

**Minnesota Felony
Driving While Impaired
2006 Report to the Legislature**

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EXECUTIVE SUMMARY

This legislatively-mandated report (Minnesota Session Laws 2002, Chapter 220, Article 6, Section 14) examines the implementation and effects of Minnesota's felony driving while impaired (DWI) law enacted on August 1, 2002. Below are the major findings from the study:

Incidence and County Characteristics

- There have been 2,273 felony DWI sentences between August 1, 2002, and June 30, 2005, involving 2,078 offenders.
 - 1,900 (91 percent) have one felony DWI conviction, 163 (8 percent) have two convictions, 13 (1 percent) have three convictions, and two have four convictions.
- After increasing sharply during the first eight months the law was in effect, the growth rate in the number of sentences has tapered off since March 2003 but remained steady, averaging 74 per month.
- March has consistently had the greatest number of felony DWI convictions; the fewest number have occurred in August.
- Hennepin and Ramsey counties have been responsible for more than 25 percent of the felony DWI sentences.
 - The seven metro-area counties have accounted for 44 percent of felony DWI sentences compared to 56 percent for greater Minnesota.

Offender Characteristics

- Felony DWI offenders are more likely to be white males in their 30s who have extensive criminal histories that include numerous misdemeanor, gross misdemeanor, and felony convictions.
- The average criminal history score of incarcerated DWI offenders is nearly twice that of those not sentenced to prison and 18 percent higher than the average criminal history score of adult inmates in general.

Court and Sentencing Characteristics

- Since the inception of the felony DWI law, there have been 123 trials that have been taken to verdict, of which 108 have resulted in a conviction.
- Of the 2,273 felony DWI sentences, 81 percent resulted in a stayed sentence, 16 percent in an executed sentence, and 3 percent in a stay of imposition.
 - The average length of probation given to offenders receiving either a stay of execution or imposition was 75 months, whereas the average jail term was 219 days.
 - The average prison sentence was 43 months for those receiving a stay of execution and 51 months for those receiving an executed sentence.
- A stayed sentence was the result in 96 percent of the cases in which the offender had a criminal history score less than three. Conversely, 59 percent of the cases in which the offender had a criminal history score of three or more resulted in an executed sentence.

- Of the 1,915 cases in which the offender received probation, nine percent (N = 179) have resulted in a revocation.
- A new offense was the most common reason for probation revocation, accounting for 48 percent of the 179 probation violations.
 - Other common reasons for probation revocation include the use of alcohol (42 percent), failure to follow probation rules (38 percent), failure to complete chemical dependency treatment (13 percent), and use of drugs (11 percent).

Corrections

- Of the 2,078 felony DWI offenders, 446 (21 percent) have been admitted to prison as either a new court commitment or probation violator.
 - Forty percent of the 446 felony DWI offenders have already entered a chemical dependency treatment program.
 - Sixty-eight percent of the offenders who have entered a program have either completed treatment or are currently participating.
 - A majority (57 percent) of the incarcerated felony DWI offenders are awaiting placement in a treatment program.
 - Twelve felony DWI offenders (3 percent) have refused treatment.
- Forty-one felony DWI offenders have been placed on either supervised release or intensive supervised release. Nine (22 percent) of these offenders violated the conditions of their release, resulting in an average of an additional 2.7 months in prison for each offender.

INTRODUCTION

Since the 1960s, efforts to promote greater awareness of drunk driving have led to the creation of numerous measures to control it (Jacobs, 1989). Due in large part to federal funding incentives, states have passed a variety of legislative initiatives over the last 35 years that have aimed to reduce the incidence and impact of drunk driving (Hedlund and McCartt, 2002). In Minnesota, for example, some of the more significant DWI legislation includes the enactment of a “per se” standard in 1971¹, administrative license revocation in 1974, an increase in the minimum legal drinking age to 21 in 1986, administrative license plate impoundment in 1990, vehicle forfeiture in 1998, increased penalties for drivers with a high blood alcohol concentration (BAC) in 1998 and, most recently, a reduction in the legal per se threshold from .10 to .08 in 2005 (Cleary and Cox, 2003; Cleary and Shapiro, 2001).

