UNDER THE INFLUENCE: WHY THE FEDERAL GOVERNMENT SHOULD IMPLEMENT A TIER SYSTEM FOR DRUNK DRIVERS

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Abstract

Drunk driving persists as a serious problem in the United States, claiming thousands of lives every year. Although the drunk driving fatality rate decreased following advancements in federal drunk driving legislation during the 1990s, after decades of remaining unchanged, the drunk driving fatality rate has increased in recent years. The increase in drunk driving fatalities has been associated, in part, with an increase in drunk driving recidivism, a phenomenon that is closely linked to alcoholism and poses a serious problem for the community. Individuals who suffer from alcoholism often develop higher tolerances, which can lead to overconsumption and a diminished capacity to determine whether their levels of impairment are such that they should not drive. To reduce the drunk driving fatality rate, the federal government should pass a law providing states with a program that includes the following two components: (1) a Tier System that categorizes drunk driving recidivists according to their degree of dangerousness and penalizes individuals according to their Tier designation; and (2) a grant program to facilitate state adoption of the federal program. This Note argues that the federal government will be successful at reducing the drunk driving fatality rate by imposing a Tier System that categorizes individuals based on their degree of dangerousness, modeled after the Tier System that exists in the context of sexual offenders. Generally, as many scholars support the presumption that targeting recidivism is a worthwhile endeavor to reduce the execution of crimes, the federal government can save human lives by implementing a program that specifically targets drunk driving recidivists.

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INTRODUCTION

"No person should suffer the tragedy of losing someone as a result of drunk . . . driving, but for far too long the danger of impaired driving has robbed people of the comfort of knowing that when they or a loved one leaves home they will return safely. Impaired driving puts drivers, passengers, and pedestrians at risk, and each year it claims the lives of thousands of Americans."[1] On December 1, 2015, President Barack

1. Proclamation No. 9373, 80 Fed. Reg. 75,781 (Dec. 3, 2015), https://obamawhitehouse.archives.gov/the-press-office/2015/12/01/presidential-proclamation-national-impaired-driving-prevention-month [https://perma.cc/F6ZC-YHBG].

Obama addressed the nation in a speech that shined light on National Impaired Driving Prevention Month and the continued issue of drunk driving.[2] Though the past administration's efforts to remedy the situation were laudable, their proposed solutions have largely been unsuccessful at eliminating the drunk driving problem.[3]

Every day in America, approximately thirty-four people die in drunk driving-related crashes, equating to one person dying every forty-two minutes.[4] In 2022, there were 13,524 individuals killed in a drunk driving incident, accounting for 32% of all motor vehicle fatalities for that year.[5] From 2000–2022, an estimated 271,130 people were victims of the drunk driving epidemic.[6] Of those impaired drivers involved in drunk driving accidents, it is estimated that 30% have previously been convicted of a drunk driving offense.[7]

The data supports the implication that a small percentage of offenders account for most drunk driving incidents.[8] This is alarming for a myriad of reasons, but two in particular: (1) the past repercussions of the recidivist's actions were not influential enough to deter the offender from driving drunk again, as evidenced by their decision to recidivate; and (2) drunk drivers who reoffend generally tend to be those who suffer from severe alcoholism, which is commonly associated with individuals who, as a result of their dependence, develop higher tolerances to alcohol.[9] This increased tolerance leads to offenders driving with higher blood alcohol concentration (commonly referred to as BAC) levels, creating a greater risk of danger to the community and providing little to no way for individuals to protect themselves against drunk drivers proactively.[10]

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2. *Id.*

3. *Alcohol-Impaired Driving*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., https://www.nhtsa.gov/book/countermeasures-that-work/alcohol-impaired-driving [https://perma.cc/TG6P-92BY] (last visited Apr. 1, 2026).

4. *Drunk Driving*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., https://www.nhtsa.gov/risky-driving/drunk-driving [https://perma.cc/8QFT-9H4A] (last visited Apr. 1, 2026).

5. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., DEP'T OF TRANSP., DOT-HS-813-578, TRAFFIC SAFETY FACTS 2022 DATA: ALCOHOL-IMPAIRED DRIVING (2024).

6. *Traffic Safety Facts Annual Report Tables*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN. https://cdan.dot.gov/tsftables/tsfar.htm (last visited May 17, 2026).

7. Patrick Kenneally, *Legislation to Admit Evidence of Propensity When Prosecuting DUI Recidivists*, 37 N. ILL. U.L. REV. 126, 129 (2016).

