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# DWI Sentencing in the United States: Toward Promising Punishment Alternatives in Texas

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## Abstract

*In recent decades, the dangers of driving while intoxicated (DWI) have received extensive attention. Despite the many efforts aimed at reducing DWI incidents, the rates have largely remained unchanged. The current study examines recidivism rates of three different sentencing options given to first-time DWI offenders in Tarrant County, Texas. Tarrant County courts allow first-time DWI offenders to choose between the three options of probation, straight jail sentence, or labor detail sanction. Recidivism rates for all three sentencing options are assessed, and probation is found to significantly reduce subsequent reoffending. Implications and limitations are discussed and suggestions for future research are provided.*

Keywords: First-Time DWI, Probation, Jail, Labor Detail, Recidivism Rates.

## Introduction

The FBI (2009) estimates that close to three million people have died on American roadways and another 100 million have been injured in traffic accidents during the last century. A significant amount of these injuries and fatalities involved a driver under the influence, rendering the criminal offense of driving while intoxicated one of the nation's leading causes of unnatural death. According to data gathered by the National Highway Traffic Safety Administration (NHTSA, 2009), 37 percent of fatalities in the U.S. involve a driver with a blood alcohol concentration (BAC) level greater than 0.01. On an annual basis, alcohol-related accidents account for approximately 17,000 deaths (DeMichele & Lowe, 2011).

The larger problem of drunk driving, however, goes mostly undetected and is far greater still. Nichols (1990) estimates that throughout a one year period, roughly 20

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percent of all licensed drivers in the U.S. drive at least once while intoxicated. A wealth of empirical evidence further suggests that the typical first-time DWI offender is not an occasional social drinker who once makes the single wrong decision to drive impaired. To the contrary, first-time DWI offenders typically have serious drinking problems, but were able to avoid police detection in many prior instances of drunk driving (Ahlin, Zador, Rauch, Howard, & Duncan, 2011). In fact, the extensive amount of research conducted on first-time DWI offending has revealed that the initial arrest is typically preceded by a long history of intoxicated driving, oftentimes spanning between 200 and 2,000 instances (Ahlin et al., 2011; Anda, Remington, & Williamson, 1986; Beitel, Sharp, & Glauz, 1975; Borkenstein, 1974; Hingson, 1995; Voas & Hause, 1987).

The questions of how to best address this problem and how to sanction this unique set of offenders has plagued lawmakers and criminal justice officials for over half a century. The present patchwork landscape of punishment options that vary widely between and within states, regions, and even counties is indicative of the absence of an effective and successful sentencing strategy. Some court systems utilize a more rehabilitative punishment option where offenders are mandated to attend treatment groups and counseling. Others operate under a zero-tolerance rule and force DWI offenders to incarceration or at least some form of community supervision (Delaney, 2005). A third group of court systems choose a different approach and allow some of their first time DWI offenders to opt for a labor detail sentence. The rationale behind this third approach is for offenders to compensate for the harm they caused in their community through manual labor. Tarrant County, the third most populous county in Texas and the fifteenth in the U.S. (U.S. Census Bureau, 2011) employs all three of these popular sentencing methods of probation, straight jail time, and labor detail for first-time DWI offenders. The current study utilizes longitudinal offender data collected from this county to compare the effectiveness of these competing punishment approaches at reducing future intoxicated driving offenses.

### **Review of Literature**

Over the last half century, policymakers have tried various markedly different approaches when addressing the problem of driving while intoxicated. In the 1970s and into the early part of the 1980s, the nation viewed a DWI offender much in the same way as a cancer patient (Lucker & Osti, 1997). The government acted as a physician who took on the responsibility of diagnosing the offender and then treating their illness in hopes that the treatment would cure them. Treatment came in the form of pre-adjudication diversion programs where a conviction was postponed and subsequently dropped if the offender successfully completed the program. During this time there was ample evidence that treatment programs were successful at reducing future intoxicated driving incidents (Holden, 1983; McCarty & Argerlou, 1988; Reis, 1983). However, with the creation of grassroots organizations such as Mothers Against Drunk Driving (MADD) and Students Against Destructive Decisions (SADD) and their intensive lobbying for more severe sanctions for DWI offenders, the rehabilitation model was ultimately ushered out and replaced with a diametrically contrasting “get tough” philosophy (Grasmick, Bursik, & Arneklev, 1993; Lucker & Osti, 1997). The existing pre-conviction diversion programs finally were put to an end when the 1984 Presidential Commission on Drunk Driving concluded that any treatment programs given to DWI offenders should come as a condition of sentencing rather than an alternative (Lucker & Osti, 1997).