As efforts to control drunk driving increased, particularly during the late 1970s and early 1980s, so did DWI arrest rates for Minnesota and the nation as a whole. Figure 1 shows that Minnesota DWI arrest rates, though below the national average, increased dramatically during the late 1970s and early 1980s, reaching a peak in 1984. Although DWI arrest rates in the state have been on the decline since that time, they have, nevertheless, almost invariably been above the national average.

FIGURE 1. Minnesota and U.S. DWI Arrest Rates, 1975-2004

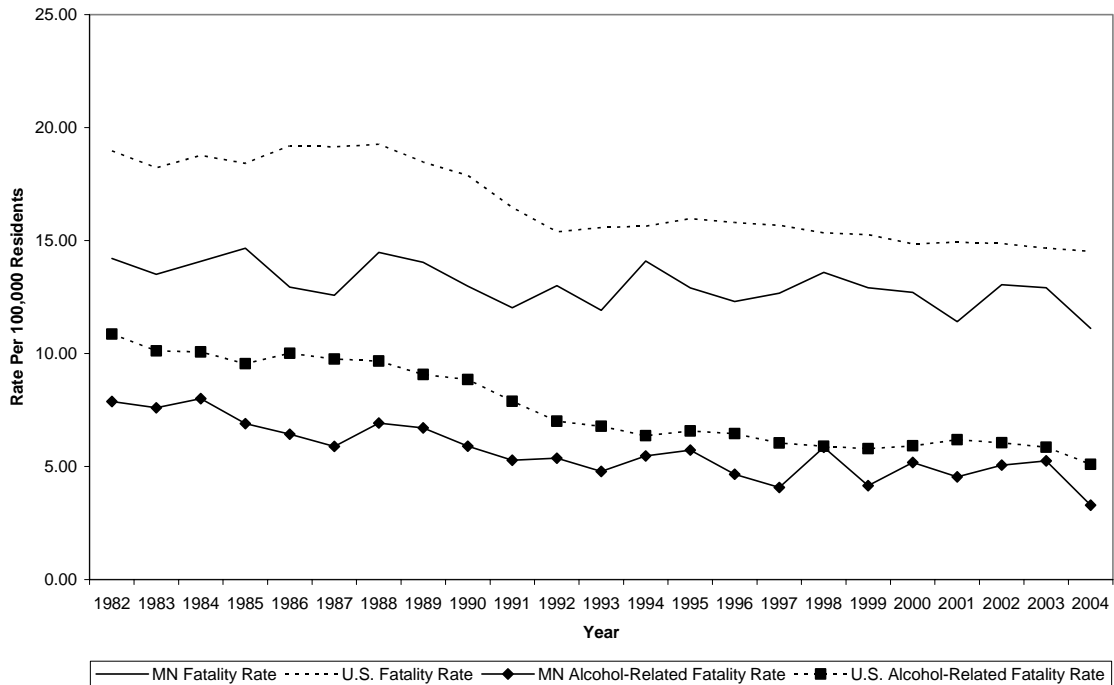


Sources: Federal Bureau of Investigation, *Crime in the United States* (1975-2004); Minnesota Department of Public Safety, *Minnesota Crime Information* (1975-2004); U.S. Census Bureau (2000a, 2004)

¹ Per se laws do not require evidence of impaired driving. Rather, they simply require the driver to have an alcohol concentration that meets or exceeds the legal limit.

Consistent with an increased emphasis on controlling drunk drivers, both the incidence and prevalence of alcohol-related traffic injuries and fatalities have dropped considerably since the early 1980s. From 1982-2004, the number of alcohol-related traffic fatalities in the U.S. declined by more than 30 percent, and the percentage of traffic fatalities involving alcohol dropped by more than 40 percent. In Minnesota, the decrease has not been quite as pronounced, as the number of alcohol-related traffic fatalities has fallen by a little more than 20 percent from 1982-2004. Still, compared to the U.S. in general, Minnesota has consistently had lower alcohol-related traffic fatality rates since 1982 (see Figure 2).