8. *See* NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., DEP'T OF TRANSP., DOT-HS-811-991, TRAFFIC SAFETY FACTS RESEARCH NOTE: DWI RECIDIVISM IN THE UNITED STATES: AN EXAMINATION OF STATE-LEVEL DRIVER DATA AND THE EFFECT OF LOOK-BACK PERIODS ON RECIDIVISM PREVALENCE (2014).

9. Steve R. Darnell, *One Small Problem with Administrative Driver's License Suspension Laws: They Don't Reduce Drunken Driving*, 42 TRANSP. L.J. 23, 33–34 (2015).

10. *See* Kenneally, *supra* note 7, at 128, 130.

Since the 1980s, federal, state, and local governments have attempted to eradicate the drunk driving problem through various approaches,[11] and though some programs were more impactful than others, their efforts have ultimately fallen short of curtailing the issue as the problem of drunk driving is still prevalent today.[12] Historically, individual states have been responsible for addressing the drunk driving issue within their jurisdiction, with some exceptions for times when the federal government stepped in to pass legislation that applied to the individual states.[13] Specifically, during the 1990s, there was a significant decrease in the fatality rate for drunk drivers; this decrease has since been correlated to a myriad of initiatives put in place by federal governments.[14] Two laws were overwhelmingly impactful: the legislation that raised the minimum age limit for purchasing and consumption of alcohol from 18 to 21 and the law that established a presumption of intoxication, making any driver with a BAC of over 0.08 *per se* guilty of drunk driving. Still, the promising improvements in lowering fatality rates have remained relatively stagnant over the last decade. Though states have remained mostly autonomous in handling issues concerning crimes that occur within their borders, drunk driving is an issue that goes beyond state borders.

As interstate travel is an essential part of living in the United States, and further that "[t]he constitutional right to travel from one State to another, and necessarily to use the highways and other instrumentalities of interstate commerce in doing so, occupies a position fundamental to the concept of our Federal Union,"[15] drunk driving is a national problem. State and federal courts have continuously reaffirmed this sentiment.[16]

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11. See *infra* Parts II.A and II.B for a historical look at how the federal government has tried to solve the problem of drunk driving by passing legislation that raised the national drinking age limit and instituted a *per se* minimum standard of 0.08 BAC to be guilty of DWI.

12. *See* John Yang et al., *Drunk Driving in the U.S. Rose in Recent Years. Would a Lower Legal Limit Improve Safety?*, PBS NEWS (Dec. 7, 2024, at 17:35), https://www.pbs.org/newshour/show/drunk-driving-in-the-u-s-rose-in-recent-years-would-a-lower-legal-limit-improve-safety [https://perma.cc/8WNW-TFGR].

13. *See infra* Part II (discussing past successful federal legislative actions targeting the drunk driving issue and how they were implemented in the states).

14. *See* Darnell, *supra* note 9, at 25.

15. United States v. Guest, 383 U.S. 745, 757 (1966).

16. *See* State v. Sullivan, 966 A.2d 919, 923 (Md. 2009) (holding "that one is not automatically and presumptively privileged to drive in Maryland," and concluding that an individual does have that privilege would go against existing case law); s*ee also* United States v. Kingsley, 241 F.3d 828, 838 (6th Cir. 2001) ("However, this reviewing court initially observes, as a seminal analytic point of departure, that operating a motor vehicle on the public thoroughfares, under any circumstances, is not a fundamental personal right, but instead is a mere societally-bestowed privilege, granted by the grace of the state, which an adult citizen must earn, and which the government can restrict or invalidate, even administratively, in the rational furtherance of a legitimate public purpose.").

Because interstate travel is such a fundamental facet of American life, the problem of drunk driving cannot be contained within the borders of one state[17], and to adequately address the problem, the federal government must step in to impose a national standard for states to follow when prosecuting drunk driving offenders.

