



What to Do with the Impaired Drivers We've Stopped—And the Ones We Haven't

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DWI arrests in North Carolina's capital city are on the rise. The Wake County district attorney's office [expects to prosecute around 7,000 DWI cases this fiscal year](#)—2,000 more than it handled in 2013-14. The increased arrests result from beefed up patrol activity made possible by federal grants. And there is [some speculation](#) that the decline in fatal alcohol-related accidents in Raleigh from the previous year may be related to the additional arrests. Yet people continue to drive while impaired in Raleigh and elsewhere in North Carolina, sometimes with tragic consequences. And every DWI charge adds a court case to an already crowded district court docket. I wonder: Can we prosecute away the risks posed by impaired drivers?

Increased arrests. Experts agree that increased enforcement—or at least the public perception of increased enforcement—is part of the solution to the impaired driving problem. Most impaired drivers are not arrested the first time they drive while impaired. To the contrary, researchers estimate that a typical impaired driver will drive while impaired 50 to 200 times before being stopped by law enforcement. Once a driver has driven while impaired on numerous occasions without being stopped, he may rationally conclude that the risk of arrest is low. High-visibility enforcement, including well-publicized DWI checkpoints, counter that notion by creating, as one leading researcher put it, [“the perception that police are out there looking for impaired drivers.”](#)

Crowded dockets. Lorrin Freeman, Wake County's newly elected district attorney, [noted that the 2,000 additional DWI cases “still have to go through the same eye of the needle.”](#) meaning that they will appear on the already crowded district court dockets in Wake County. Freeman's predecessor, Ned Mangum, who recently has returned to his previous post as a district court judge, has noted that the courts can process “50,000 speeding tickets faster than it can handle 2,000 impaired driving cases, because [the DWI cases are] so complex and take time.” District Attorney Freeman has said she doesn't favor amending DWI laws, but instead advocates for hiring more prosecutors and judges to handle the cases. Yet, as [a leading report](#) noted nearly a decade ago, arresting and imposing sanctions on everyone who drives while impaired “is not logistically feasible without a massive infusion of additional resources at all levels of the criminal justice system.” National Cooperative Highway Research Program Report 500, Volume 16: A Guide for Reducing Alcohol-Related Collisions (2005) (NCHRP Report).

Affording prosecutors and judges more discretion. Some attorneys contend that DWI cases could be resolved more quickly and effectively if the parties had the ability to plea-bargain. Under current law, prosecutors may not dismiss or reduce charges of impaired driving without explaining orally in open court and entering in writing the specific reasons why they took that action. [G.S. 20-138.4](#). Many construe this requirement as a legislative directive that district attorneys avoid reductions and dismissals in almost all circumstances. Others believe that the public they serve disfavors such leniency. As a result, reductions and dismissals are rare in DWI cases.

That's a good thing, according to national experts, who contend that diversion programs and plea bargains to non-alcohol offenses “undermine the integrity of DWI countermeasure programs, allowing individuals to escape appropriate punishment and preventing states from treating [repeat] offenders more seriously.” NCHRP Report at V-5, V-6.

There likewise is little room for striking a deal when it comes to sentencing for DWI. Prosecutors are required by [G.S.](#)

[20-179](#) to present to the court all grossly aggravating and aggravating factors of which they are aware. These factors largely control the level of punishment to which the defendant is subjected. The sentencing scheme further requires that the punishment imposed accord with a relatively narrow range of options for each sentencing level. Judges have repeatedly--and often notoriously--been sanctioned for departing from this mandatory sentencing scheme. A defendant's inability to plead her case for meaningfully reduced punishment to a judge removes an obvious incentive that might otherwise lead to a guilty plea and a quicker resolution of the case.

The drivers who haven't been caught. Nothing about DWI enforcement efforts to date suggests that the risks of impaired driving can be entirely prosecuted away. Some [94 percent of drivers](#) with a blood alcohol concentration of 0.08 or more who were involved in a fatal crash in 2013 had **no** previously recorded DWI conviction (based on data from the Fatality Analysis Reporting System, which records convictions that occurred up to three years before the date of the crash). Thus, the criminal justice system had no specific opportunity (or at least no recent specific opportunity) to deter their behavior. This is why experts contend that an essential component of any effort to reduce impaired driving must include efforts to dissuade all drivers from engaging in that activity, not simply the ones who previously have been arrested. While some drivers are dissuaded by high-visibility enforcement, such strategies are less likely to affect the behavior of drivers who are alcohol-dependent. (NCHRP Report at III-3).

The NCHRP report recommended four strategies to reduce incidents of DWI by reducing excessive drinking and underage drinking: (1) increase the state excise tax on beer ([NC did this](#) in 2009); (2) require responsible beverage service policies for alcohol servers and retailers (NC has [checked](#) this box); (3) conducting well-publicized checks of alcohol retailers to reduce sales to underage persons ([check](#)); and (4) employing screening and brief interventions in health care settings. North Carolina has the first three bases covered. I don't know whether the health care strategy has been widely adopted.

DWI Task Force. Governor Pat McCrory established in 2013 a [statewide impaired driving task force](#) charged with reviewing existing data, laws, regulations and programs and developing a "plan to provide a comprehensive strategy for preventing and reducing impaired driving behavior." That group has been active, and I expect that that it will report its recommendations to the legislature later this session. The last DWI task force report led to [substantial amendments](#) to the laws governing impaired driving and alcohol sales generally.

Have your say. Do you work in the criminal justice system? In health care? With young people? Let us know what you think about these strategies and others for solving the seemingly intractable problem of DWI.