FIGURE 2. Trends in Minnesota and U.S. Traffic Fatality Rates, 1982-2004



Sources: National Highway Traffic Safety Administration, Fatality Analysis Reporting System (1982-2004); U.S. Census Bureau (2000b, 2004)

Despite the long-term decline in alcohol-related traffic fatalities, concern over drunk drivers, especially repeat offenders, persists. As of 2003, the most recent year for which data are available, there were 3.8 million licensed drivers in Minnesota, of whom 11 percent had at least one DWI incident on their record. Of that 11 percent with a DWI, 57 percent had one incident, 23 percent had two incidents, and the remaining 20 percent had three or more incidents. Further, 33 percent of the 32,266 DWI incidents that occurred in Minnesota in 2003 were committed by offenders who had a DWI conviction or implied consent violation on their record within the previous ten years (Minnesota Department of Public Safety, 2005a).

Although these figures suggest that most DWI offenders do not recidivate, those who do are more likely to have slightly higher BAC levels than first-time offenders (Gould and Gould, 1992) and to be involved in an alcohol-related crash (Jones and Lacey, 2000; National Transportation Safety Board, 2000). Research has indicated, for example, that a

DWI conviction increases the likelihood of an alcohol-related crash by about 20 percent. Thus, an offender with four DWI convictions is 60 percent more likely to be involved in an alcohol-related crash than an offender with one conviction. Moreover, a driver with one or more DWI convictions is approximately 40 percent more likely than a driver with no DWI convictions to be involved in a traffic fatality (Jones and Lacey, 2000).

THE FELONY DWI LAW²

In response to continued concern over drivers who repeatedly drink and drive, the Minnesota Legislature amended the state's DWI laws in June 2001 by creating a felony offense for individuals who violate the state's DWI law and have three or more DWIs over the last ten years or have a previous felony DWI.³ The law, which took effect on August 1, 2002, led to the creation of a new severity level (VII) for the felony DWI offense within the Minnesota sentencing guidelines, thereby increasing the number of severity levels from 10 to 11. Crimes that were previously in severity levels VII-X were reclassified and are now found in severity levels VIII-XI.

The felony DWI law stipulates a mandatory sentence that can be no less than three years but no greater than seven years. As a result, the court may stay execution, but not imposition, of the sentence. For offenders who have either a criminal history score greater than two or a previous felony DWI conviction (regardless of the criminal history score), Minnesota sentencing guidelines presume an executed sentence of imprisonment. Offenders who receive an executed sentence are not eligible for any program that allows for release (e.g., Challenge Incarceration Program) until they complete a chemical dependency treatment program. Following their release from prison, offenders are placed on conditional release for an additional five years. If they fail to comply with the conditions of release, their supervised release may be revoked and they may be returned to prison.

Sentencing guidelines presume a stayed sentence for offenders who have a criminal history score less than three. For offenders who receive a stayed sentence, the court must apply the mandatory penalties for non-felony DWI offenses, which may include a jail term, intensive supervised release, long-term alcohol monitoring, and the recommended chemical dependency treatment. Offenders receiving their fourth conviction must serve a minimum of 180 days in jail, while those receiving their fifth conviction must serve a minimum jail sentence of one year. If any conditions are violated, the court may order the stayed sentence to be executed, resulting in incarceration.

THE PRESENT STUDY: DATA AND METHODS

This report describes the implementation and effects of the felony DWI law from August 1, 2002, to June 30, 2005. Data on felony DWI sentences were provided by the

² The description of Minnesota's felony DWI law in this section borrows heavily from the synopsis of the law prepared by Cleary and Cox (2003).

³ Minnesota is currently one of 45 states that have enacted a felony DWI/DUI law. The vast majority of the 45 states with felony DWI/DUI laws generally require three to four convictions within five to ten years for felony classification.

