



The GREEN LIGHT NEWS

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Changing the Question

By: Judge Harvey J. Hoffman

Is it more effective for courts to control the operation of a vehicle owned by an alcoholic driver through the use of an ignition interlock, or is it better to use other technology to monitor that person's alcohol consumption, as part of a comprehensive treatment plan? This is a debate that has raged since the doors of the first DWI Courts rumbled open in 1997, probably longer. Most DWI Court judges (myself included) have tended to come down strongly in favor of monitoring the individual.

The case for the use of interlocks has powerful arguments behind it. It can not be disputed that there is basic, public safety logic in making it more difficult for alcoholic drivers to fire up their engines and roar off into the sunset. In fact, numerous studies have shown that there are substantial reductions in DWI recidivism when the interlocks are actually on

the vehicles (Vizena 2002, Tippetts and Voas 1997, Beck et. al. 1999). On the other hand, the studies have also shown that once the interlock devices are removed from the vehicles, recidivism rates among program participants eventually return to levels comparable to offenders who did not participate in the

Michigan's 56-A District Court is one of the longest running DWI Courts in the nation. The DWI Court program deals primarily with repeat DWI offenders, as well as first offenders with a high BAC and an assessment of alcohol dependence.

interlock program (Robertson, Vanlaar and Simpson, 2006). To complicate matters further, as few as 22% of offenders ordered to install interlocks actually comply (DeYoung, 2002).

Any judge who has served in DWI Court for more than a couple of weeks carries within him/her a deep and abiding skepticism, born of close and repeated exposure to the deceitful and manipulative nature of alcoholic drivers. Alcoholic drivers are professional deceivers. DWI Court judges tend to distrust simple technological responses to complex, deeply ingrained patterns of addictive behavior. DWI Court judges know that the alcoholic drivers will go to great lengths to "beat" the interlocks, be it driving vehicles without interlocks or getting spouses, girlfriends or children

to make their blow. Naturally, they will expend the same amount of energy attempting to avoid detection by other means of alcohol testing.

A pilot project was begun at the DWI Court located at the 56 A District Court in Eaton County, Michigan. The purpose of the pilot project was to approach the issue from a different perspective. Rather than taking an either/or position, controlling the vehicle or monitoring the individual, the project looked at whether it is possible to use the same technology to achieve both ends.

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primarily with repeat DWI offenders, as well as first offenders with a high BAC and an assessment of alcohol dependence. The pilot project targets the first offense high BAC/alcohol dependent participants, for the simple reason that the repeat offenders currently have no driver's licenses, while the first offenders typically have at least restricted licenses. For the purposes of the pilot project we defined high BAC offenders as persons being arrested with a BAC of .20 or above.

The court selected, as its partner in the pilot, Smart Start of Michigan. Judges exist in a culture where guilt has to be proven beyond a reasonable doubt, a very high burden of proof. Many judges have found that some of the interlock Driver Recognition Systems (ex. "hum tone identification" and "breath pulse codes" etc.) do not rise to that level of proof. This can become a major issue when it comes to proving, for example:



who it was that made a dirty blow. The Smart Start interlock includes a camera that is affixed to the driver's side of the windshield. A photograph is taken of the individual that is using the interlock. This improvement of technology made me much more comfortable with the driver recognition process.

Nearly all modern interlocks have data loggers. These are basically small computers in the devices that record all sorts of information about what goes on in the daily life of the interlock, including positive hits, failures to make blows etc. Normally the device has to be taken into the interlock service center once a month to download the data. At least in Michigan, this information is frequently not forwarded to the court.

The final technological improvement which is important to the pilot, are the interlock's Early Recall mechanisms. You can program modern interlocks so that if certain things happen, (for example a dirty blow or a failure to make a required blow) a sign comes up on the interlock screen telling the driver that unless they bring the vehicle in to download within 48 hours, the vehicle will not start.

