of this project where self-reported number of DUI's is the outcome variable, self-reported number of lifetime DUI's has been removed from the substance abuse/dependency scale.

Sample Selection

Data were drawn from the online Florida DRI database held by Behavior Data Systems, Ltd. The initial sample consisted of 75,505 DUI offenders. Multiple constraints were placed on the sample to promote accuracy of subsequent analyses. Duplicate cases were identified by matching offenders on static demographic characteristics as well as percentile scores. Cases identified as duplicates were removed from the sample. Offenders who reported having been arrested for DUI before January 1st, 2006 were removed. Thus only offenders who were arrested within one year of possible DRI

assessment were included. Subjects were included in analysis if their test date fell between the dates specified above and who provided valid measurements of age. The DRI requests both the birth-date and age of offender, thus those whose reported age did not match the age calculated by the difference between the test date and their reported birth-date were excluded from analysis. This inclusion criterion was selected under the assumption that those who report an invalid age likely also introduce error into the sample by incorrectly responding to other variables. Once these constraints were placed on the original sample, 30,557 cases remain.

Statistical Analysis

The outcome variable of interest in this project is the number of self-reported lifetime DUI arrests. A Poisson regression model is designed to handle count data and basically predicts the rate of response to increase or decrease in counts (Gardener et al., 1995). Count data are highly non-normal and require special estimation techniques. Poisson regression also allows for the standardization of regression coefficients for varying time spans (Allison, 1999). Older individuals have a greater amount of time to accumulate DUI arrests, thus age is used as an indicator of amount of time exposed to the possibility of receiving a DUI. Although a regression coefficient will not be produced for age when standardizing for years of exposure, standardizing the Poisson regression coefficients to mirror equal lengths of time where DUI arrest is possible allows for a more accurate identification of the unique demographic, behavioral and criminal history characteristics that predict multiple DUI recidivism.

Variables

All descriptive statistics are displayed in table 1 and self-reported number of lifetime DUI's is graphically represented in exhibit 1. To meet the requirements of multivariate regression analysis, all categorical variables were recoded into dummy variables. For ethnicity, dummy variables were created for White, Black, Hispanic, and an "other" category that combined offenders who reported being Asian, American Indian, or "other" ethnicity. White was used as the reference group in the Poisson regression models. Similarly, marital status was re-coded into variables representing being single, married, divorced or widowed, and finally "other". Those who responded as single were used as the reference group in the Poisson regression models. Continuous variables were mean centered to reduce modeling issues introduced by collinearity.

Dependent Variable

Self-reported number of lifetime DUI arrests was the dependent variable in all analyses. Rather than coding this variable as a dichotomous variable identifying between one-time DUI offenders and multiple-offenders, number of lifetime DUI's was analyzed in its original metric. By employing Poisson regression to this variable, this analysis differentiates between number of lifetime DUI's for those reporting anywhere from zero to nine lifetime DUI's.

Independent Variables

Both demographic and DUI specific variables were included in the regression models to control for individual characteristics that have been shown to predict DUI recidivism. Gender, ethnicity, education and marital status represent the demographic controls included in the analysis. Numerous variables were included in analysis to control

for the respondent's propensity towards risky behaviors that are related to driving under the influence. Both the previous number of non-driving related alcohol arrests and non-driving drug arrests within the past five years account for the subject's alcohol and drug related encounters with law enforcement. Number of at-fault auto accidents and number of traffic violations where points were assessed within the past five years control for the individual's driving history. Number of non-alcohol-or-drug related misdemeanors and felonies control for encounters with law enforcement at various levels of severity. All DRI scales which report a percentile score (alcohol risk, driver risk, drug risk, stress coping risk, and truthfulness) were divided by 10 so regression estimates correspond to a 10% change in the given scale rather than a 1% change, giving the interpretation of these scales increased applicability.

Results

All statistical analysis were generated using SAS software, Version 9 of the SAS System for Windows (© 2008, SAS Institute Inc.). Following initial discussion of the descriptive statistics, results from the Poisson regression models are presented.

Descriptive Statistics

Descriptive statistics are presented in table 1.Sixty-nine percent of the sample included in analysis was male and the average age of the sample was around 37 years old. Regarding ethnicity, around 62% of the sample was White, 11% Black, 22% Hispanic and around 5% of offenders were coded as ethnicity of "other". The average education of the sample was slightly above a high school degree. For marital status, 55% of respondents reported being single while 22% reported being married, 16% reported being divorced and around 6% were coded as separated or widowed.

