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# **Evaluation of the Mandatory Minimum Sentence for Habitual Drunken Drivers**

## **A Report to the Minnesota Legislature**

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## Executive Summary

**T**he 1988 legislature increased the penalties for persons who have been convicted of drunken driving more than once. (Statutes 169.121, Subd. 3a.) Ordinarily, a jail sentence of 30 days or more is now required in these cases. The legislature also asked that the State Planning Agency evaluate the implementation of the minimum sentencing law. This report fulfills that obligation.

As a result of the law, habitual drunken drivers are now more likely to go to jail and to serve longer terms in jail. The most noticeable effect of the law, however, is that repeat offenders are less likely to get jail sentences that are shorter than

30 days. It was already the case that most offenders received jail terms.

The minimum sentence law has had only a modest effect on average sentence lengths for repeat offenders, because the average jail sentence was already significantly longer than 30 days. As a result of the law, average sentence length increased about ten percent in 1988, from 58 days to 64 days.

Some counties have been slower than others in implementing the law. So the final impact of the law may yet be greater than this analysis shows.

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# Evaluation of the Mandatory Minimum Sentence for Habitual Drunken Drivers

## A Report to the Minnesota Legislature

The 1988 legislature increased the penalties for persons who have been convicted of drunken driving or a related offense more than once. (Statutes 169.121 Subd. 3a.) Upon the second conviction within five years, or the third conviction within ten years, the offender must be sentenced to a jail term of 30 days or more, without a stay of the sentence. Alternatively, eight hours of community service can be substituted for each day of jail time reduced from a 30-day sentence. If there are mitigating circumstances, however, the prosecutor can ask the court to ignore the minimum sentence provision. The mandatory minimum sentence applies to crimes committed on or after August 1, 1988.

The law also specified that "the state planning agency shall monitor the implementation and use of the mandatory minimum sentencing provisions contained in section 169.121, subdivision 3a, and shall report to the legislature by January 1, 1990, with its findings and recommendations, if any." (Statutes 169.121 Sec. 2.) This report is the fulfillment of that mandate.

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### Possible Effects of the Statute

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One might evaluate three provisions of the mandatory minimum statute: (1) the use of the minimum jail term; (2) the use of community service in lieu of jail time; and (3) the exception for mitigating circumstances. In evaluating the law's implementation, however, one must also consider whether other aspects of the sentencing process may have been affected inadvertently. For example, was there a reduction in fines as a result of the increase in jail time?

Of the three provisions of the statute, only the use of the 30-day minimum jail term is subject to statistical analysis at this time. The state's criminal justice information systems are not adequate for an analysis of the use of community service alternatives or of requests by a prosecutor for a sentence reduction. Fortunately, the 30-day minimum sentence, which we can evaluate, is the key provision of the statute.

In addition to the 30-day minimum provision, we have adequate data to examine other dimensions of the sentencing process that are subject to change. These include:

- average lengths of jail sentences for DWI offenders;
- average fines for DWI offenders;
- average length of stayed DWI sentences;
- proportions of DWI offenders sentenced to jail;
- average probation time for DWI offenders;
- variations in DWI sentencing by county; and
- changes in sentencing for other crimes.

More generally, we are concerned with the impact that the mandatory minimum sentence might have had on jail crowding. Did the change in the law substantially increase the amount of jail space taken up by convicted drunken drivers?

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### The Deterrence Issue

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This evaluation does not address the fundamental issue of whether the mandatory jail sentence has a deterrent effect on drunken drivers. The deterrence question is beyond the scope of the legislative mandate for this report. The possible deterrent effect of jail sentences on repeat drunken driving convictions was studied

in a report by the State Planning Agency, Sentencing Effectiveness in Preventing Crime (1988). That analysis found no difference after three years in the likelihood of a repeat drunken driving conviction between those habitual drunken drivers who were previously sent to jail and those not sent to jail, nor between those who had served short jail sentences and those with longer sentences.