The basic outline of the pilot project is that we use the Smart Start interlocks for our first offense high BAC alcohol dependent participants, to both control the vehicle and to monitor the individual. Typically at least twice per day the defendant has to go out to the garage, face the camera and blow into the interlock. If they don't make the blow, or if they blow dirty, the Early Recall sign informs them that they have to bring the vehicle into the service center. If the data logger download shows a probation violation, an e-mail notification is sent to the desk of the defendant's probation officer. DWI Court probation violation proceedings then follow the usual course.

It has long been my suspicion that DWI Courts and interlocks may be very helpful to each other. DWI Courts, operating under the 10 Guiding Principles of DWI Courts as crafted by the National Center for DWI Courts (NCDWC) provide two things that the interlocks need if these devices are to fulfill their potential as a traffic safety measure: Alcohol assessments to determine what treatment is appropriate to address the addictive issues of the

offenders, and offender accountability through regular review hearings to ensure compliance with treatment orders. This should reduce the increase in recidivism rates that occur once the interlocks are off the offender's vehicles. The DWI Courts also provide frequent contact with the offenders, providing a procedure to insure that the offenders actually put the interlocks on the vehicles after they are ordered to do so.

The interlocks may also be helpful to the DWI Courts. They are relatively inexpensive, with a \$100 fee at installation and a charge of \$4.00 per day. If the interlocks can be used as an effective means of monitoring alcohol consumption, this may result in a substantial savings to the courts and the DWI Court participants. In a state like Michigan, which is going through a seven year long economic recession and the collapse of its principal industry, this is extremely important. Furthermore, by having the alcohol testing device parked in the participant's driveway, it makes testing more convenient, while taking away any excuses for not being able to make a required blow.

This document is not designed to be a summary of a rigorous body of research. We haven't the money for a full blown research study. It is basically the first in a series of semi annual reports as to what the data loggers and the probation files are telling us. This effort seeks only to raise the above cited reconstituted question, leaving final answers to another day.

Of the 56 persons placing the interlocks on their vehicles, and participating in the treatment program, none were arrested for new alcohol related driving offenses. One should not read too much into this specific outcome at this early stage. It is to be expected that recidivism rates would be low while the offenders are in intensive treatment, being held accountable by the court and operating a vehicle with an interlock in place.

New Report Shows Drugged Driving a Growing Problem on Nation's Highways

Recently released statistics on traffic fatalities in the United States offer some of the most compelling – and disturbing – evidence of the magnitude of the threat posed by drugged driving on our Nation's highways.

According to the Fatality Analysis Reporting System (FARS), one in three (33 percent) of all drivers with known drug-test results who were killed in motor vehicle crashes in 2009 tested positive for drugs (illegal substances as well as medications).



The 2009 FARS, conducted by the National Highway Traffic Safety Administration (NHTSA), makes clear that our national drugged driving problem is severe and getting worse. Even as the total number of drivers killed in motor vehicle crashes declined 21 percent from 2005 to 2009, the involvement of drugs in fatal crashes during that same time period increased by 5 percentage points.

Drug involvement, in this case, means only that drugs were found in the driver's system. It does not imply impairment or indicate that drugs were the cause of the crash. Drug presence includes illegal substances as well as medications, which may or may not have been misused. There is no measure of the drug amounts present.

Gil Kerlikowske, Director of National Drug Control Policy, released the

“Drugged driving is a much bigger public health threat than most people realize,” said Director Kerlikowske, “and unfortunately, it may be getting worse.”

new FARS results at a November 30 press conference in Washington, DC. Joining him were NHTSA Administrator David Strickland and Washington Metropolitan Police Chief Cathy Lanier. “Drugged driving is a much bigger public health threat than most people realize,” said Director Kerlikowske, “and unfortunately, it may be getting worse.”

Chief Lanier, citing examples of deaths and injuries attributed to drugged drivers, said, “Everyone thinks drunk driving is the big problem. This is no different. There are too many lives being lost to drugged driving.”