One practical example of the government intervening in state affairs is the federal government's aggressive response to prosecuting sexual offenders. Before there was a national standard imposed by the federal government, states were primarily responsible for passing legislation against sex offenders.[18] States began creating their standards to prosecute sex offenders, which led to many discrepancies regarding how laws were being executed. To alleviate any potential due process and equal protection concerns, the federal government implemented a program, notably through the passage of the Adam Walsh Protection and Safety Act of 2006 and Megan's Law,[19] which included the creation of a Tier System that serves as a tool to categorize sex offenders according to the severity of their crimes and their likelihood to reoffend.[20]

Historically, the federal government has successfully intervened in state affairs by imposing national schemes to alleviate societal problems that affected constituents beyond state lines.[21] Just as federal legislation succeeded at lowering the drunk driving fatality rate, federal legislation would also provide states with a framework that imposes stricter sanctions for drunk drivers generally, and for those who are recidivists specifically. Studying historical examples of how the federal government has implemented legislation within the states serves as a model for how the federal government could address the drunk driving issue today,

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17. *See* Att'y Gen. v. Soto-Lopez, 476 U.S. 898, 902 (1986) ("The textual source of the constitutional right to travel, or, more precisely, the right of free interstate migration, though, has proved elusive . . . . However, in light of the unquestioned historic acceptance of the principle of free interstate migration, and of the important role that principle has played in transforming many States into a single Nation, we have not felt impelled to locate this right definitively in any particular constitutional provision."); Shapiro v. Thompson, 394 U.S. 618, 630 (1969).

18. The discrepancies in how federal sex offender laws were executed among the states remained an issue, and due to the lack of cohesion, the federal government imposed stricter legislation. *See* CHARLES DOYLE, CONGR. RSCH. SERV., RL33967, ADAM WALSH CHILD PROTECTION AND SAFETY ACT: A LEGAL ANALYSIS 1 (2007) ("[The Adam Walsh Child Protection and Safety Act] reformulates the federal standards for sex offender registration in state, territorial and tribal sexual offender registries, and does so in a manner designed to make the system more uniform, more inclusive, more informative, and more readily available to the public online.").

19. See *infra* Part III.B for further discussion regarding the impact of the Adam Walsh Protection and Safety Act and Megan's Law.

20. *See* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (2006).

21. *See infra* Part II.

paying close attention to how the government has successfully persuaded states to implement the federal rules to create a national standard.[22]

To alleviate the drunk driving issue, the federal government should pass a law that contains a similar system to the Tier System implemented for sexual offenders. The system should categorize drunk drivers according to their level of dangerousness and encourage adoption and equal enforcement of the standard within states by conditioning federal grant money on compliance. Within the suggested Drunk Driving Tier System, penalties for aggravated drunk drivers and drunk driving recidivists become more restrictive the more individuals reoffend.

Additionally, the federal government should create a National Drunk Driving Internet Registration System for law enforcement use. This registry will assist prosecutors in holding offenders responsible for their past drunk driving offenses by keeping a record of every prior offense, regardless of the outcome. The registry will act as a useful resource that law enforcement personnel can use to quickly identify the records of past offenders by their identifying license numbers.[23]

Today, all state laws targeting drunk driving vary considerably, and if the federal government took a unified approach to addressing the drunk driving issue by implementing the suggested Tier System and a National Drunk Driving Internet Registration System like the one argued for in this Note, it would greatly assist states in making their legislation. In addition to passing the federal legislation, within the bill, there should be a funding component that allows states that comply to receive federal grant money through highway and transportation funds. A unified standard created to address the drunk driving issue in the United States would benefit all Americans while also providing the federal government with more control over the problem.

Part I of this Note provides background information regarding past federal legislative actions that have reduced the drunk driving fatality rate, and how the federal government has incentivized the states to implement the legislation. Part II examines the phenomenon of drunk driving recidivism and compares the actions taken by the federal government to reduce drunk driving recidivism to the federal response to reducing sex offender recidivism. Due to the success of measures such as

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22. *See infra* Part II.

23. Drunk driving is challenging to detect, and time-saving measures that assist law enforcement personnel in quickly identifying past offenders could prevent thousands of motor vehicle accidents related to drunk driving and save hundreds of lives. *See generally* B. B. KIRLEY ET AL., NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., DOT-HS-813-490, COUNTERMEASURES THAT WORK: A HIGHWAY SAFETY COUNTERMEASURE GUIDE FOR STATE HIGHWAY SAFETY OFFICES 14, 1-6 (2023); *See* Darnell, *supra* note 9, at 26 ("Policies designed to catch drunk drivers in the act are not optimal since it is estimated the typical first time DUI offender has driven drunk eighty times before being apprehended behind the wheel.").

the Internet Registry and the Tier System, studying the government's legislative response to the issue of repeat sexual offenders provides valuable insight into ways that similar measures could be implemented to address other crimes with equally high rates of recidivism, such as drunk driving.