Thirteen percent of the sample reported no DUI arrests, 62% reported one DUI arrest, 19% reported two DUI arrests, and 6% reported three or more DUI arrests (analysis available on request). More than 90% or respondents reported having zero non-driving alcohol related arrests five years previous to assessment and nearly 93% reported no non-driving drug related arrests five years previous to assessment (analysis available on request). Around 60% reported no traffic violations where points were assessed five years before assessment. Nearly 81% of subjects reported no at-fault driving accidents five years prior to assessment, 82% reported having no misdemeanor arrests that were not alcohol or drug related and 91% reported having no felony arrests that were not alcohol or drug related.

Table 1 about here

Poisson Regression

Numerous Poisson regression models were estimated to assess the capacity of the alcohol risk, driver risk, drug risk, stress coping risk, truthfulness percentile scores and finally the substance abuse/dependency classification to predict multiple DUI recidivists. First, a restricted model that included only the subject's demographic, driving and criminal history related variables was initially estimated. Next, a model including the alcohol risk percentile, in addition to all variables included in the restricted model, was estimated to test whether the alcohol risk percentile added predictive capacity to the model. Each DRI scale was added to the model in a similar fashion with the final model including all variables included in analysis. This type of nested model building allows for statistical tests of the goodness of fit that each additional variable provides to the predictive model. The X^2 likelihood-ratio test allows determination of the best fitting

model and provides information to the predictive capacity added by each added variable. The -2 Log-Likelihood value for each model, and the X^2 difference between sequential models for degrees of freedom used is presented at the bottom of Table 2.

Parameter Estimates

Starting with the restricted model that includes only the respondent's demographic and DUI related variables (Model 1, Table 2), inferences about the personal characteristics that predict DUI recidivism can begin to take shape. All variables excluding having reported an accident with the arrest and number of reported non-drug or alcohol related felonies were statistically significant. For males, the expected log count compared to females was .07 while holding other variables constant in the model, meaning that men had around 7% more DUI arrests than did females (exp(.07)=1.07). Subjects who were of Black, Hispanic, or of "other" ethnicity had an expected log count of DUI arrests lower than Whites. Those with more education had a lower expected log count of DUI arrests, holding other variables constant in the model. Those who were married, divorced or who reported being separated or widowed had a lower expected log count of DUI arrests as compared to those who reported being single. Offenders who had a greater number of non-driving alcohol arrests, a greater number of at-fault accidents, a greater number of traffic violations where points were assessed, and those reporting a greater number of non-alcohol or drug related misdemeanor arrests had a significantly higher expected log count of DUI arrests. Interestingly, those who reported a higher number of non-driving related drug arrests five years previous to assessment had significantly lower expected log counts of DUI arrests, holding other variables constant.

Model 2 includes all variables present in Model 1 but adds percentile scores from the alcohol risk scale. The alcohol risk percentile score is a statistically significant predictor of the expected log counts of DUI arrests. The addition of the alcohol risk scale to the previous model produces a significantly better fitting model (X^2 diff= 512, df=1, $p<.001$). For these data, the expected change in log count for a 10% above average increase in the alcohol risk percentile was .06, meaning that for every 10 percentile increase above average on the alcohol risk scale, the expected log count of DUI arrests increased by 6% (exp(.06)=1.06).

Table 2 about here

Model 3 adds the driver risk percentile to the previous model, again producing a model that predicted the log count of DUI arrests more accurately than model 2 (X^2 diff= 15, df=1, $p<.001$). A 10% increase above average in the driver risk percentile score corresponds to a .01 increase in the log count of DUI arrests. In other words, for every 10% increase in driver risk percentile score above average, there is a 1 % increase in the log count of DUI arrests (exp (.01) =1.001). For a 20 percentile above average increase in driver risk, the expected log count of DUI arrests increased by around 2%, holding other variables in the model constant. Based upon the value of the estimate for the driver risk percentile and the relatively small improvement of model fit from model 2 to model 3, it seems that the driver risk percentile does not predict multiple DUI recidivism as well as the other scales provided by the DRI.

Model 4 controls for all variables in model 3 as well as adds the drug risk percentile. The inclusion of the drug risk percentile produces a better fitting model than model 3 (X^2 diff= 48, df=1, $p<.001$). For every 10% above average increase in a

respondent's drug risk percentile score, there is a .02 unit increase in the log count of DUI arrests. This translates into a expected log count of DUI arrests 2% greater for every 10 percentile increase in drug risk above average (exp (.02) =1.02).