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## Data Issues

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**B**ecause the law has to do with repeat or "habitual" drunken drivers, we need to know which defendants are repeat offenders. The data available for this analysis from the state's criminal history file does not include information on all of the previous drunken driving convictions of the defendants. Ordinarily, first convictions for drunken driving are misdemeanors, which are not recorded in the state's criminal history file--the source of our data. The state file contains records only for the more serious levels of crimes: felonies and gross misdemeanors.

When a person is convicted of a drunken driving violation or related offense a second or subsequent time, the level of the crime becomes a gross misdemeanor. Therefore, we know that virtually everyone in the state's criminal history file with a record of a gross misdemeanor conviction for a drunken driving or related offense is a repeat offender. (Related offenses include, for example, drunken driving after a previous license revocation for drunken driving or failure to take an alcohol test if caught drunken driving after a revocation--Statutes 169.129.)

The missing information about the criminal record is whether the previous DWI offense was within a specific period of time, namely, five or ten years. So we may expect that not everyone with a gross misdemeanor DWI conviction for an offense after August 1, 1988 is subject to the mandatory sentence. But our data will still tell us whether there were significant changes in sentencing practices as a result of the change in the law.

Another data problem is caused by the time it takes from an arrest to court disposition and from court disposition to the recording of that disposition in the state's criminal history file. The total elapsed time might often be six months or more. As a result, a change in sentencing practices that might have occurred in August 1988 may not be observable in the data until the summer of 1989.

For this analysis, data was extracted from the state's criminal history file in October 1989. To limit problems of incomplete data, however, most of the analysis is restricted to DWI arrests made before the end of 1988. Data on cases that began in 1989 is relatively incomplete because of delays in case processing and in the reporting of dispositions for cases that were completed.

Despite these data precautions, the records of DWI convictions in the state's criminal history file remain incomplete because of missing fingerprint identification. If the arresting law enforcement agency does not send a defendant's fingerprint card to the Bureau of Criminal Apprehension (BCA), which maintains the criminal history file, that defendant's record of conviction will be dropped from the file. An analysis by the BCA of missing fingerprint cards showed that a significant but unknown proportion of fingerprint cards are missing.

Because the analysis is designed to compare differences in sentencing before and after August 1, 1988, the fact that some cases are missing is of little consequence. Although we might be in doubt as to the total number of DWI convictions in a given time period, we can still analyze changes in sentencing patterns without regard to the total. That is, the database is at least a very large sample out of the total number of convictions. And because the fingerprint problem has existed for some years, we can safely assume that there was no significant change in the processing of fingerprint cards on or about August 1, 1988 that would confound the analysis of sentencing changes.

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## Method of the Analysis

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**T**he plan of the analysis is to compare jail sentences in drunken driving cases that

began before August 1, 1988 with jail sentences in cases that began on or after that date. If the mandatory sentencing provision is being followed by judges, we should see an increase in 30-day jail sentences in cases beginning on or after August 1, 1988.

In criminal law, the defendant is subject to the law as it was when the crime was committed. The date of the DWI offense was not available for this analysis, but one can use the date of arrest in drunken driving cases as the indicator of what the law was at the time the crime was committed. (It is usually the case for drunken driving that the offense is immediately prior to the arrest.) If two persons were sentenced for repeat drunken driving after August 1, 1989 but one had been arrested before that date and the other after that date, the mandatory minimum sentence would apply only to the second case.

To do the "before/after" comparison, we will compare the sentencing in DWI cases across three time intervals: (1) August 1987 to December 1987; (2) January 1988 to July 1988; and (3) August 1988 to December 1988. The first two of these time intervals are in the "before" period; the third immediately follows the change in the law. As discussed above, 1989 data is too incomplete to use.

To assess the effect of the minimum sentencing law, it might be sufficient to compare sentencing in the second and third time intervals. But it sometimes happens that there is a seasonality to crime, in which case it becomes necessary to compare events over the same calendar months. With the first of the two "before" intervals, it is possible to compare DWI cases for the same calendar months, namely, the last five months of 1987 and the last five months of 1988.