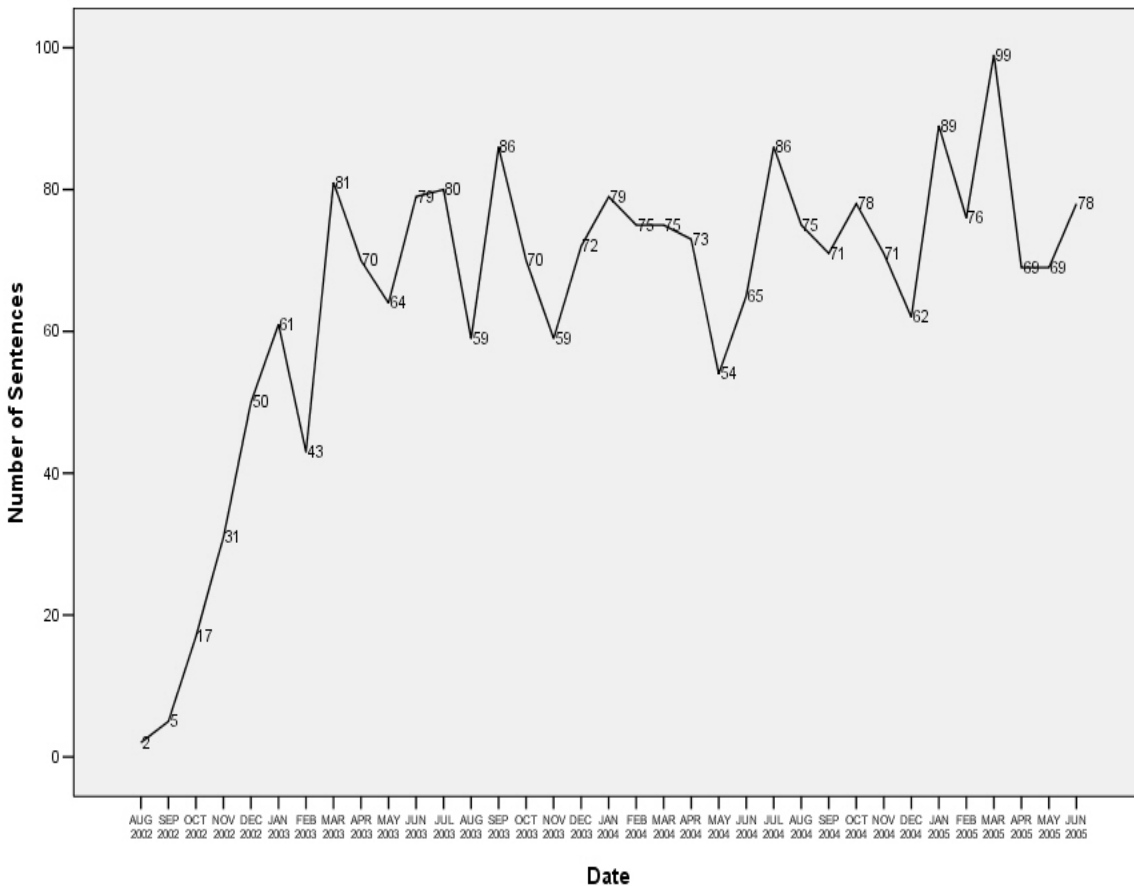
Minnesota Supreme Court. Data on the criminal histories and chemical dependency treatment status of incarcerated felony DWI offenders were derived from the Department of Corrections' Correctional Operations Management System (COMS) database.

Although the legislation governing this report requests information on felony DWI offenders' previous impaired driving and criminal histories, data on prior impaired driving histories were not available for any of the 2,273 sentences. In addition, even though information on the criminal history score, as reported in the sentencing worksheets, was available for all 2,273 sentences, more detailed criminal history data such as the number of previous misdemeanor, gross misdemeanor, and felony convictions were available only for the 446 offenders who have been sentenced to prison.

INCIDENCE AND COUNTY CHARACTERISTICS

Between August 1, 2002, and June 30, 2005, there have been 2,273 felony DWI sentences involving 2,078 offenders. Ninety-one percent of the offenders (N = 1,900) have one felony DWI sentence, eight percent (N = 163) have two sentences, and one percent (N = 15) have three or more sentences.