Model 5 added the stress coping risk percentile score to model 4, again producing a significantly better fitting model (X^2 diff= 140, df=1, p<.001). Holding all other variables in the model constant, with each 10% above average increase in the stress coping risk percentile there is a .04 increase in the log count of DUI arrests. This means that every 10% above average percentile increase in stress coping risk corresponds to an 4.1% greater expected log count of lifetime DUI arrests (exp (.04) =1.04). For a 20 percentile above average increase in stress risk, the expected log count of DUI arrests increases by about 8%. With the inclusion of the stress risk percentile, the relationship between the log count of DUI arrests and being male decreased to non-significance. The nature of Poisson regression coefficients do not allow for formal mediation analysis, but the fact that the inclusion of the stress risk scale into the model reduced the relationship between gender and expected log count of DUI arrests to non-significance indicates that stress coping beliefs and behavior may be key to understanding the gendered nature of DUI recidivism.

Model 6 adds the truthfulness percentile score to all variables tested in model 5. Once again, the inclusion of the truthfulness percentile score produces a better fitting model than model 5 which did not include the truthfulness percentile (X^2 diff= 66, df=1, p<.001). For every 10% increase above average in the truthfulness scale, there is a .02 expected log count decrease in the number of DUI arrests. For every 10% increase above average in the truthfulness percentile, there is a 2% decrease in the expected log count of

DUI arrests (exp (-.02) =.980). Basically, those who are more truthful have a lower number of DUI arrests. All other coefficients remained unchanged with the inclusion of the truthfulness scale.

Model 7 represents the final and best fitting model developed to predict multiple DUI recidivism. The inclusion of the substance abuse/dependency classification produced a better fitting model than that represented by model 6 (X^2 diff= 111, df=1, p<.001). Those who met the substance abuse/dependency classification had a log count of lifetime DUI's 21% higher (exp (.194) =1.21) than those who did not meet the substance abuse/dependency classification criteria.

Discussion

The final model represents the combination of variables contained in the DRI that best predicts the number of DUI arrests experienced by the 2007-2008 Florida sample. In the final model, those who were White, single and had less education displayed an increased risk of having a greater expected log count of DUI arrests than those without these characteristics. Regarding the variables that represent the respondent's experience with DUI related problematic behavior, the number of non-driving alcohol arrests, number of at-fault accidents and number of traffic violations where points were assessed were significantly positively related to number of lifetime DUI's. Those reporting an accident in the given arrest had an expected log count of DUI arrests lower than those who did not report an accident in the arrest, indicating those with multiple DUI's are less likely to have been involved in accident in their previous arrest. This makes sense in the context that those who experience accidents in their DUI arrest are likely to suffer greater severity in terms of both judicial reprimands and physical injury.

The single most interesting finding stemming from this research is the fact that the relationship between gender and expected log count of DUI arrests becomes statistically non-significant when controlling for the individual's stress risk profile. The DUI recidivism literature is replete with evidence that males are more likely to be DUI recidivists than are females. The statistical testing of mediation requires regression estimates unlike those produced in Poisson regression, thus disallowing further examination of the complex relationship between gender, stress and DUI recidivism. It is likely that when accounting for stress coping abilities, the relationship between gender and DUI recidivism becomes non-significant due to the different nature of stress coping between men and women. The positive association between being male and DUI recidivism is likely strengthened by the fact that stress coping behavior for men is likely associated with greater alcohol use as a stress coping mechanism in men but not in women (Cooper et al., 1992).

Generally, these results reiterate the importance of using advanced measurement scales that attempt to accurately capture behavioral aspects of the offender that are related to DUI recidivism. By testing the impact of various behavioral characteristics of DUI offenders and using statistical methods that properly define the offender as a potential multiple DUI recidivist, this work provides an argument for the value of properly addressing the heterogeneous profiles of DUI offenders in the United States. In addition, the results of this work can be used by public health and law enforcement agencies to identify offenders who potentially pose the greatest threat to the safety of American roads.

Limitations and Future Directions

This study is the first in a series of publications projected to continue over a decade. With assistance from the State of Florida and Behavior Data Systems, baseline data from the population of Florida DUI/DWI offenders and follow-up data taken each year will be used to track individual DUI/DWI trajectories over a ten year period. Data collection will employ a multiple-cohort design, where every subsequent year of information collected on DUI offenders will be used to both identify individuals who are already in the database (DUI recidivists) as well as provide baseline data for the cohort of DUI offenders measured in the following year. All unmatched cases for a given data collection year will be used for the following year's matching process. Cox proportional hazard modeling will be used to identify predictors of DUI recidivism in the analysis. The longitudinal design will allow for increased causal inference as well as permit the use of time varying covariates (changing criminal history for example) into the predictive model. By using longitudinal methods to track DUI recidivism over a decade, a more robust and nuanced appreciation of the characteristics of DUI recidivists will be developed.