Administrator Strickland underscored the point. “Drugged driving is just as inexcusable as drunk driving,” he said. “The numbers are going up, and that is a huge problem.”

FARS is a census of motor vehicle crashes that result in the death of at least one individual within 30 days of the crash. It contains detailed data on the drivers involved in the crashes, including whether they tested positive for drugs.

In 2009, 63 percent of fatally injured drivers were tested for the presence of drugs. Overall, 3,952 of these drivers tested positive. This number represents 33 percent of fatally injured drivers with known drug-test results in 2009.

The new data add to the growing body of research showing far too many Americans are getting behind the wheel with drugs in their system. A recent roadside survey, for example, revealed that 1 in 8 nighttime, weekend drivers tested positive for an illicit drug, and that about 1 in 6 tested positive for illicit or licit drugs, including medications. One in 10 high school seniors

responding to the 2008 Monitoring the Future Study reported they had driven after smoking marijuana in the two weeks before taking the survey. And according to the 2009 National Survey on Drug Use and Health, an estimated 10.5 million people age 12 or older reported driving under the influence of illicit drugs in the year prior to taking the survey.

The Obama Administration, recognizing this threat, is taking action to get drugged drivers off the road. For example, the Administration is providing increased specialized training for law enforcement officers through a variety of initiatives, including:

- The International Drug Evaluation and Classification (DEC) program. Sponsored by NHTSA, the DEC program trains officers as Drug Recognition Experts to recognize impairment in drivers under the influence of drugs.
- An interactive Web site to complement the Advanced Roadside Impaired Driving Enforcement (ARIDE) program. ARIDE was developed by NHTSA as a way to bridge the gap between the DRE program and a program that trains officers to identify and assess suspected drunk drivers.

More information about FARS is available at www.nhtsa.gov/FARS. Parents can find useful information about teens and drugged driving at www.theantidrug.com.

Editor's Note: The above-mentioned Article was provided by the Office of National Drug Control Policy (ONDCP), Executive Office of the President of the United States. ONDCP seeks to foster healthy individuals and safe communities by effectively leading the Nation's effort to reduce drug use and its consequences. Contact ONDCP: www.ondcp.gov/utilities/contact.html.

Stimulants & Alcohol: A Dangerous Combination

Alcoholic Energy Drinks

By: Kenneth Stecker, PAAM Traffic Safety Resource Prosecutor

In October 2010, nine students from Central Washington University in Ellensburg, WA were taken to the hospital after they became sick from drinking the high-alcohol energy drink "Four Loko." Authorities first suspected drug use because of the number of persons who had become ill at the same party. That drink, which is comparable to consuming five to six cans of beer, is referred to as "black-out in a can" or "liquid cocaine."

Alcoholic Energy Drinks (AEDs) are prepackaged beverages that combine alcohol with caffeine, taurine, guarana, ginseng, and other ingredients commonly associated with nonalcoholic energy drinks. They may either be malt- or distilled-based spirits. Malt-based Spark, Bud Extra, Tilt, and Rock Star 21 are among the popular AED brands. Pink Vodka and V2 Vodka are examples of distilled spirit-based AEDs. Malt-based AEDs have a higher alcohol content of 5 – 12% as compared to most beers with an alcohol content of 4 – 5%.

There are also what are known as Flavored Alcoholic Beverages (FABs). FABs are alcoholic beverages designed and marketed for entry-level drinkers. Examples of FABs being marketed with distilled spirits brand names include Smirnoff Ice, Skyy Blue, Bacardi Breezer, and Jack Daniels County Cocktails. The vast majority of entry level drinkers are

under the legal drinking age of 21.¹ The alcohol taste in FABs is concealed by sweet, fruity flavors that serve as an alternative between nonalcoholic beverages such as soft drinks and the harsher tastes of traditional alcohol products. FABs are also called "alcopops" because of their similarity to soda pop in flavor and sweetness.²

Because of their efforts, on November 4, 2010, Michigan's Liquor Control Commission announced a statewide ban in Michigan on stimulant-laced alcoholic energy drinks.