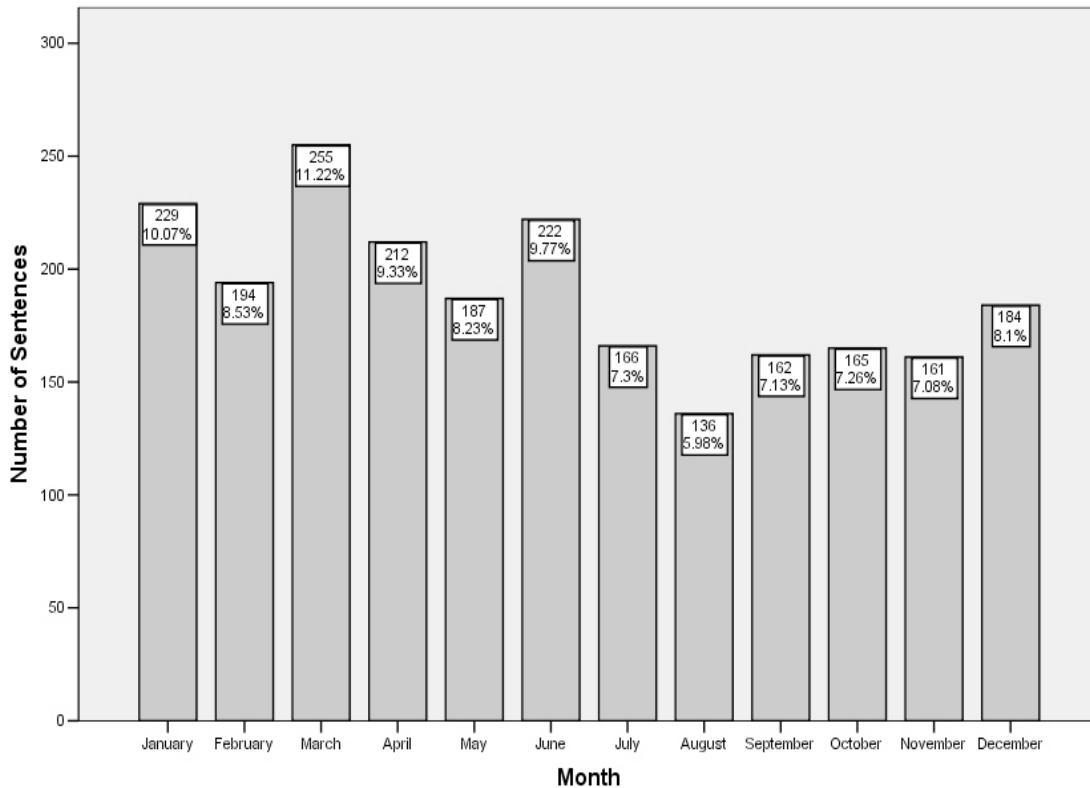
Figure 3. Felony DWI Sentences from August 1, 2002-June 30, 2005
(N=2,273)



As seen in Figure 3, the number of sentences increased steadily from August 2002 through March 2003. Although the growth rate has tapered off since that time, the average number of sentences per month increased slightly during the most recent fiscal year (FY). For example, the monthly average during FY 2004 was 71 sentences. During FY 2005, however, the monthly average was 77 sentences, which represents an eight percent increase.

Figure 4 depicts the monthly distribution of felony DWI sentences from August 1, 2002-June 30, 2005. March is the month when the most convictions have taken place, followed closely by June, January, and April. Conversely, the fewest number of convictions have occurred in August.

Figure 4. Monthly Distribution of Felony DWI Sentences, August 1, 2002-June 30, 2005
(N=2,273)



As shown in Table 1, felony DWI convictions are more likely to take place in Minnesota’s most populous counties. For example, the state’s two most populous counties—Hennepin and Ramsey—have accounted for 27 percent of the felony DWI sentences. Further, half of the felony DWI sentences have occurred in just seven of the state’s 87 counties.

Table 1. Felony DWI Sentences by County

<i>County</i>	<i>Number</i>	<i>Percent</i>
Hennepin	406	17.9
Ramsey	195	8.6
Dakota	168	7.4
St. Louis	120	5.3
Anoka	112	4.9
Clay	74	3.2
Washington	63	2.8
Olmsted	57	2.5
Remaining Counties	1,078	47.4
Total	2,273	100.0

Although the seven metro-area counties (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington) contain 54 percent of the state's population, they were responsible for only 44 percent of the felony DWI sentences (see Table 2). Greater Minnesota, on the other hand, accounted for 56 percent of the felony DWI sentences, which is 1.26 times its percentage (44 percent) of the state's population (U.S. Census Bureau, 2000a).