Part III provides a suggested federal approach to addressing drunk driving recidivism through the creation of an Internet Registry and offers a suggested Tier System, similar to the one implemented for sex offender recidivists, for states to adopt. This Part of this Note addresses procedural and substantive due process concerns regarding the National Drunk Driving Internet Registration System and suggested Tier System. The last Part of this Note summarizes the potential impact that this suggested approach could have on lowering rates of recidivism for drunk driving offenders, and how lowering rates of recidivism will better protect the public.

I. A HISTORICAL LOOK AT THE FEDERAL GOVERNMENT'S EFFORTS TO ALLEVIATE THE DRUNK DRIVING ISSUE

Multiple studies have evaluated the success of the varying approaches that have been employed to address the drunk driving issue.[24] These approaches differed significantly; some were federally backed actions, others were state-based legislation, some focused on general deterrence, and others focused on specific deterrence.[25] Though this section focuses on federal statutes that were influential in lowering the national drunk driving fatality rate, other state-based actions that have been regarded as influential were the implementation of administrative license revocation laws,[26] zero tolerance laws,[27] and open container laws.[28]

Two federal laws, which remain in place today, have impacted annual rates of drunk driving fatalities: (1) 23 U.S.C. § 158, which required states to raise the legal drinking age or else lose funding[29]; and (2) 23 U.S.C. §

24. *See generally* KIRLEY ET AL., *supra* note 23.

25. *See, e.g.*, Kenneally, *supra* note 7, at 130.

26. KIRLEY ET AL., *supra* note 23, at 1-11–1-12 ("Administrative license suspension laws allow law enforcement and driver licensing authorities to suspend a driver's license if the driver fails or refuses to take a BAC test.").

27. *Id.* at 1-37 ("Zero-tolerance laws pertain to drivers under 21 years old and impose a maximum BAC for underage drivers of .02 g/dL. Underage drivers who violate the statute by driving with higher BAC levels risk having their license revoked or suspended.").

28. *Id.* at 1-17 ("Open container laws prohibit the possession of any open alcoholic beverage container and the consumption of any alcoholic beverage by motor vehicle drivers or passengers. . . . In 1998 Congress required States to enact open container laws or have a portion of their Federal-aid highway construction funds redirected to alcohol-impaired driving or hazard elimination activities.").

29. 23 U.S.C. § 158.

163, which lowered the *per se* BAC standard from 0.10 to 0.08.[30] To reduce drunk driving fatalities, the federal government should take a similar approach today by passing federal legislation that provides the states with a standard to implement more severe penalties for drunk driving recidivists and attach a federal grant program for complying states to receive additional funding.

A. *Raising the Legal Drinking Age from 18 to 21*

Before implementing a national drinking age limit, states were independently left to institute their drinking age limits, which created chaos and confusion. Teenagers in states with higher drinking age limits would drive into states who had lower drinking age limits to purchase or consume alcohol. To better understand the drunk driving problem, in 1983 a Presidential commission was "appointed to study alcohol-related accidents and fatalities on the Nation's highways" and "concluded that the lack of uniformity in the States' drinking ages created 'an incentive to drink and drive' because 'young persons commut[e] to border States where the drinking age is lower.'"[31]

This phenomenon was prevalent throughout the 1980s, and Congress similarly determined that the lack of cohesion among states provided "incentives for young persons to combine their desire to drink with their ability to drive and that this interstate problem required a national solution"[32] and in 1984, Congress passed 23 U.S.C. § 158, otherwise known as the National Minimum Drinking Age Act.[33] The Act promised uniformity by requiring states to enact legislation raising the legal drinking age from eighteen to twenty-one.[34] The legislature implemented the Act by conditioning federal highway funds on state compliance, and by July 1988, all fifty states had implemented the national minimum drinking age.[35]

Though some may argue this type of government action is inordinately coercive,[36] the Supreme Court disagreed, and in 1987, held that Congress "has acted indirectly under its spending power to encourage

30. 23 U.S.C. § 163.
31. South Dakota v. Dole, 483 U.S. 203, 209 (1987).
32. *Id.* at 208.
33. 23 U.S.C. § 158.
34. *Id.*
35. KIRLEY ET AL., *supra* note 23, at 13.
36. Some believe it is an overreach for the federal government to pass legislation aimed at implementation in the states. For example, in South Dakota v. Dole, the dissent argued "that the regulation of the minimum age of purchasers of liquor falls squarely within the ambit of those powers reserved to the States by the Twenty-first Amendment. Since States possess this constitutional power, Congress cannot condition a federal grant in a manner that abridges this right. The Amendment, itself, strikes the proper balance between the federal and state authority." *Dole*, 483 U.S. at 212.