FABs are popular with junior and senior high school students. In a 2007 survey, 12.2% of 8th graders, 21.8% of 10th graders, and 9.1% of 12th graders reported consuming "alcopops" within the last 30 days. Girls are much more likely to consume FAB than boys.³

Teenagers often refer to FABs as "girlie beer" or "cheerleader beer" because of their popularity with young, adolescent girls. Eighty-two percent of teen girls who have tried "alcopops" agree that they taste better than beer or alcoholic drinks.⁴

The younger the drinker, the more likely he/she will consume "alcopops." Among 8th grade drinkers, 78% reported FAB consumption in the last 30 days compared to 59% of 19-20 year olds and 36% of 25-30 year olds.⁵



The caffeine in the AEDs, often as much as five cups of coffee, suspends the effects of alcohol, allowing people to continue drinking long after they normally would have stopped consuming non-caffeinated alcohol, health experts have said.⁶

Caffeine, a stimulant, masks the intoxicating effects of alcohol, which may lead to increased risk-taking.⁷ As a result, consumers may misjudge their level of intoxication and engage in risky behavior.⁸ The stimulants also encourage greater consumption by counteracting the depressant effects of the alcohol, increasing the risk of heavy binge drinking.⁹

Both the "Marin Institute" and Wake Forest University are the leaders in the research on this issue. The Wake Forest University report can

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¹ See Mosher, J. and D. Johnson, "Flavored alcoholic beverages: An international marketing campaign that targets youth" *Journal of Public Health Policy* 26(3): 326-342 (2005).

²*Id.*

³*Id.*

⁴American Medical Association, *Teenage Drinking Survey Results*. Available at: www.alcoholpolicysolutions.net/alcoholpolicymd/press_room/girlie_drinks_release.htm.

⁵Johnston, L.D., O'Malley, P.M., Bauchman, J.G., & Schulenberg, J.E. *Monitoring the Future national Results on Adolescent Drug Use: Overview of key findings, 2007* (NIH Publication No. 06-5882). Bethesda, MD: National Institute on Drug Abuse (2008).

⁶Michigan's Liquor Control Commission announces ban on alcoholic energy drinks, "Michigan Live," November 4, 2010.

⁷www.marininstitute.org/alcopops/resources/EnergyDrinkReport.pdf.

⁸James F. Mosher, JD, The CDM Group, Inc., jimmosher@cdmgroup.com, based on the report: Simon, S. and Mosher, J. *Alcohol, Energy drinks and Youth: A Dangerous Mix*. San Rafael, CA; Marin Institute, 2007.

⁹*Id.*

Drug and Pill Identifier Website

The following website may be useful in identifying a certain pill. The website link is: www.muschealth.com/DI/DrugIdentifier

Once on the website just pick the shape of the pill, color, and any identifying marks such as the Blue xanax 1mg tablet with the markings of MYLAN with A1 under it.



Once you type this information in, you will get a list of the xanax tablets as well as a picture to compare your unknown pill too. You can also get the FDA Schedule of the medication, in this case schedule IV narcotic, and print out a brief description of the medication, its uses, and how addicting the medication is.

For Your Information

Michigan has Been Approved as a Drug Evaluation & Classification State

The Michigan Office of Highway Safety Planning was notified by the International Association of Chiefs of Police (IACP) that Michigan's request to be designated a Drug Evaluation and Classification (DEC) state and to establish a DEC Program was approved by the IACP on October 22, 2010.

The program has received national acclaim for its success in identifying drug-impaired individuals. Through this program, the Drug Recognition Expert (DRE) is frequently called upon to differentiate between drug influence and medical and/or mental disorders.