With a more punitive approach in mind, the legislature, despite the absence of empirical evidence to support such an endeavor, turned to the probation system for the sentencing of DWI offenders (Lucker & Osti, 1997). The shift to probation sentences took place in the wake of the larger resurgence of interest in the classical approach to crime during the 1970s. Landmark publications by David Wilson (1975) and Robert Martinson (1974) spearheaded this renewed classical outlook on crime and criminal offenders. Both postulated that crime was a deliberate act committed by rational actors who weigh action-alternatives in their decision making processes. They summarized that rehabilitation programs, due to a lack of deterrence components, had failed to effectively dissuade predatory offenders from engaging in future criminal actions. Martinson's (1974) name, in particular, became almost synonymous with the "nothing works" doctrine. Summarizing the main findings of his meta-analysis of 231 prison rehabilitation programs, Martinson concluded that rehabilitation programs failed across the board—a claim he had to later recant when faced with substantial contradictory evidence that led him to admit that his 1974 meta-analysis had been biased to include primarily studies in support of his conclusion (Martinson, 1979).

Essentially, both researchers advocated the deterrence-centered sanctioning approach already proposed by Beccaria almost 250 years earlier. Sanctions were thought to be most effective when (1) swiftly following the crime, (2) highly probable, and (3) severe enough to deter future criminal acts (Beccaria, 1764). The swing toward the new "get tough" paradigm shifted the focus to DWI offender programs that were specifically designed to include all three components. Accordingly, police departments began to employ several strategies to increase the certainty of apprehension, for instance by setting up mandatory alcohol checkpoints during periods of increased rates of alcohol consumption (e.g., holiday weekends, days of major sporting events, etc.). In some states, efforts to increase the swiftness of sanctioning came from Motor Vehicle Departments (MVDs) that began to revoke offenders' driver's licenses prior to DWI convictions in cases where substantial evidence existed that the offender had been intoxicated at the time they were intercepted by the police (Ahlin et al., 2011). The effectiveness of license revocations through administrative agencies such as state MVDs or the courts in reducing recidivism among DWI offenders is well documented in the pertinent literature (Klein, 1989; Peck, Sadler, & Perrine, 1985; Rodgers, 1994; Ross, 1991; Ross, 1992; Ross & Gonzalez, 1988; Yu, 1994). Lastly, the third deterrence component of punishments, severity, was targeted by a range of newly enacted sentencing practices that moved from treatment to automatic jail stints (Lucker & Osti, 1997; Nichols & Ross, 1989; Ross, 1990; Voas, DePont, Talpins, & Shea, 2011).

After more than two decades of primarily deterrence-focused criminal justice measures for DWI offenders, however, comprehensive reviews of the experiences gathered with these policies have hardly been favorable. An analysis of a cohort of first-time DWI offenders in Maryland, for instance, led Delaney and Zhao (2005) to conclude that imprisonment alone is an ineffective deterrent for drinking and driving behaviors. Similarly, an earlier study by Martin, Annan, and Forst (1993) found that there were no significant differences in recidivism rates between those given a fine for their first DWI and those who, in addition to a fine, were incarcerated for a short period of time. Today, there is an overarching consensus among criminologists studying DWI recidivism rates that sentencing policies aimed at increasing punishment severity (e.g., through mandatory jail time), when enacted as sole replacements for some form of treatment/rehabilitation

(either from diversionary programs or through probation that mandates treatment as a condition of the offender's probation sentence), are failing at reducing recidivism (Lucker & Osti, 1997; Taxman & Piquero, 1998; Wheeler & Hissong, 1988).

