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Policy Analysis of Impaired Driving Laws in Nebraska

Jim P. Stimpson and Kelly Shaw-Sutherland

SUMMARY

In Nebraska, motor vehicle crashes are the leading cause of injury death, and the second leading cause of injury-related hospitalization. More than a fourth of all motor vehicle deaths in Nebraska involved at least one alcohol-impaired driver. This brief provides a description of Nebraska alcohol-related statutes and regulations as of January 2011, and impaired driving policy recommendations based on the Nebraska Strategic Highway Safety Plan and recommendations of the Centers for Disease Control and Prevention.

Overview of the Problem

In Nebraska, motor vehicle crashes are the leading cause of injury death, and the second leading cause of injury-related hospitalization.¹ Young drivers have the greatest likelihood of being involved in an alcohol-related crash, and motor vehicle crashes are the leading cause of injury death for Nebraska's children, and the fourth leading cause of injury-related hospital visits.² More than a fourth of all motor vehicle deaths in Nebraska involved at least one alcohol-impaired driver.¹

The research indicates that attempts to solve the problem of impaired driving should carefully consider options at various levels of prevention.

Primary prevention efforts focus on reducing drinking levels, particularly on preventing persons from getting drunk in public, and have the strongest relationship with preventing impaired driving behavior. The focus of primary prevention efforts is on changing community norms about drinking by:

- Reducing consumption of alcohol through excise taxes
- Reducing retail availability of alcohol
- Monitoring alcohol serving and sales practices

Secondary prevention efforts focus on reducing the likelihood that a person who is intoxicated drives a vehicle. The research indicates this effort is less effective than primary prevention efforts because the person is already intoxicated. The focus of secondary prevention efforts is on changing community norms about drinking and driving by:

- Increasing the perceived risk of driving under the influence (DUI) enforcement
- Providing drug and alcohol treatment
- Providing alternative means of transportation home such as public transit, designated drivers, or free cab rides

Tertiary prevention efforts focus on persons who are driving while intoxicated, which research shows has the least impact on preventing alcohol-related crashes. Tertiary prevention efforts focus on:

- Arresting and punishing offenders

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Exhibit 1. DUI Policies by Level of Prevention in Nebraska

Level of Prevention	Policy	Nebraska Law?
Primary	Price Control	Yes
	Retail Availability	Yes
	Alcohol Serving & Sales Practices	Yes
	Graduated Drivers Licensing	Yes
	Primary Seat Belt Laws	Yes
Secondary	Lower Blood Alcohol Content Limits	Yes
	Zero-Tolerance Laws	Yes
	Open Container Laws	Yes
	Ignition Locks	Yes
	Sobriety Checkpoints	Yes
Tertiary	Tiered Penalty Structure (DUI offenses)	Yes
	Tiered Administrative Penalty Structure (SIP offenses)	No
	Tiered Criminal Penalty Structure (SIP offenses)	No
	"Intoxication" Clearly Defined	Yes

Current Nebraska statutes cover driving under the influence/driving while intoxicated (DUI/DWI), open containers, state sales to intoxicated people (SIP), sobriety checkpoints, and underage drinking. Exhibit 2 provides a description of Nebraska alcohol-related statutes and regulations as of January 2011.

Exhibit 2. Nebraska Alcohol-Related Statutes and Regulations

Policy/Law	Statutory/Regulatory Requirements ^{a, b, c,}	State Statutes ^{a, b, d}
Driving Under the Influence/ Driving While Intoxicated (DUI/DWI)	<ul style="list-style-type: none"> The legal blood alcohol content (BAC) for adult operators of noncommercial motor vehicles and recreational watercraft is 0.08.^e There is zero-tolerance (BAC limit 0.02) for underage drinkers. There is a tiered DUI penalty structure: penalties increase with each conviction, requiring payment for an alcohol assessment and an alcohol treatment program (if so ordered by a judge) at the expense of the person convicted.^f Administrative license suspension for the first offense is 180 days. Driving privileges can be restored during suspension after 30 days.^g Penalties for DUI/DWI include interlock but do not include vehicle forfeiture for multiple offenses (see also open containers). 	<p>Neb. Rev. Stat. s. 60-6,211.01 Neb. Rev. Stat. s. 60-6,211.02 Neb. Rev. Stat. s. 60-6,211.03 Neb. Rev. Stat. s. 60-6,211.04 Neb. Rev. Stat. s. 37-1254.01 Neb. Rev. Stat. s. 60-6,196 2001 Neb. Laws 166 2001 Neb. Laws 773</p>

Exhibit 2. Nebraska Alcohol-Related Statutes and Regulations continued...