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Table 1. Descriptive Statistics

	N	Min	Max	Mean	S.D.
# of Lifetime DUI Arrests	30481	0	9	1.2	0.78
Male	30557	0	1	0.69	0.46
Age	30557	15	78	36.71	12.71
White	30557	0	1	0.62	0.49
Black	30557	0	1	0.11	0.31
Hispanic	30557	0	1	0.22	0.41
Other Race	30207	0	1	0.05	0.21
Education	30557	1	4	2.53	0.97
Single	30557	0	1	0.55	0.5
Married	30557	0	1	0.22	0.42
Divorced	30557	0	1	0.16	0.37
Separated/Widowed	30347	0	1	0.06	0.23
Accident in Arrest	30442	0	1	0.19	0.39
# of Non-Driving Alcohol Arrests	30445	0	8	0.13	0.49
# of Non-Driving Drug Arrests	30446	0	8	0.1	0.4
# of At-Fault Accidents	29830	0	9	0.24	0.55
# of Traffic Violations with Points Assessed	30312	0	20	0.93	1.57
# of Non-Drug-Alcohol Misdemeanors	30398	0	9	0.28	0.74
# of Non-Drug-Alcohol Felonies	30550	0	8	0.12	0.49
Truthfulness Percentile Score	30550	0	99	54.98	26.02
Alcohol Risk Percentile Score	30550	0	99	63.83	21.06
Driver Risk Percentile Score	30550	0	99	57.71	20.88
Drug Risk Percentile Score	30550	0	99	73.5	36.32
Stress Coping Risk Percentile Score	30557	0	99	48.02	29.72
Substance Abuse/Dependency Classification	30481	0	1	0.61	0.49

DUI COMMISSION-AGGRAVATED BATTERY-DUI

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Gleened from a recent Kansas Court of Appeals case: State v. Barajas 230 P.3d 784, April 22, 2010

K.S.A. 21-3412 (misdemeanor battery) and K.S.A. 21-3414 (aggravated battery) both proscribe reckless or intentional conduct that results in physical contact, bodily harm, or great bodily harm. Although reckless conduct includes "gross negligence," "wanton negligence," and "culpable negligence," it requires something more than ordinary negligence. Further, Kansas' battery statutes do not specifically require that the harm result from driving a vehicle while under the influence of alcohol or driving with a specific blood alcohol level.

Kansas' aggravated battery statute has been applied to factual situations in which an intoxicated driver causes bodily harm to another. See, *e.g.*, *State v. Huser*, 265 Kan. 228, 232, 959 P.2d 908 (1998); *State v. Lafoe*, 24 Kan.App.2d 662, 663, 953 P.2d 681, *rev. denied* 263 Kan. 889 (1997).

In *Huser*, the defendant struck two pedestrians while driving under the influence. *Huser*, 265 Kan. at 229, 959 P.2d 908. In affirming the trial court's dismissal of two counts of reckless aggravated battery, the *Huser* court explained that the State failed to present evidence of an essential element of reckless aggravated battery, *i.e. reckless* conduct. 265 Kan. at 232-37, 959 P.2d 908.

The *Huser* court explained:

"When the vehicular battery statute was in effect, it punished a defendant for unintentionally causing bodily harm to another while driving under the influence, or driving recklessly, or eluding an officer. It treated each of these types of driving as a different method to prove vehicular battery. It did not equate driving under the influence with reckless driving.

"When the vehicular battery statute was repealed, the legislature enacted the misdemeanor battery statute and the aggravated battery statute to include reckless acts, not just intentional acts. *Thus, unintentionally causing bodily harm to another by driving a car recklessly is now punishable under the aggravated battery statute.* However, this statute continues to use the term reckless in the same manner in which it has been used previously-a realization of imminent danger to another person *and* a conscious and unjustifiable disregard of that danger. **K.S.A. 21-3201(c). As such, driving under the influence of alcohol does not equal driving recklessly, without additional evidence of reckless conduct. It can be argued that merely driving under the influence of alcohol amounts to reckless behavior because one should realize the imminent danger that driving in an impaired condition places another**

person in. However, in [*State v.*] *Mourning,* [233 Kan. 678, 664 P.2d 857 (1983)] this court specifically rejected that argument....