The program will make a significant contribution to combat drugged driving in Michigan.

The certified DRE is a valuable tool for combating the adverse impact of drugs on the communities they serve.

The program will make a significant contribution to combat drugged driving in Michigan. In addition, with improved law enforcement training in drug detection, the DEC program will help to reduce unnecessary blood evidence caseload at the Michigan State Police

Toxicology Laboratory by supporting better triage and filter policies resulting in cost savings and expedited testing of evidence in drugged driving cases.

The Michigan DEC Program will be moving forward with the first Drug Recognition Expert school, which will take place in April 2011 in Lansing. If you are interesting in attending, please contact Kenneth Stecker, Traffic Safety Resource Prosecutor, at steckerk@michigan.gov or 517-334-6060 extension 827.

Mark Your Calendar

Feb 15-16 - ARIDE - Berrien County

Feb 23 - Nuts & Bolts of OWI Arrests - Ann Arbor

Feb 24 - Cross Examination of Defense Experts - Ann Arbor

March 1-2 - ARIDE - Big Rapids

April 25-May 6 - DRE School - Lansing

Drunk Driving Enforcement Event

On Friday, December 17, 2010, Wayne County Prosecuting Attorney Kym Worthy spoke at a drunk driving enforcement media event in Detroit. From December 16, 2010 through January 2, 2011, 200 law enforcement agencies in 35 counties were conducting drunk driving enforcement during extra patrols funded by the Office of Highway Safety Planning (OHSP) through federal traffic safety funds. Prosecuting Attorney Worthy reminded citizens in Michigan that as of October 31, 2010, under the new high BAC law motorists face enhanced penalties if arrested with a .17 BAC or higher. She further reminded them that under Michigan's new high BAC law, in addition to points on their driver's license and community service, enhanced penalties for first-time drivers include:

- up to 180 days in jail,
- up to a \$700 fine, and
- one year license suspension with restrictions permitted after 45 days.



In essence, those who chose to drive drunk could have found themselves the recipient of an ignition interlock device to start off the new year.

Stimulants and Alcohol (continued from page 4)

be found at www.wfubmc.edu. The Marin Institute's report can be found at www.marininstitute.org/alcopops/resources/EnergyDrinkReport.pdf.

To address this serious concern, the Michigan Coalition to Reduce Underage Drinking (MCRUD) has been collecting the research on the harmful effects of these drinks and what other states have been doing about it. Because of their efforts, on November 4, 2010, Michigan's Liquor Control Commission announced a statewide ban in Michigan on stimulant-laced alcoholic energy drinks.

The decision was made in light of the several studies regarding alcohol energy drinks, the widespread community concerns aired by substance abuse prevention groups, parent groups and various members of the public, as well as The Food and Drug Administration's (FDA) decision to further investigate these products.

The ban covers a number of products from four manufacturers currently approved for sale in the state.

Manufacturers had until December 2, 2010 to remove these products from the market. For a complete list of the products that are banned in Michigan, please go to the following website: www.michigan.gov/documents/dleg/11_AED_Product_Release_12-2-2010_339777_7.pdf

Chairperson Nida Samona said that "Alcohol has been recognized as the number one drug problem among youth, and the popularity of alcohol energy drinks is increasing at an alarming rate among college students and underage drinkers."

Further, according to Commissioner Patrick Gagliardi, who voted in favor of the ban, "One can, one serving, is enough to get you intoxicated. Alcohol energy drinks cost on average \$2-\$5 per can making these products easily accessible and affordable."

Following Michigan's lead, on November 17, 2010 the FDA notified four manufacturers of caffeinated alcoholic drinks, giving them 15 days to stop adding caffeine to the products or stop

selling them altogether. Dr. Margaret Hamburg, the FDA commissioner, said the drinks appeared to pose a serious public health threat because the caffeine masked the effects of the alcohol, leading to "a state of wide-awake drunk." After a yearlong review found no conclusive evidence that the drinks were safe, she said, the FDA decided the caffeine in them was an illegal additive.