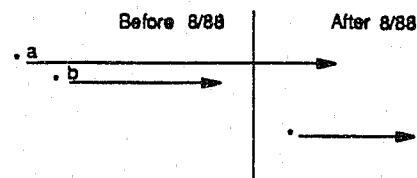
Because of the problems with less complete data in the "after" period, the analysis will use two methods of selecting cases. First, the comparison will include all DWI convictions where the arrest date was in one of the three time intervals. This will prove to be the main test of the law's implementation. It is possible, however, that long delays in the processing of some DWI cases might cause a difference between "before" and "after" cases. Long delayed cases might be missing from the "after" group, and if long delayed cases are different from other cases, this might itself be a cause of sentencing differences

in the "before" and "after" periods. So to confirm that observed changes in sentencing are not the result of court delays, the analysis also compared those "before" and "after" cases that were completed within 90 days of arrest.

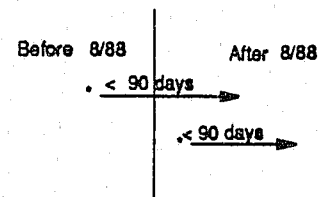
Another possible complication is that all DWI sentencing changed after August 1, 1988 regardless of when the arrest took place. That is, we have to be certain that if a change is observed it is unique to those cases that fall under the new law. To check on this, the comparison of 90-day (or less) cases was further restricted to those cases where the sentencing occurred in the "after" period. That is, we compared cases that began before August 1 and ended after August 1 with cases that began and ended after August 1, but all of which were concluded within 90 days. The alternative methods of case selection are depicted in the accompanying illustration.

Cases are Compared by Date of Arrest: Before or After 8/88

First Method of Case Selection



Second Method of Case Selection



\* date of arrest      ———> conviction

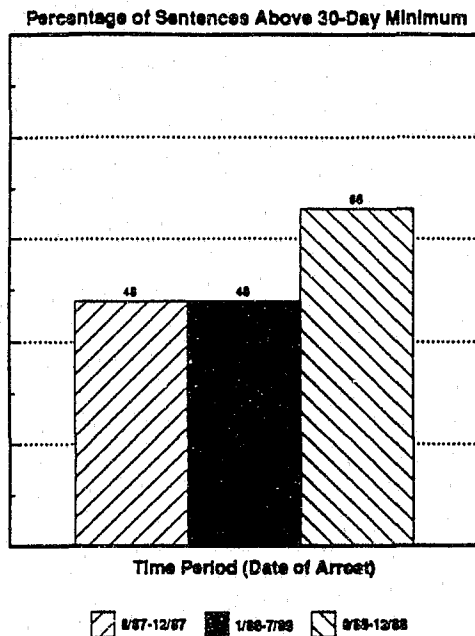
## Results: Jail Sentences

The selection of cases by the first method shows 1,619 convictions in the first "before" time interval, 2,300 in the second "before" interval, and 988 in the "after" interval of 1988. The first and third intervals cover the same calendar months, so one would expect the totals to be closer to equality. Because there are fewer cases in the "after" period, one must consider whether this is the result of incomplete

data reporting or whether the change in the law might have caused fewer cases to be prosecuted. We will return to this issue, but first we can examine sentencing changes with the understanding that the number of cases does constitute a large sample of convictions.

**DISPLAY 1.**

**The Percentage of DWI Convictions with Jail Sentences of 30 Days or More Increased After the Minimum Sentence Law Became Effective (8/88)**



Our primary concern is whether jail sentences of 30 days or more became more likely after the law changed. The analysis shows that the percentage of gross misdemeanor DWI convictions with jail sentences at or above the 30-day minimum increased from 48 percent (1,110/2,287) to 66 percent (649/985) as a result of the change in the law. (The numbers of convictions, in the denominator, are slightly less than the totals above because of some missing data on sentences.) The analysis also shows that there was no seasonal effect in convictions for DWI cases. Both of the "before" time intervals had the same likelihood of 30-day (or more) jail sentences. These results are presented in Display 1.

