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**An Evaluation of Michigan's
Repeat Alcohol Offender Laws:
Executive Summary**

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Introduction

During the last decade, Michigan has taken aggressive legislative actions to combat drunk driving. On July 11, 1991, the Michigan legislature passed a set of bills designed to reduce the incidence of people driving while drunk or impaired. The underlying theme of this drunk and impaired driving package of laws was to ensure expedient and potent sanctions to those arrested for driving while drunk or impaired. Among other things, these so-called swift-and-sure laws set time limits for adjudicating cases, set and/or increased minimum sanctions, created two new felony drunk driving crimes, set consistent licensing sanctions, and eliminated hardship appeals for habitual offenders. These new laws became effective on January 1, 1992.

UMTRI conducted an evaluation of the impact and effectiveness of these laws during the first 2 years of implementation. We found that the courts were implementing the laws and minimum sanctions as intended, and that the laws appeared to reduce alcohol-involved traffic fatalities by as much as 25 percent. We also found that suspending, revoking, or denying a person's driving privileges did not seem to lead to employment loss. Unfortunately, the study also found that an estimated 30 to 70 percent of these people with a suspended, revoked or denied license drove at least some of time during their sanction period and that this package of laws had little effect on reducing the incidence of repeat drunk driving.

Heartened by the positive effects of the 1992 drunk and impaired driving laws had on first-time drunk-driving offenders, the Michigan legislature turned its attention to reducing the incidence of repeat drunk driving and driving with a suspended or revoked license. On October 16, 1998 the Michigan legislature passed a package of 20 bills to address these problems. These laws define a repeat alcohol offender as one of the following; (1) a person with two or more alcohol-related convictions within 7 years; (2) a person with three or more convictions for driving with a suspended, revoked, or denied license within 7 years; or (3) a person with three or more alcohol-related convictions within the last 10 years. The package of laws, implemented on October 1, 1999, was specifically designed to aid law enforcement in separating multiple-offenders from their vehicles, to strengthen legal consequences for repeat alcohol offenders, and to provide uniform licensing actions and treatments. Specifically, the following changes and additions were made to Michigan's drunk driving laws:

- Mandatory minimum 1-year use of an ignition interlock device is required by repeat alcohol offenders who are approved to return to the road;
- Vehicle immobilization is required for repeat offenders;
- When appropriate, vehicle forfeiture is to be applied;
- Plate confiscation is required for repeat offenders;

- Vehicle registration denial for persons with three or more alcohol-related convictions, or four or more driving while suspended/revoked actions;
- Mandatory substance abuse treatment for persons convicted of a second alcohol-related offense;
- Creation of several new felony crimes, including: Driving While License Suspended Resulting in a Death or Serious Injury; Drunk Driving Resulting in a Death or Serious Injury in an Off Road Vehicle; and Drunk Driving Child Endangerment.

In addition, lesser alcohol offenses, such as operating a vehicle while impaired, now count as a prior offense used for defining repeat alcohol offenders. This prevents offenders who plea bargain down to a lesser offense from avoiding the consequences of repeat offender laws over time. In addition, the new laws state that any combination of three alcohol-related offenses within 10 years would be a felony, with only one "zero-tolerance" conviction allowed in this combination of offenses for a felony.

UMTRI was selected to evaluate the impact and effectiveness of Michigan's repeat alcohol offender package of laws. In discussion with the Michigan Department of State (DOS) and the Michigan Office of Highway Safety Planning (OHSP). 14 research objectives were defined for a three-year evaluation. These objectives were:

- (1) Determine the amount of change from prelaw levels in the number of crashes, and associated injuries and deaths caused by persons whose licenses are under suspension or revocation;
- (2) Determine the amount of change from prelaw levels in the number of crashes, and associated injuries and deaths caused by persons convicted of first-time or second-time alcohol offenses, and repeat offenders not currently under suspension;
- (3) Determine the amount of change from prelaw levels in the number of first-time repeat (two-time offenders) and multiple repeat offenders;
- (4) Determine the extent to which vehicle immobilization, ignition interlock, license plate confiscation, and substance abuse treatment are being issued to eligible convicted persons;
- (5) With respect to vehicle immobilization, determine the extent to which companies are available to hold immobilized vehicles and to what extent immobilization orders are being violated;
- (6) With respect to ignition interlocks, determine the extent to which persons sentenced to this sanction continue to violate drinking and driving laws;