Under the deterrence paradigm, probation emerged as one of the last remaining options for offenders to receive any kind of treatment interventions for their alcohol problems. Unfortunately, Texas stopped offering deferred adjudication probation sentences for repeat DWI offenders in the mid-1980s. Under this sentencing model, a conviction was withheld and eventually dropped once the offender had completed their probation term. This policy change towards a more punitive system, despite the possibly well-conceived intentions pursued through it, had a predominantly negative impact on the lives of many offenders affected by it. Essentially, offenders suffering from serious alcohol addictions and abuse-related problems were left without any incentive to seek treatment programs through probation (Wheeler & Hissong, 1988).

When assessed on a macro-level, it is clear that past attempts to deter driving while intoxicated behaviors have failed to reduce DWI rates. In 2008, 1.48 million DWI arrests were made across the United States (FBI, 2009). This crime has not seen the same reductions witnessed in other types of offending behaviors in recent years, including most violent and property crimes. As a result, almost 14 percent of all probationers in the United States today are sanctioned for DWI offenses.

Fortunately, some jurisdictions today allow non-violent, first-time DWI offenders to choose from different options for post-conviction sanctions. Typically, the options offered include the serving of probationary terms, straight jail time, or labor detail. For criminal justice researchers, the parallel offering of different sentencing options creates an ideal opportunity to compare the effectiveness of the contrasting sentencing measures. Such a quasi-experimental field setting enables researchers to examine several best-practice questions and assess, for instance, which sentencing alternative yields the lowest recidivism rates for offenders convicted of a DWI offense.

The present study seeks to add to our understanding of the effectiveness of commonly-enacted correctional interventions in reducing DWI recidivism. The Tarrant County criminal court system, by offering all three different punishment options (probation, a jail term, or a term of labor detail) to convicted first-time DWI offenders, is ideally suited for a comparison of the correctional effectiveness of all three measures.

### ***Probation***

In the United States in general, and more specifically in Texas, the composition of the population of probationers has undergone drastic changes in recent years. In less than a decade's time, the probation department went from monitoring low-risk, non-violent offenders to alleviating the strains on an overburdened prison system by supervising many dangerous offenders who would have previously been incarcerated (Noonan & Latessa, 1987; Petersilia & Turner, 1990). For the offenders, the most significant advantage of opting for a probation sanction is the opportunity to have their conviction deferred upon successful completion of their community supervision sentence. From a behavioral treatment perspective, the oftentimes mandated programming involved in a probation sentence (typically courses for treatment for substance-abuse issues, education and vocational development, emotional therapy, or anger management) renders this option the most promising alternative.

## **Jail**

Offenders who prefer not having to comply with the more pronounced and prolonged rigors of a probation term (mandatory attendance for treatment courses, reporting requirements, payment obligations for their supervision, drug testing requirements, and a range of other programming aspects) oftentimes opt for a jail sentence. Dependent on the specific circumstances of their offense and the presence of aggravating factors, such as high BAC levels or the presence of a child in the vehicle at the time of the offense, the length of jail sentences for first-time DWI offenders typically ranges between one and 30 days. Offenders opting for straight jail sentences forfeit the treatment benefits offered by probation. Instead, they simply “do their time” and move on once their sentence is completed.

## **Labor Detail**

Tarrant County is one of the few jurisdictions to also offer labor detail sanctions as a third option in cases where specific qualifying criteria are met. Since its first implementation with approximately 25 offenders who were mandated to clean up roadways and public areas around downtown Fort Worth on weekends during the late 1980s, the prevalence of labor detail sentences has increased substantially. Today, there are more than 800 concurrent labor detail participants in Tarrant County. Offenders who meet the specific qualifying criteria, including having no prior felony convictions and having not committed any prior violent or sexual offenses (Tarrant County Community Supervision and Corrections Department, 2010), can utilize the labor detail option to avoid the loss of their freedom as well as the strict supervision conditions imposed by a probation sentence. However, they also do not receive any of the rehabilitative benefits involved in probation programs.

The parallel offering of all three sentencing options for first-time DWI offenders in Tarrant County renders data from this jurisdiction ideally suited for a comparison of recidivism rates. Specifically, the present study examines the hypothesis that offenders who have greater exposure to counseling and/or treatment programs included in probation sentences, through the behavioral changes induced by these programs, have significantly lower recidivism rates than those who opt for either one of the other two sentencing options without any behavioral programming.