"When the legislature repealed the vehicular battery statute in 1993, it knew that reckless driving did not equate to DUI because the *Mourning* case had been decided in 1983. Thus, the legislature knew that if it repealed a criminal statute which punished a defendant who caused bodily injury to a victim while driving under the influence of alcohol, this criminal act would not be covered by a statute which punishes recklessness without independent evidence that the drunk driver also drove recklessly." (Emphasis added.) *Huser,* 265 Kan. at 236-37, 959 P.2d 908.

[11] Thus, as the court explained in *Huser,* a drunk driver who unintentionally causes bodily harm or great bodily harm can be charged with aggravated battery under K.S.A. 21-3414. **However, the State is required to establish evidence of reckless conduct beyond simply driving under the influence of alcohol.** ***Huser,*** **265 Kan. at 236-37, 959 P.2d 908. See also** ***State v. Robinson,*** **267 Kan. 734, 739, 987 P.2d 1052 (1999) (noting that "[w]hile driving drunk cannot alone stand as probable cause of recklessness, it may, among other factors, be evidence of reckless behavior");** ***Lafoe,*** **24 Kan.App.2d at 663-67, 953 P.2d 681 (affirming reckless aggravated*791 battery convictions where defendant worked a double shift, consumed several beers before driving home, crossed the centerline, collided with another car injuring both occupants, and had a blood alcohol level of .172).**

MY PROPOSAL

AGGRAVATED BATTERY WHILE DRIVING UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS

(a) Aggravated Battery while driving under the influence of alcohol and/or drugs is:

(1)(A)unintentionally causing great bodily harm to another person or disfiguring of another person committed in the commission of, or attempt to commit, or flight from an act described in K.S.A. 8-1567 and amendments thereto.

(1)(B) unintentionally causing bodily harm to another person or disfiguring of another person committed in the commission of, or attempt to commit, or flight from an act described in K.S.A. 8-1567 and amendments thereto.

(2) Aggravated Battery while driving under the influence of alcohol and/or drugs as described in subsection (a)(1)(A) is a severity level 5, person felony. Aggravated battery while under the influence of alcohol and/or drugs as described in subsections (a)(1)(B) is a severity level 8, person felony

SPECIAL RULE ON SENTENCING COULD BE CHANGED: (fiscal note!)

K.S.A. 21-4711

(2) If the current crime of conviction was committed on or after July 1, 1996, and is for a violation of an act described in K.S.A. 21-3442, and amendments thereto **or Aggravated Battery-DUI** , each prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for: (A) An act described in K.S.A. 8-1567 and amendments thereto; or (B) a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the act described in K.S.A. 8-1567 and amendments thereto shall count as one person felony for criminal history purposes.

THINGS TO CONSIDER---do we want to make this more egregious if it is a law enforcement officer while he is performing his official duties is struck and hurt by a drunk driver... (see agg batt statute for LEO below)

To review the Aggravated Battery Statute it is printed below:

(a) Aggravated battery is:

(1)(A) Intentionally causing great bodily harm to another person or disfigurement of another person; or

(B) intentionally causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted; or

(C) intentionally causing physical contact with another person when done in a rude, insulting or angry manner with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted; or

(2)(A) recklessly causing great bodily harm to another person or disfigurement of another person; or

(B) recklessly causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted.

(b) Aggravated battery as described in subsection (a)(1)(A) is a severity level 4, person felony. Aggravated battery as described in subsections (a)(1)(B) and (a)(1)(C) is a severity level 7, person felony. Aggravated battery as described in subsection (a)(2)(A) is a severity level 5, person felony. Aggravated battery as described in subsection (a)(2)(B) is a severity level 8, person felony. A person convicted of aggravated battery shall be subject to the provisions of subsection (h) of K.S.A. 21-4704 and amendments thereto.

AGGRAVATED BATTERY AGAINST A LAW ENFORCEMENT OFFICER

(a) Aggravated battery against a law enforcement officer is:

(1) An aggravated battery, as defined in subsection (a)(1)(A) of K.S.A. 21-3414 and amendments thereto, committed against: (A) A uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or (B) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;

(2) an aggravated battery, as defined in subsection (a)(1)(B) or (a)(1)(C) of K.S.A. 21-3414 and amendments thereto, committed against: (A) A uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or (B) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or

(3) intentionally causing, with a motor vehicle, bodily harm to: (A) A uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or (B) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty.

(b)(1) Aggravated battery against a law enforcement officer as described in subsection (a)(1) or (a)(3) is a severity level 3, person felony.

(2) Aggravated battery against a law enforcement officer as described in subsection (a)(2) is a severity level 4, person felony.

(3) A person convicted of aggravated battery against a law enforcement officer shall be subject to the provisions of subsection (g) of K.S.A. 21-4704 and amendments thereto.