(7) With respect to license plate confiscation, determine the extent to which persons sentenced to this sanction continue to violate drinking and driving laws and their suspension;

(8) With respect to substance abuse treatment, determine the extent to which treatment services are available to offenders and the extent to which persons sentenced to this sanction continue to violate drinking and driving laws;

(9) Determine the extent to which the use of "lesser offenses" for repeat alcohol offenders described in the new laws changes the proportion of cases that involve repeat offense convictions, and whether prosecutors are charging multiple offenders under the multiple offender statutes;

(10) Determine the extent to which new felony repeat offender, DWLS death/injury felony, and OUIL/OWI child endangerment laws are charged and present trial results and sentences;

(11) Determine the extent to which vehicle forfeiture is applied by the courts in sentencing;

(12) Track the denial of vehicle registrations to the extent possible using data collected by the DOS;

(13) Compare and contrast recidivism rates for persons receiving the various sentencing options; and

(14) Determine the perceptions and knowledge of prosecuting attorneys charged with implementing changes with respect to the new laws, the implementation of the laws, and the extent to which the new laws serve their deterrent and rehabilitative functions.

Results and Conclusions

One intent of Michigan's repeat alcohol offender laws was to increase the effectiveness of the driving while license suspended or revoked (DWLS/R) sanction. If the sanctions were effective, we would expect there to be fewer crashes and injuries involving drivers currently under suspension/revocation. Therefore, one objective considered the effect of the laws on crashes and crash-related injuries and fatalities, in which people under license suspension/revocation were involved. Through analysis of DOS Master Driving Record (MDR) data and Michigan Vehicle Crash datasets, we found about a 30 percent decrease in the rate of crashes involving drivers currently under suspension/revocation. This decrease in crashes resulted in about a 37 percent decrease in injury rates and a 13 percent decrease in fatality rates from crashes involving drivers currently under suspension/revocation. Thus, it appears that Michigan's repeat alcohol offender laws have been effective in reducing crashes caused by people driving on a suspended or revoked license.

Another intent of Michigan's repeat alcohol offender laws was to reduce the number of crashes involving drunk driving recidivists. One of the objectives was to determine the amount of change from prelaw levels in the rates of crashes, and crash-related injuries and fatalities, involving first-time alcohol offenders and repeat alcohol offenders. Because the laws specifically target repeat alcohol offenders, we would expect the laws to have a greater effect on repeat than on first-time offenders. Analysis of DOS MDR and Michigan Vehicle Crash data revealed several interesting findings. First, we found that there was about a 39 percent decrease in crashes involving people with two or more previous alcohol-related convictions while there was only a one percent decrease in crashes involving people with one previous alcohol-related conviction. The analysis of injuries revealed more than a 40 percent postlaw decrease in injuries resulting from crashes involving drivers with two-or-more previous alcohol-related convictions as compared to a 15 percent decrease found for injuries resulting from crashes involving drivers with only one previous alcohol-related injury. Finally, the numbers of fatal injuries from crashes involving drivers in either group, were too small for meaningful analysis. It appears that Michigan's repeat alcohol offender laws have been effective in reducing the number of crashes, and crash-related injuries, involving repeat drunk drivers.