The unique opportunity for rehabilitation that is offered to offenders by probation treatments is vital for reduction in or desistance from their destructive drinking habits. It is hypothesized that, *ceteri paribus*, the treatment and rehabilitation programs provide the causal mechanism for the resulting reduction of future offending behaviors.

## **Methods**

The comparison of recidivism rates for all three sentencing options in this study necessitated data acquisition from different sources. All data pertaining to probation sentences was obtained from the Tarrant County Community Supervision and Corrections Department (CSCD). The information relating to the other two sentencing options, straight jail and labor detail were obtained from the Texas Department of Public Safety (DPS). Included in the sampling frame were all first-time DWI offenders in Tarrant County who were adjudicated during the two-year time period between January 1, 2008 and December 31, 2009. In order to assess recidivism, a subsequent 15-month follow-up period from January 1, 2010 to March 31, 2011 was scrutinized for any charges incurred

by the same offender for any new offense. When interpreting the results, it is important to bear in mind that the operationalization of the concept recidivism in this study includes any subsequent charges for any type of criminal activity by the same offender, not merely another DWI offense. The decision to include all instances of reoffending was made in an attempt to capture a more comprehensive recidivism picture as an indicator of the offenders' relapse into antisocial behaviors.

In Tarrant County, offenders are randomly assigned to one of ten municipal criminal courts. Across all ten courts, a total of 3,783 offenders opted for a probation sentence during the examined timeframe. During the same time period, a total of 1,379 offenders chose straight jail sentences, and 3,306 opted for labor detail sanctions. Critical time and personnel constraints of records departments in both the Tarrant County CSCD and the Texas Department of Public Safety rendered a collection of data from all eligible offenders impossible. To accommodate this limitation in the methodologically soundest way possible, a stratified sampling technique was employed. Instead of soliciting data for the whole population of offenders, a sample of ten percent of offenders in each stratum was obtained and included in the study. The decision for a ten percent sample was made in an attempt to balance the burden inflicted on the involved agencies, while at the same time ensuring sufficient sample sizes in all relevant subgroups. Furthermore, this limitation in sample size allowed the exclusion of all offenders with prior convictions for any violent or sexual offenses. Special care was taken to ensure comparability of all subgroups in the final sample by including only offenders who were principally eligible for all three sentencing options. After compensating for record-related missing case information, the final dataset consisted of 381 probation, 138 straight jail, and 331 labor detail cases. To verify the representativeness of the study data, several key socio-demographic variables were compared to the general population of convicted offenders. The fact that no significant differences were detected on any of the examined characteristics indicates that the sample can be treated as a true random sample for the purposes of statistical analysis.

In accordance with IRB agreements obtained prior to the beginning of this investigation, all identifiable markers and all variables (such as CID numbers and other tracers used by Tarrant County personnel to track probationers) that could have potentially revealed the identities of cases were removed from the final, merged dataset.

### **Analysis**

Prior to a comparison of recidivism rates, an analysis of the socio-demographic breakdown of the sub samples in all three sentencing categories was conducted to examine their composition and to identify whether there are systematic differences in the preferences for certain alternatives across socio-demographic groups. The table below displays the socio-demographic characteristics of offenders in all three sentencing options.

Aside from showing the vast gender bias that is generally the case for DWI offenses, the table also documents that there are systematic differences between the sexes in their preference for certain sentencing alternatives. An ANOVA means comparison across groups indicates that these preference differences are highly significant ( $F(2,847) = 11.1$ ;  $p \leq .0001$ ). Tukey's HSD further reveals that significant differences exist between all subgroups. Males exert a significantly stronger preference for the straight jail option, while females prefer the probation alternative.

Significant differences were also observed when comparing the mean ages of offenders at the time of sentencing ( $F(2, 847) = 16.48$ ;  $p \leq .0001$ ). Again, a Tukey's post hoc

analysis shows that these differences are significant across all three groups. The younger an offender is at the time of sentencing, the more likely he or she is to opt for straight jail. In contrast, the older offenders are at the time of sentencing, the more their preference for probation sentences increases.