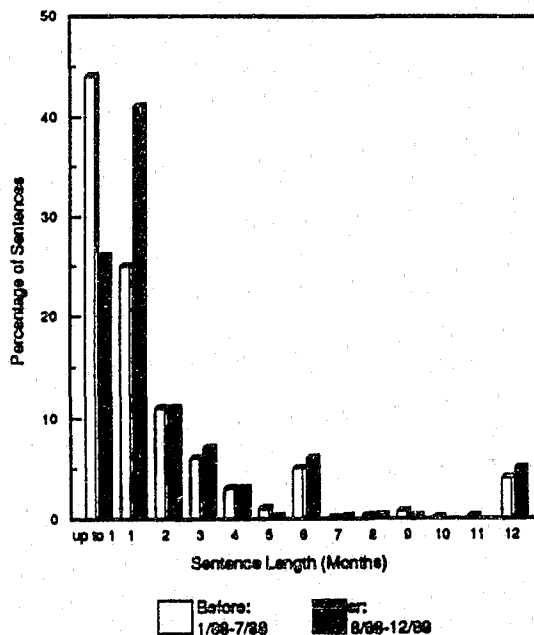
As shown in Display 2, the principal effect of the law was to shift a substantial proportion of jail sentences from the category of less than 30 days to be 30 days or more. For arrests in the first seven months of 1988, 44 percent of jail

sentences (866/1976) were in the range of 1 to 29 days, and 25 percent (500/1976) in the range of 30 to 59 days. In the "after" period, by contrast, the percentage of jail sentences in the range of 1 to 29 days dropped from 44 percent to 26 percent (230/879), while the percentage in the range of 30 to 59 days increased from 25 percent to 41 percent (362/879). There were slight increases, as well, in the proportion of cases with jail sentences of two or more months. (All jail sentences are limited, by law, to one year or less.)

Overall, the average length of a jail sentence in a gross misdemeanor DWI conviction increased from 58 days in the first seven months of 1988 to 64 days in the "after" period of 1988--a 10 percent increase. This data is shown in Display 3. One can also observe, however, that the average jail sentence greatly exceeds the 30-day minimum, and that this was already the case before the law went into effect. This shows again that the result of the law was to bring the shorter sentences up to the minimum rather than to move all DWI sentences to the minimum.

**DISPLAY 2.**

**The Length of Jail Sentences Increased After the Implementation of the Mandatory Minimum 30-Day Sentence in DWI Cases**



Time interval is by date of arrest. Sentence length truncated to whole months.



### DISPLAY 3.

#### A Comparison of Sentencing In Gross Misdemeanor DWI Cases Before and After the Mandatory 30-Day Minimum Jail Time

	Before 8/87-12/87	Before 1/88-7/88	After 8/88-12/88
Avg. jail days	57	58	64
Avg. probation days	640	643	615
Avg. stayed days	244	246	231
Percent jail	87	88	89
Avg. fine dollars	871	890	814
Convictions	1819	2,300	988 *

Time Interval by date of arrest.

\*Total may reflect incomplete reporting.

The increase in length of jail sentences was accompanied by a small increase in the proportion of defendants sentenced to jail instead of probation without jail (Display 3.) In the "before" period of 1988, 86 percent of convicted defendants (1976/2300) went to jail. This rate increased to 89 percent (879/988) in the "after" period. These findings show that most repeat drunken drivers are given jail time on conviction, and that the principal effect of the law was to lengthen jail sentences rather than to send more people to jail.

The analysis was repeated with the second method of case selection, namely, using cases that were completed in 90 days or less and with sentencing after August 1, 1988. The narrow time constraint gives a sharp focus to the analysis at the point in time when the law changed. The results show an increase in jail sentencing, just as with the other method of case selection. Because the findings are essentially the same as previously discussed, however, we will not report them in detail.