The laws were also designed to reduce the incidence of drunk driving and DWLS/R recidivism. We examined this issue through analysis of DOS MDR data for drunk driving and DWLS/R separately. Note that under Michigan law, a repeat alcohol offender is defined as a person having two or more alcohol convictions within 7 years (two-plus offenders) or three or more alcohol convictions within 10 years (three-plus offenders). We found that for the five year period we examined (1997-2001) the numbers of all alcohol, two-plus, and three-plus offenders generally decreased each year. Comparison between the prelaw and postlaw years showed that the number of two-plus offenders decreased by about 5 percent, the number of three-plus offenders decreased by about 18 percent (a total decrease of about 10 percent for all repeat alcohol offenders), while there was only a 2.4

percent decrease in the total number of alcohol offenders. These results suggest that Michigan's repeat alcohol offender laws have been effective in reducing drunk driving recidivism. We also examined DWLS/R recidivism which is defined as three or more convictions for DWLS/R within 7 years. Analyses showed large decreases in the total number of DWLS/R convictions for each year studied. The numbers of repeat DWLS/R offenders, however, increased up to 1999 and then decreased. Comparison between pre and postlaw years revealed about a 14 percent decrease in the number of DWLS/R offenders for the postlaw years while repeat DWLS/R offenders increased by 2 percent. Thus, the laws did not seem to have the intended effect of reducing DWLS/R recidivism.

The repeat-alcohol offender laws included provisions for four new sanctions: vehicle immobilization, license plate confiscation, ignition interlock, and substance abuse treatment. We were interested in determining the extent to which these sanctions were being applied. Examination of the DOS MDR and the Repeat Offender Datasets revealed that these sanctions were applied quite infrequently for both alcohol-related and DWLS/R-related convictions. The study showed that vehicle immobilization was utilized in only about 6 percent of eligible cases (6.7 percent for alcohol-related and 3.9 percent for DWLS/R-related cases). License plate confiscation, where the police officer physically removes the metal license plate and issues a temporary paper plate, occurred in slightly less than one-half of cases for alcohol-related arrests and in only about 15 percent of DWLS/R eligible cases (a total of about 30 percent of eligible cases). Only data on actual ignition interlock installation, rather than data on the ordering of interlocks, was available. No records are kept for substance abuse treatment programs. Therefore, the ordering of these sanctions for eligible persons could not be investigated.

Several objectives were designed to determine the effects of these various sanctions on drunk driving recidivism. Overall, the study found that recidivism rates for people receiving the various sanctions (individually or in combination) were very small, ranging from zero to about 6 percent. All sanction combinations that included ignition interlocks had the lowest drunk driving recidivism rates, while people with sanctions involving only driver license suspension/revocation had the highest rates of recidivism. Based upon these results, Michigan should redouble its efforts to increase the frequency with which ignition interlocks are ordered for eligible convicted drunk drivers.

An important component of Michigan's repeat alcohol offender laws was to include all alcohol convictions, regardless of the level, in determining who was a repeat alcohol offender. (Note that only one Zero Tolerance conviction counts toward repeat offender status.) Thus, the common approach of defense attorneys to plea serious drunk driving charges down to less serious charges in order to avoid more serious sanctioning, would not be effective in many cases in avoiding repeat alcohol offender status and the sentencing guidelines which accompany this status. The study investigated the frequency with which lesser charges were utilized for drunk driving arrests, by examining the DOS MDR data sets to determine the differences between original charges and convicted charges. The study found that of the 122,699 cases with a drunk-driving-related original or convicted charge, about 41 percent were convicted on the same charge. Of those

that were convicted on a different charge, nearly all were convicted of a different drunk-driving-related offense. In only 2.7 percent of cases, was the convicted offense a non-drunk driving offense when the original charge was drunk driving related. Thus, in nearly all cases, the plea arrangement did not alter the repeat offender status.

Michigan's new repeat offender laws also allowed for the forfeiture of vehicles in certain repeat drunk driving cases. Because of limitations with available data, we could only analyze this sanction for vehicles registered in Michigan for non-commercial driver licenses between June 1, 1999 and January 31, 2002. During this time period, there were 215 vehicles forfeited. About 90 percent were for repeat drunk driving convictions for men and about 60 percent were for people between the ages of 21 and 40.

The new laws also allow for the DOS to deny requests for vehicle registration made by people with three or more alcohol convictions, or four or more DWLS/R convictions within the last ten years. Utilizing the Repeat Offender Dataset maintained by the DOS, the study found a total of 133,591 registration denials between October 1999 and January 2002. As of the end of January 2002, the study found: about 92 percent of denials were still active; about 80 percent were for drunk driving recidivism; about 90 percent were for males; and about one-half were for people between 21 and 40 years of age (the other half were for people 41 to 64 years of age). Thus, registration denial was a commonly applied sanction in Michigan and the frequencies matched the demographics of drunk drivers in Michigan.