**Table 1: Sociodemographic Characteristics of Offenders in all 3 Sentencing Options**

Variable	Total N (850) %		Probation N (381) % <sup>1</sup>		Labor Detail N (331) % <sup>1</sup>		Straight Jail N (138) % <sup>1</sup>	
<i>Sex</i>								
Male	714	84.0	299	78.5	284	85.8	131	94.9
Female	136	16.0	82	21.5	47	14.2	7	5.1
<i>Age<sup>2</sup></i>								
	850	31.7 (10.4)	381	36.4 (11.6)	331	32.7 (10.7)	138	29.8 (9.0)
<i>Race<sup>3</sup></i>								
White	789	92.8	352	92.4	315	95.2	122	88.4
Black	57	6.7	27	7.1	14	4.2	16	11.6
Asian	4	.5	2	.5	2	.6	0	-
<i>Marriage status<sup>4</sup></i>								
Single	338	39.8	184	48.3	81	24.5	73	52.9
Married	192	22.6	124	32.5	35	10.6	33	23.9
Divorced	75	8.8	58	15.2	7	2.1	10	7.2
Unknown	245	28.8	15	3.9	208	62.8	22	15.9

<sup>1</sup> N may not add up due to missing case information. Percentages displayed are within correctional subsamples and may not add up due to rounding.  
<sup>2</sup> Measured in years, means reported (std. dev. in parentheses).  
<sup>3</sup> Information regarding Hispanic origin was not included in all data sources and was therefore omitted from the analysis.  
<sup>4</sup> Any comparison of percentages across sentencing options has to take into consideration the vastly differing number of unknowns.

As is the case of all DWI arrests and convictions, the majority of offenders in the sample are White. Unfortunately, not all data sources recorded whether the offender was of Hispanic origin and, thus, a separate category for Hispanic ethnicity could not be included in the analysis. The extremely low number of Asian offenders (only four offenders in the whole sample were Asians) also precludes them from any meaningful analysis. The carefulness one has to observe when interpreting the racial composition of sentencing groups aside, an interesting pattern emerges when comparing White and Black offenders. Whereas Whites seem to have a stronger preference for labor detail, a higher proportion of Blacks opts for straight jail sentences. Lastly, any interpretation of marital statuses across the three groups has to be conducted with the utmost caution since the number of unknown statuses varies greatly across sentencing categories. Unfortunately, a very high number of labor detail cases were submitted with no explicit marital status information recorded.

Summarizing, the initial analysis of the socio-demographic composition of all three sentencing options reveals systematic and significant differences especially with regard to

the sex and age distributions. Any analysis of recidivism rates has to control for these effects to minimize the possibility of spurious relationships between sentencing type and impact on recidivism. To allow for such controls, a binomial logistic regression model was run to investigate the extent of the association between sentence type and recidivism.

**Table 2: Recidivism Rates of 850 Offenders in all 3 Sentencing Options**

Variable	Total N (850) %	Probation N (381) %	Labor Detail N (331) %	Straight Jail N (138) %
<i>Recidivism</i>				
No	577 67.9	279 73.2	230 69.5	68 49.3
Yes	273 32.1	102 26.8	101 30.5	70 50.7

An exploratory data analysis prior to the regression model reveals that probation has the lowest recidivism rates with only 26.8 percent, followed by labor detail with 30.5 percent. Starkly contrasting from both is the third sentence type, straight jail, with a recidivism rate of over 50 percent. More than half of the offenders who were sentenced to straight jail for their first DWI conviction in this sample reoffended within the next 15 months. A mean comparison between the three sentencing options shows significant differences between the groups ( $F(2, 847) = 14.05; p \leq .0001$ ). Tukey's HSD, however, reveals that the only the straight jail option differs significantly from the other two. The increase in the recidivism rate for labor detail is not large enough to reach a statistically significant level. Hence, we cannot rule out sampling error as the cause for the observed higher rate for labor detail.