Table 2. Felony DWI Sentences Among Metro and Non-Metro Counties

<i>County</i>	<i>Number</i>	<i>Percent</i>	<i>Percent of Population</i>
Metro Counties	995	43.8	55.7
Non-Metro Counties	1,278	56.2	44.3
Total	2,273	100.0	100.0

Source: U.S. Census Bureau (2000a)

DEMOGRAPHIC CHARACTERISTICS

Table 3 shows the demographic characteristics of the offenders who have been convicted of a felony DWI since August 1, 2002. Consistent with previous research on repeat drunk drivers (Jones and Lacey, 2000), felony DWI offenders in Minnesota are typically white males in their 30s, with an average age of 37.

Table 3. Demographic Characteristics of Felony DWI Offenders

<i>Sex</i>	<i>Number</i>	<i>Percent</i>	<i>Race</i>	<i>Number</i>	<i>Percent</i>	<i>Age</i>	<i>Number</i>	<i>Percent</i>
Male	2,078	91.4	White	1,747	76.9	Under 30	550	24.2
Female	195	8.6	African American	202	8.9	30-39	864	38.0
			American Indian	259	11.4	40-49	669	29.4
			Asian	14	0.6	50-59	147	6.5
			Other	51	2.2	60 and over	43	1.9
Total	2,273	100.0		2,273	100.0		2,273	100.0

CRIMINAL HISTORY

As noted earlier, although criminal history score data, as reported by the sentencing worksheets, were available for nearly all 2,273 sentences, more detailed information on prior misdemeanor, gross misdemeanor and felony convictions was available only for the 446 offenders who have been incarcerated. Table 4 indicates that the majority (78 percent) of offenders with a felony DWI sentence had a criminal history score less than three, which, per sentencing guidelines, calls for a stayed sentence in the absence of a previous felony DWI conviction.⁴

The results further show that virtually all of the 446 incarcerated offenders have been convicted of a misdemeanor, gross misdemeanor, or felony. For example, 79 percent have a prior misdemeanor conviction, 86 percent have a previous gross misdemeanor conviction, and 75 percent have a prior felony conviction. The criminal histories for these offenders are generally more extensive than for the other felony DWI offenders. Indeed, the average criminal history score for the incarcerated offenders was 3.21, which is nearly double the overall average score of 1.64.

Table 4. Criminal Histories of Felony DWI Offenders

	<i>Misdemeanor</i>	<i>Gross Misdemeanor</i>	<i>Felony</i>	<i>Criminal History Score</i>
<u>Average</u>	4.03	3.48	2.48	1.64
<u>Number</u>	<u>Percent</u>	<u>Percent</u>	<u>Percent</u>	<u>Percent</u>
0	20.6	13.7	24.7	25.3
1	12.6	11.7	22.6	34.8
2	10.3	16.6	14.1	17.4
3	13.0	18.4	13.2	8.8
4	8.1	15.5	8.1	5.6
5	8.3	5.4	5.4	3.2
6 and over	27.1	18.7	11.9	3.9
Unknown				1.0
N	446	446	446	2,273

The average criminal history score of imprisoned felony DWI offenders is also greater than that of the general inmate population. For example, criminal history score data were available on 4,011 offenders who, as of July 1, 2005, were incarcerated in a Minnesota correctional facility. The average criminal history score for these offenders was 2.72, which is 15 percent less than the average score of the incarcerated felony DWI offenders.

⁴ An offender's criminal history score is based on both the number and severity of criminal offense convictions. Predicate offenses are not included in the criminal history score calculation for felony DWI offenders. That is, offenders without a prior felony DWI conviction need to have at least three misdemeanor or gross misdemeanor DWI violations on their record within the last 10 years to be able to be charged for a felony DWI. These predicate offenses are excluded, though, from the computation of the criminal history score. However, a felony DWI is counted as part of the criminal history score for those with a prior felony DWI.

FELONY DWI TRIALS

Since August 1, 2002, there have been 123 felony DWI trials that have been taken to a verdict, which amounts to an average of about three per month. Of the 123 cases, 108 (88 percent) have resulted in a conviction. Of the 15 non-convictions, six (10 percent) ended with an acquittal, and nine (two percent) with a dismissal.