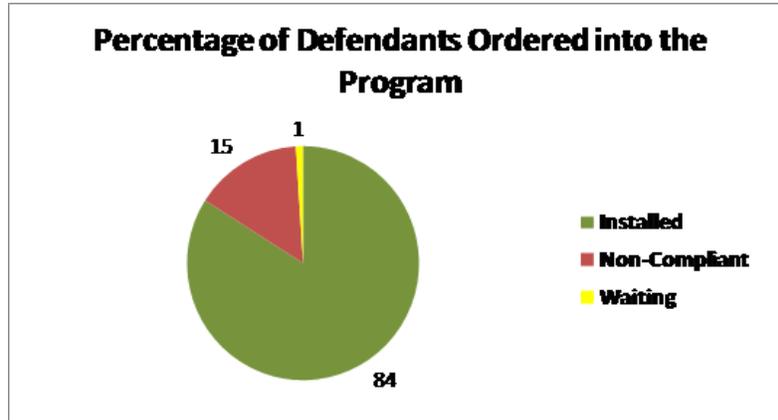
Getting behind the wheel after drinking alcohol is bad enough, potentially endangering other innocent drivers on the highways. If a drinker decides to drive after drinking alcoholic energy drinks, the caffeine will most likely make this driver feel wide awake which causes them to underestimate their impaired condition.

The bottom line is that stimulant combined with alcohol is a dangerous combination at anytime, especially when driving!

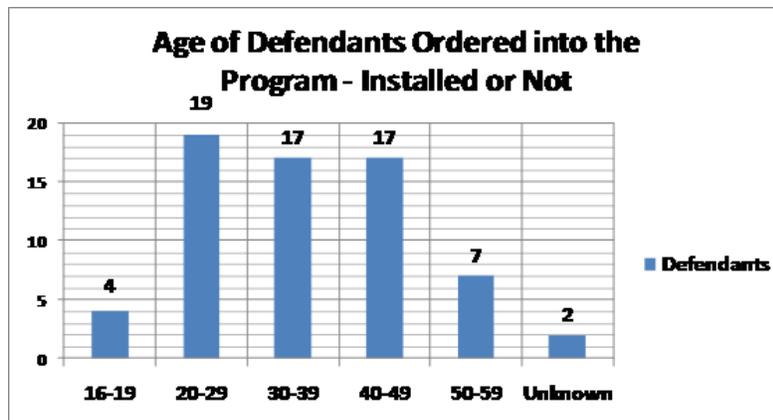
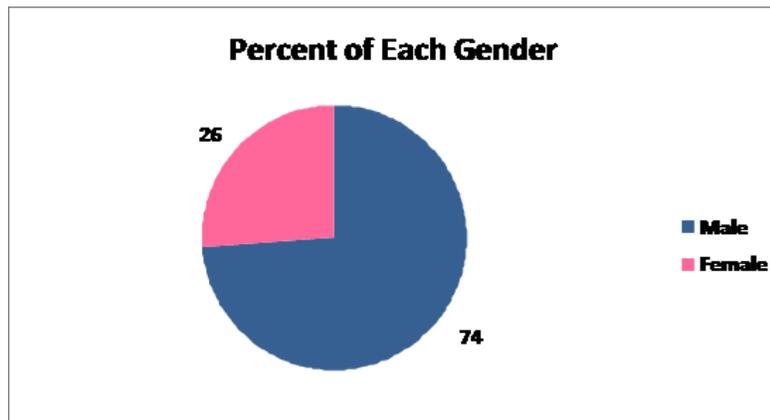
Editor's Note: For more information on this issue, contact Kenneth Stecker, Traffic Safety Resource Prosecutor, at (517) 334-6060 or steckerk@michigan.gov.