### Results: Non-Jail Sentencing

The increase in jail sentences was partially offset by changes in other sentencing dimensions. As Display 3 indicates, there were decreases in average length of probation times, average length of stayed sentences, and average fines. Presumably, judges may have been inclined to lessen sentences on these dimensions while they lengthened jail terms.

### Change in Total Convictions

As discussed above, the data included fewer cases in the "after" period of 1988 than one might have anticipated given the numbers in the corresponding months of 1987. Inspection of the number of convictions for each month from August 1988 through mid-1989 shows a steady decline in convictions. This suggests that delay in data reporting is responsible for the apparent decline in convictions.

As a further check on the cause of the monthly decline in DWI convictions, comparisons were made between DWI convictions and conviction for felony theft and auto theft. These last two types of crime were chosen because they have similar types of sentences to drunken driving cases, that is, mainly jail sentences. (There are too few gross misdemeanor offenses of other types of crimes than DWI to do a comparison strictly among gross misdemeanors.)

A statistical test (Kolmogorov-Smirnov) indicated that there was no difference between the distribution of convictions for these three types of crimes over the "after" period from 1988 through mid-1989. This result implies that the monthly decrease in DWI convictions was caused by the same factors that caused an apparent monthly decrease in convictions for the other types of crimes, and not a result of a change in the DWI law. In other words, the fall-off in conviction totals seems to be the result of delayed data reporting, which affects the data on various crimes, and is not unique to drunken driving. This conclusion can be checked in the future when a more complete database is available for 1989.

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## County Variation

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**A**lthough the state as a whole showed a strong increase in jail sentences after the law was implemented, not all counties fit the state pattern. A comparison was made of counties in the "after" 1988 period. Overall, 74% of persons sentenced to jail (649/879) got sentences of 30 days or more. Among the larger counties, several were well above the state average in jail sentences of 30 days or more: Anoka (94%), Clay (86%), Crow Wing (96%), and St. Louis (96%). At the lower end, below the state average, were Dakota (44%), Hennepin (57%), and Winona (41%).

It might have been that some counties were slower to implement the law than others, which would account for some of the county variation. To check on this possibility, the previous analysis was repeated for cases that began in 1989. Because of incomplete reporting, only 131 cases were available for the 1989 analysis. Nevertheless, the results show that the state average of jail sentences of 30 days or more increased to about 81% (106/131). Hennepin County showed an increase to 79% (41/52). Given the limitations of a relatively small sample of cases, it appears that jail sentences continued to lengthen in 1989 as implementation of the law became more uniform around the state. Therefore the eventual impact of the law may be greater than the findings indicated by this report.

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## County Survey Responses

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**I**n March 1989, the State Planning Agency conducted a survey of county court service directors. The results of the survey were previously described in an agency document, "Existing Sentencing Alternatives in Minnesota

Counties--For the Subcommittee on Facility Assessment, House Judiciary." One of the questions asked in the survey was whether the county had been able to implement the mandatory minimum sentence for DWI offenders and whether there had been problems in implementation.

Of the 26 counties that responded (30% of the state's counties), 12 reported that they had implemented the law "at great expense; strained"; 10 reported that they had implemented the law with "no problem; or already doing this"; 3 reported not implementing the law; and 1 did not know.

Several respondents to the survey cited problems with jail capacity in their county or problems with arranging community service as an alternative to the jail sentence. In a separate survey question, 13 of the 26 respondents indicated that an expansion of community service was not a viable option in their county.

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## Summary

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**T**his analysis leads to the conclusion that the courts have implemented the mandatory minimum jail sentence to a substantial degree. As a result of the law and its implementation by the courts, habitual drunken drivers are more likely to go to jail, and those going to jail are serving longer jail terms. The greatest impact has been that relatively fewer defendants now receive jail terms shorter than one month. Average jail sentences increased by about ten percent, from 58 days to 64 days, in the last five months of 1988, after the law went into effect. It appears that some counties have been slower to implement the law than others, so there may yet be a further increase in jail sanctions for drunken drivers than reported here. In some counties, the implementation caused a strain on jail resources.