SENTENCING CHARACTERISTICS

As indicated below in Table 5, 81 percent of the 2,273 convictions resulted in a stay of execution, another 16 percent in an executed sentence, and the remaining three percent in a stay of imposition. All of the stay of execution and stay of imposition cases (N = 1,915) were given probation, which averaged 75 months. In addition, 96 percent of the stay of execution and stay of imposition cases (N = 1,836) resulted in jail time, which averaged 228 days. Of the 2,207 cases (97 percent) that received a pronounced prison sentence, those with a stay of execution had an average sentence of 42.6 months, while those with an executed sentence had an average sentence of 51.1 months.

Table 5. Sentencing of Felony DWI Offenders

	<i>Stay of Imposition</i>	<i>Stay of Execution</i>	<i>Executed Sentence</i>	<i>Total</i>
Probation	66 (100%) ^a	1,849 (100%) ^a	358 (100%) ^a	2,273 (100%) ^a
Average Length of Probation	74.6 months	75.1 months	N/A	75.0 months
Jail	64 (97.0%) ^a	1,772 (96 %) ^a	N/A	1,836 (80.8%) ^a
Average Jail Term	219.1 days	227.9 days	N/A	227.6 days
Pronounced Prison Sentence	N/A	1,849 (100%) ^a	358 (100%) ^a	2,207 (97.1%) ^a
Average Sentence Length	N/A	42.6 months	51.1 months	44.0 months
Total	66 (2.9%) ^b	1,849 (81.3%) ^b	358 (15.8%) ^b	2,273

^a Column percentage

^b Row percentage

In the previous section on criminal history, it was shown that 78 percent (N = 1,761) of the 2,273 cases had a criminal history score of less than three. According to the sentencing guidelines, these cases should result in a stayed sentence so long as the offender does not have a prior felony DWI conviction. Only four percent (N = 70) of the cases with a criminal history score of less than three were given an executed sentence. As for the 489 cases that had a criminal history score of three or more, which is a presumptive commit to prison, 199 (41 percent) did not receive an executed sentence. Rather, most of these cases were stays of execution (195 cases) while the rest (4 cases) were stays of imposition.

PROBATION REVOCATIONS

From June 1, 2002-June 30, 2005, there were 1,915 cases that received a stayed sentence that included probation. Of these cases, 179 (nine percent) have already resulted in a probation revocation. One hundred seventy-one (96 percent) of these cases initially

received a stay of execution, whereas the remaining eight cases (four percent) were given a stay of imposition.

Table 6. Probation Revocation Reasons

<i>Reason</i>	<i>Number</i>	<i>Percent of Total Probation Revocations</i>
New Offense	86	48.0
Use of Alcohol	76	42.4
Failed General Probation Rules	59	33.0
Failed Treatment	23	12.8
Use of Drugs	19	10.6
Refused Treatment	10	5.6
Failed Repeat DWI Probation Rules/Guidelines	9	5.0

Note: Because an offender can have his or her probation revoked for multiple reasons, a total of 282 reasons were identified for the 179 probation violators. The percentages presented in this table are based on the total number of probation revocations (N = 179).

Although offenders can have their probation revoked for multiple reasons, the results in Table 6 indicate that nearly half of the probation revocations involved the commission of a new criminal offense. The use of alcohol was cited as a reason for revocation in 42 percent of the cases, whereas the use of drugs was noted in another 11 percent. Failure to follow probation rules was identified as a reason for 38 percent of the cases. Finally, the refusal of, or failure to complete, chemical dependency treatment was cited as a reason for revocation in 18 percent of the cases.

CHEMICAL DEPENDENCY TREATMENT

As discussed above, offenders sentenced to prison must successfully complete chemical dependency treatment to be eligible for programs that allow for release (e.g., Challenge Incarceration Program). Consistent with previous research on repeat drunk drivers (Jones and Lacey, 2000), most (83 percent) of the 446 incarcerated offenders have been diagnosed as alcohol dependent. Of the 368 offenders diagnosed as alcohol dependent, 41 percent (N = 151) abuse or are also dependent on another substance. The remainder of the incarcerated offenders either abuse alcohol (12 percent), abuse alcohol and another substance (4 percent), or are dependent on another substance (1 percent).