Change the Question (continued from page 2)

The first pie chart (right) deals with the percentage of participants that put the interlocks on their vehicles when the DWI Court program requires them to do so. The result is in stark contrast to results in other situations where as low as 22% of the people ordered to put interlock on vehicles, do so when ordered:



The next two charts deal with gender and age demographics of program participants:

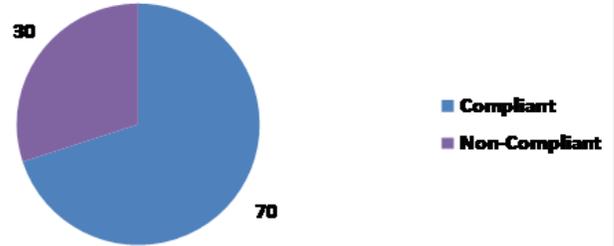


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Changing the Question (continued from page 7)

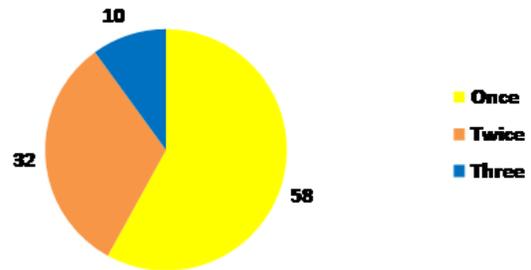
The next chart deals with the percentage of participants with violations. The violations can come from either blowing dirty for alcohol, or not making a blow when required to do so by probation:

Percent of Program Participants with Violations



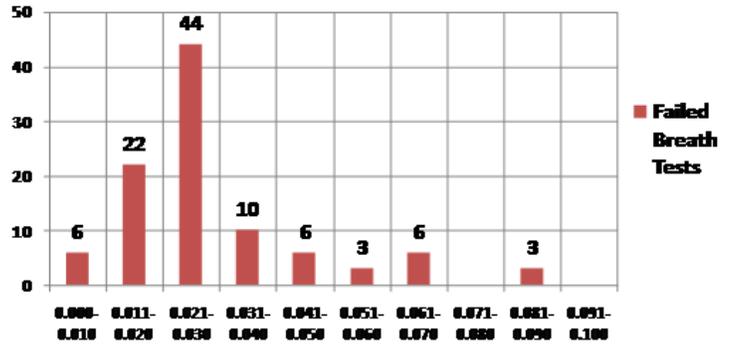
This chart deals with the frequency of violations by participants that have committed violations in the first six months of the program:

Percent of Non-Compliant Participants that Reviolated



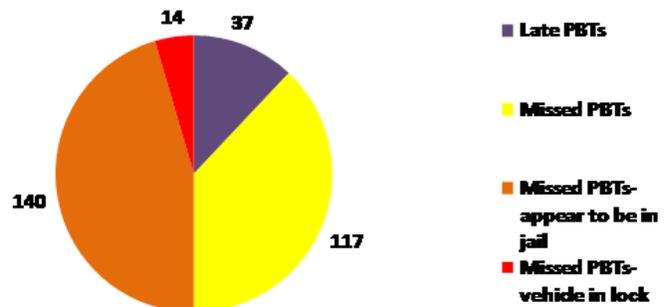
This chart shows blood alcohol levels for participants who had violations for dirty blows:

Breath Levels of Non-Compliant Participants



The final chart shows the number of late or missed breath tests for participants:

Missed and Late PBTs



Changing the Question (continued from page 8)

In conclusion, the information on hand only covers a period of six months, and no basis for comparison with a control group exists. However, some of the results are quite interesting, providing food for thought, if nothing else.

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Editor's Note: Harvey J. Hoffman is married with five children. He is a graduate of Thomas M. Cooley Law School and practiced law in Lansing for 14 years before being appointed to the 56th District Court bench in 1996. He was re-elected without opposition in the general election on November 2, 2010. He was recognized as the Judge of the Year 2001 by the Michigan District Judges Association.

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