The Michigan repeat-alcohol offender laws included the creation of four new felony crimes: DWLS/R causing serious injury (DWLS/R-Injury); DWLS/R causing a death (DWLS/R-Death); OUIL/OWI child endangerment; and three-or-more alcohol-related convictions in the last 10 years. Our analysis found that between October 1, 1999 and December 31, 2001 there were a total of 11 DWLS/R-injury; 7 DWLS/R-death cases; 546 child endangerment cases; and 17,652 three-or-more-alcohol-conviction cases. In order to determine how courts were handling these cases, we conducted case studies of all DWLS cases and random samples of child endangerment and 3-or-more cases. These case studies revealed a wide range of demographics, circumstances, and sanctioning for felony drunk driving and DWLS/R cases in Michigan.

Prosecuting attorneys play an important role in combating drunk driving. The effectiveness of a traffic safety law is dependent, in part, on how easily people arrested for violating the law can be prosecuted. This study sought to determine the experiences and opinions of Michigan prosecuting and assistant prosecuting attorneys regarding Michigan's new repeat alcohol offender laws through a written survey. The study found that a vast majority of prosecuting attorneys received training on the new laws and most found the training to be useful. About one-half indicated that the new laws have increased their workload. Eighty percent of prosecuting attorneys indicated that the new felony crimes created by the laws have been helpful in convicting repeat drunk driving offenders. Prosecutors reported very high conviction rates, with nearly all reporting that 75 to 100 percent of their drunk driving cases result in a conviction.

A series of questions were asked about the provision of the law that makes it illegal for an associate of a drunk person to knowingly allow the drunk person to drive the associate's vehicle. Very few attorneys had charged people with this crime, with about 60 percent of attorneys reporting that they had not charged a person with this crime in the past 6 months. The infrequency of this charge may be due to the fact that prosecuting attorneys find it difficult to prosecute these cases. About 90 percent indicated that it was "very difficult" to provide the court with evidence of this crime.

The new laws, when compared to the old laws, limit many conditions for driver license restoration appeals, making it more difficult for a successful appeal. About one-half of respondents indicated that the frequency of these requests had decreased since the new laws were implemented. About 30 percent indicated that the frequency with which courts grant these requests had also decreased. These decreases indicate the effectiveness of this portion of the new legislation.

The new laws allow courts to request reimbursement for prosecuting expenses. We found that about two-thirds of respondents indicated that their courts request reimbursement at least some of the time. Only about 30 percent are actually reimbursed.

The survey included several questions about the new sanctions for repeat drunk drivers. The study found that courts are using a variety of methods for vehicle immobilization, including the boot, the club, and electronic tethers. About two-thirds of courts monitor compliance with vehicle immobilization orders. About one-half of prosecuting attorneys thought that vehicle immobilization was not an effective sanction for preventing alcohol impaired driving or DWLS/R recidivism. A vast majority of respondents indicated that their courts order vehicle immobilization when required. Similar results were found for vehicle forfeiture. In addition, only 10 percent of respondents felt that forfeiture was too harsh a penalty for repeat drunk driving. Slightly more than one-half of respondents felt that there were enough substance abuse treatment programs available, particularly for those with limited economic resources. About three-fourths of prosecuting attorneys felt that their courts monitored compliance with substance abuse treatment programs.

In summary, this evaluation has shown that Michigan's repeat alcohol offender laws are generally being implemented as intended, except that many of the new sanctions are not being well-utilized. The laws have been successful in reducing drunk driving recidivism but not DWLS/R recidivism. The laws have also been successful in reducing crashes caused by drunk driving and DWLS/R recidivists. Future programs and legislation should focus on ways to increase the use of vehicle immobilization, vehicle forfeiture, and ignition interlocks for drunk driving and DWLS/R recidivism.