Table 7. Chemical Dependency Treatment Status

<i>Treatment Status</i>	<i>Number</i>	<i>Percent</i>
Awaiting Placement	253	56.7
Entered Treatment	179	40.1
Refused Treatment	12	2.7
Other	2	0.5
Total	446	100.0

As seen in Table 7, 179 (40 percent) have already entered treatment while the remainder are either awaiting placement (57 percent) or have refused treatment (3 percent).⁵ More than two-thirds of the offenders who have entered treatment have either completed the program (24 percent) or are currently participating (44 percent). Conversely, 32 percent have either quit or been terminated for disciplinary reasons (see Table 8).

Table 8. Chemical Dependency Discharge Status

<i>Discharge Status</i>	<i>Number</i>	<i>Percent</i>
Currently Participating	78	43.6
Completed Treatment	43	24.0
Quit	29	16.2
Disciplinary Termination	29	16.2
Total	179	100.0

SUPERVISED RELEASE

Of the 2,078 felony DWI offenders in this study, 446 (21 percent) have received an executed sentence, which has averaged 48.4 months.⁶ Given that this report is limited to examining the first 35 months the felony DWI law has been in effect, the vast majority of felony DWI offenders who have received an executed sentence are still incarcerated. Accordingly, there have been 38 offenders who have been placed on supervised release and another three who have been placed on intensive supervised release. Nine (22 percent) of these offenders (seven supervised releasees and two intensive supervised releasees) have violated the conditions of their release, resulting in an average of 2.7 additional months of incarceration.

PER DIEM

The legislation governing this report requests information on the costs associated with the incarceration and treatment of felony DWI offenders. Although per diem data disaggregated by either governing offense or treatment type are unavailable and, thus, not presented here, per diem information is available on adult offenders in general. In the three fiscal years (2003, 2004, and 2005) since the inception of the felony DWI law, the average adult per diem was \$80.52 (FY 2003), \$76.80 (FY 2004), and \$76.43 (FY 2005).

⁵ Two offenders, designated as “Other” in Table 7, did not have a sufficient amount of time to enter treatment because one had his sentence vacated by the court while the other died shortly after he was admitted to prison.

⁶ Although 48 months is the average sentence, few, if any, of the incarcerated felony DWI offenders will actually serve this entire time in prison. When offenders are committed to prison for crimes committed after August 1, 1993, they receive sentences that consist of two parts: a minimum prison term equal to two-thirds of the total executed sentence and a supervised release term equal to the remaining one-third. If offenders violate disciplinary rules while imprisoned or violate the conditions of supervised release, the time they serve in prison may be extended. Therefore, the incarcerated felony DWI offenders should serve, on average, 32 months in prison (two-thirds of 48 months) so long as they do not incur any disciplinary or release violations.

CONCLUSION

This report has examined the implementation and effects of the felony DWI law during the first 35 months of its existence. Following an early ramp-up period, convictions have occurred at a rate of 74 per month since the beginning of March 2003. Relatively few cases have gone to trial, and those that have tend to end in a conviction.

The results presented here indicate that felony DWI offenders are typically white males in their 30s who have an extensive criminal history, even more so than non-felony DWI offenders. The sentencing of felony DWI cases has generally followed the guidelines. Offenders with lower criminal history scores (i.e., less than three) tend to receive a stay of execution and are sentenced to probation and a jail term. Offenders with higher criminal history scores (i.e., three or more), on the other hand, are more often than not given an executed sentence.

The findings in this report further reveal that when felony DWI offenders have their probation revoked, it is often for a new criminal offense or the use of alcohol or drugs. For the offenders who have been admitted to prison as either a new court commitment or a probation violator, alcohol dependency is, not surprisingly, the most common diagnosis. Although the majority of incarcerated offenders are awaiting placement in a program, the percentage of offenders (40 percent) who had entered treatment at the end of FY 2005 is higher than that at the end of FY 2004 (34 percent). Finally, even though relatively few felony DWI offenders have been placed on either supervised or intensive supervised release, the rate of return has, thus far, been relatively modest at 22 percent.

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