Policy/Law	Statutory/Regulatory Requirements ^{a, b, c,}	State Statutes ^{a, b, d}
Open Containers	<ul style="list-style-type: none"> • Possession and consumption of alcohol is prohibited for both drivers and passengers on any public highway or right-of-way. 	Neb. Rev. Stat. s. 60-6,211.08 Neb. Rev. Stat. s. 60-624 1999 Neb. Laws 585
Retail Sales & Sales to Intoxicated People (SIP)	<ul style="list-style-type: none"> • Alcohol can be sold from 6 a.m. to 2 a.m.^h • Incentives are provided to retailers who use electronic scanners that read birth date and other information digitally encoded on valid identification cards.ⁱ • Spirits may not be sold on- or off-premises before noon on Sundays. Beer, wine, and champagne can be sold starting at 6 a.m.^j • Licensees and employees may be held criminally liable for SIP.^k • Only the licensee may be held administratively liable for SIP. 	NE LB 1061, 2010 Neb. Admin. R. & Regs. Tit. 237, Ch. 6, § 019.
Sobriety Checkpoints	<ul style="list-style-type: none"> • Law enforcement officials are entitled to carry out sobriety checkpoints under state law. • United States Department of Transportation policies permit a motorist who wishes to avoid a checkpoint to legally turn before entering the checkpoint area unless he or she commits a traffic offense. 	State v. McCleery, 560 N.W.2d 789 (1997) ^a
Underage Drinking	<ul style="list-style-type: none"> • Consumption of alcohol is prohibited, except in a parent's/guardian's home. • Purchase of alcohol is prohibited unless done for law enforcement purposes. • The State has discretionary authority to revoke driving privileges for possession and consumption of alcohol for those 18 years and older for a minimum of 30 days. • It is a criminal offense to alter a valid ID or to create or manufacture a false ID to obtain alcohol. 	Neb. Rev. Stat. s. 53-1,122 Neb. Rev. Stat. s. 53-103 Neb. Rev. Stat. s. 53-103.23 Neb. Rev. Stat. s. 53-168.06 Neb. Rev. Stat. s. 53-180.01 Neb. Rev. Stat. s. 53-180.02 Neb. Rev. Stat. s. 53-180.05 Neb. Rev. Stat. s. 53-180.07 Neb. Rev. Stat. s. 53-181 Neb. Rev. Stat. s. 60-4,111.01 Neb. Rev. Stat. s. 60-4,119 2001 Neb. Laws 114 2010 Neb. Laws 258, §3 2010 Neb. Laws 261 2010 Neb. Laws 861, §8 & §31

^aInsurance Institute for Highway Safety, Highway Loss Data Institute (2011). State Highway Safety Law Summary. Retrieved from <http://www.iihs.org/laws/StateLaws.aspx?StateAbbr=NE> on September 28, 2011.

^bVoas R, Lacey J. *Alcohol and Highway Safety 2006: A Review of the State of Knowledge*. Washington, DC: US Department of Transportation, National Highway Traffic Safety Administration; 2011. Adapted from Birkmayer JD, Boothroyd RI, Friend KB, Holder HD, Voas RB. Prevention of Alcohol-Related Motor Vehicle Crashes: Logic Model Documentation. Calverton, MD: Pacific Institute for Research and Evaluation; 2008.

^cAlcohol Policy Information System (2011). *Policy Changes at a Glance*. Retrieved from http://www.alcoholpolicy.niaaa.nih.gov/APIS_policy_changes.html on September 1, 2011.

^dNebraska Interagency Safety Committee (March 2007). *Nebraska Strategic Highway Safety Plan: Guidance for 2007-2011*

^eThe BAC limit was changed from 0.1 to 0.08 in 2001.

^fNebraska Revised Statute § 60-6,197.08.

^gDrivers usually must demonstrate special hardship to justify.

^hLegislation passed in 2010 allows for municipalities to extend on-premises sales to 2 a.m. with two-thirds approval of city or county councils.

ⁱIn Omaha, it was illegal to sell all liquor before noon, but the Omaha city council voted 5-1 to repeal the law December 16, 2006.

^jNebraska provides incentives to retailers who use electronic scanners that read birth date and other information digitally encoded on valid identification cards. Incentives may include an affirmative defense in prosecutions for sales to minors if the retailer can show that the scanner was used properly, and restoration of sales privileges during suspension.

^kVisible intoxication indicators in the regulation include the following: problems with balance; inability to maintain balance, e.g., stumbling, staggering gait, bumping into furniture while walking, falling against bar or off stool, head on bar; ineffective muscular coordination, e.g., spilling and/or knocking over drinks, unable to pick up change; strong smell of alcohol; slurred speech, e.g., thick tongue, uncontrollable voice pitch, muttering; bloodshot and/or glassy eyes, e.g., flushed face; condition of clothes and hair, e.g., disheveled appearance, messy hair, unzipped clothing; unusual behavior, e.g., vomiting, profanity, hiccups, fighting, loud, boisterous, obnoxious behavior.

Policy Recommendations

The Nebraska Strategic Highway Safety Plan (2007-2011)³ identified several critical strategies and activities to reduce impaired driving in Nebraska.

Critical Strategies

- Enforcement to discourage drinking and driving
- Enforcement and education to discourage underage drinking and driving
- Broad-based education campaigns to reduce impaired driving
- Compliance checks of alcohol retailers

Activities

- Selective overtime enforcement operations
- Sobriety checkpoints (average 2 per month)
- Open container and repeat offender laws
- Judicial and prosecution training

- Drug recognition expert training
- Alcohol server/seller training
- Administrative license revocation law
- 0.08 BAC and zero tolerance laws

Since 2007, the Centers for Disease Control and Prevention has recommended the following initiatives to reduce impaired driving and recidivism:

- Ignition interlocks for all convicted DWI offenders
- Expanded use of sobriety checkpoints
- Maintenance and enforcement of minimum legal drinking age and zero tolerance laws.⁴

References

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²Nebraska Department of Health and Human Services Injury Prevention and Control Program. (2010). Nebraska injury prevention and control facts 2010: issue 2. <http://dhhs.ne.gov/publichealth/Documents/2010-Issue2.pdf>. Nebraska Department of Health and Human Services. Accessed July 22, 2011.

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⁴Motor Vehicle Safety. Centers for Disease Control and Prevention Web site. <http://www.cdc.gov/motorvehiclesafety/index.html>. Accessed September 19, 2011.

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Conflict of Interest

None.

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The views expressed herein are those of the authors and do not necessarily reflect the views of collaborating organizations or funders, or of the Regents of the University of Nebraska.

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