This preliminary analysis, while clearly documenting the existence of highly significant differences in recidivism rates, is unsuited to examine the impact of differing exogenous socio-demographic factors that leads to systematic differences in the socio-demographic composition of the groups. In order to be able to control for these socio-demographic differences across the three sentencing groups and their potentially compounding influences on the observed recidivism rates, a binary logistic regression model was calculated. The findings of this analysis are presented in table 3.

The fit of the model against the actual outcomes is assessed with the inferential Hosmer and Lemeshow (H-L) test that yields a  $\chi^2(8)$  of 4.865 and a significance of  $p > .05$ , suggesting that fits the data well (the null hypothesis of a good model fit was tenable). An overall model evaluation shows that the saturated model with four included predictive factors is highly significant ( $p < .001$ ) and explains between about six to eight percent of the variation in recidivism (Cox and Snell  $R^2 = .057$ , Nagelkerke  $R^2 = .079$ ).

The examination of individual predictors with the Wald chi-square statistic confirms the significant effect of age on recidivism ( $p < .001$ ). With the inclusion of age as a predictor, the effect of sex drops short below the generally accepted level of statistical significance ( $p < .053$ ). Even though the numbers show slightly lower rates for female offenders, this difference fails to reach significance when controlled for age. Race was included primarily to control for any potential compounding effects, even though the comparison of the reference group White with Asian cannot be meaningful due to the very low case numbers for Asians. Most importantly, the analysis shows that, even when



all the relevant socio-demographic factors are controlled for, the effect of the sentencing alternatives themselves on recidivism levels persists. Probation sentences result in the lowest recidivism rates of all three alternatives, even though the difference between probation and labor detail fails to reach a significant level. Both options, however, produce significantly lower recidivism rates than do straight jail sentences (probation  $p < .001$ ). These findings lend at least partial support to our original hypothesis. Probation is shown to result in the lowest recidivism rates of all three options and yields significantly lower recidivism rates than do straight jail sentences.

**Table 3: Logistic Regression Analysis of Recidivism Rates for 850 Offenders**

Predictor	<i>B</i>	<i>SE B</i>	Wald's $\chi^2$	<i>df</i>	<i>p</i>	$e^B$ (odds ratio)
Constant	.313	.316	.981	1	.322	NA
Sentence (Probation is reference)			15.123	2	.001 ***	
Labor Detail	.084	.170	.2450	1	.620	1.088
Straight Jail	.796	.213	13.910	1	.001 ***	2.216
Sex (Males = 0 is reference)	-.440	.228	3.735	1	.053	.644
Age	-.031	.007	17.607	1	.001 ***	.969
Race (White is reference)			1.321	2	.517	
Black	.315	.297	1.125	1	.289	1.370
Asian	-.500	1.160	.185	1	.667	.607
Test			$\chi^2$	<i>df</i>	<i>p</i>	
Overall model evaluation						
Likelihood ratio test			49.507	6	.001 ***	
Goodness-of-fit test						
Hosmer&Lemeshow			4.865	8	.772	

*Note.* Cox and Snell  $R^2 = .057$ . Nagelkerke  $R^2 = .079$ . All statistics reported herein use 3 decimal places in order to maintain statistical precision. NA = not applicable. \*\*\* indicates significance on the  $p < .001$  level.

### Discussion and Conclusion

The empirical investigation conducted in this study lends at least partial support to the hypothesis that the behavioral programming received during community supervision leads to lower recidivism rates for first time DWI offenders. A stark contrast emerges when comparing recidivism rates of offenders sentenced to probation with those going to jail for the same offense. The recidivism rates of the latter were almost double as high as those who underwent probation. A slight, albeit insignificant, reduction is further seen when comparing recidivism rates of probationers to the ones of offenders sentenced to labor detail. As shown in the binary logistical regression model, these differences persist when

controlling for the differences in the socio-demographic compositions of the three sentencing groups.

While the study was able to establish the higher effectiveness of probation sentences, it did so for only one Texas County. It is principally questionable whether the observed effects are generalizable to other jurisdictions outside of Tarrant County. Future studies should examine the effects of sentencing alternatives for other jurisdictions and in other states to see if the presented findings can be corroborated. If that is the case, the argument for probation sentences as a promising alternative for first time DWI offenders to save taxpayer expenses by lowering future reoffending should be made.

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