uniformity in the States' drinking ages."[37] In *South Dakota v. Dole*, 483 U.S. 203, the Supreme Court was asked to determine whether Congress violated its spending power and the Twenty-first Amendment when it passed 23 U.S.C. § 158, and they ultimately held that such a legislative action was "within constitutional bounds even if Congress may not regulate drinking ages directly."[38]

In upholding the constitutionality of the National Minimum Drinking Age Act, the Supreme Court held that Congress could use its spending powers to indirectly impose legislation that implemented a national drinking age by conditioning federal grant money on state compliance, finding that the penalty for non-compliance was not too burdensome on those states as it was only a five percent decrease of federal highway funds.[39]

Raising the national drinking age limit was successful in lowering the drunk driving fatality rate, as supported by many studies throughout the last two decades.[40] Overall, "there is strong evidence that [minimum legal drinking age] laws reduce drinking, driving after drinking, and alcohol-related crashes and injuries."[41] As many studies have produced similar results, the drunk driving phenomenon was aptly summarized by a phrase contained in the National Highway Traffic Safety Administration (referred to as NHTSA) in their 2023 report, "[d]eaths go up when the drinking age is lowered, and they go down when it is raised."[42] Overall, the NHTSA estimates that state laws imposing higher drinking ages have saved over 32,000 lives since 1975.[43]

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37. *Id.* at 206.

38. *Id.* at 205.

39. *Id.*

40. *E.g.*, James C. Fell, et al., *The Impact of Underage Drinking Laws on Alcohol-Related Fatal Crashes of Young Drivers*, NAT'L INST. OF HEALTH (2009), https://pmc.ncbi.nlm.nih.gov/articles/PMC2825167/ [https://perma.cc/SQ52-MWHT]. This study evaluated how effective raising the national drinking age limit was in lowering rates of fatalities caused by drunk driving incidents. *Id.* The authors determined that the "results provide substantial support for the effectiveness of underage 21 drinking laws with four of the six laws examined having significant associations with reductions in underage drinking-and-driving fatal crashes" and that "[t]hese findings point to the importance of key underage drinking and traffic safety laws in efforts to reduce underage drinking-driver crashes." *Id.*

41. KIRLEY ET AL., *supra* note 23, at 1-13.

42. KIRLEY ET AL., *supra* note 23, at 1-14.; *see also* ROBERT APSLER ET AL., NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., DOT HS 808 892, THE EFFECTS OF 0.08 BAC LAWS 1 (1999) (citing a study showing that: "(1) drivers who had been drinking were more likely to be involved in a crash than sober drivers, and (2) beginning with low BACs, the greater the level of intoxication, the higher the probability of being in a crash") (citing R.F. BORKENSTEIN ET AL., THE ROLE OF THE DRINKING DRIVER IN TRAFFIC ACCIDENTS (Allen Dale ed., 1964)).

43. KIRLEY ET AL., *supra* note 23, at 13. *But cf.* RICHARD J. BONNIE & MARY ELLEN O'CONNELL, REDUCING UNDERAGE DRINKING: A COLLECTIVE RESPONSIBILITY 35 (Nat.'l Rsch. Council eds., 2004) ("Despite minimum legal drinking age laws, actual drinking patterns in the United States suggest that almost all young people use alcohol before they are 21.").

B. *Enacting A Per Se Standard and Lowering the Standard BAC from .10 to .08*

The earliest drunk driving legislation "made it illegal to drive while intoxicated but did not provide a statistical definition of intoxication."[44] Indiana was the first state to statistically define the presumption of intoxication, where their state legislature passed a law issuing a minimum BAC standard of 0.15%.[45] Other states followed, and in 1982, Congress created the Traffic Safety Information System Improvement Grant Program (also known as the Section 408 Program).[46]

The Section 408 Program allowed the federal government to provide money to states that abided by the grant requirements, one of those requirements being that states enact a 0.10 BAC *per se* law. In addition to the 0.10 BAC limit, the program provided further financial incentives for states that voluntarily chose to enact a lower limit of 0.08.[47] Through the imposition of two different limits, it is evident that the federal government favored the lower BAC because states that enacted the lower limit were allowed to receive additional grant money. States remained free to set their own BAC limits, but states that chose not to comply with the minimum national standard were not allowed to receive federal funding.[48]

Then, in 1998, Congress passed a law that authorized a "$500 million incentive program encouraging states to adopt tough 0.08 BAC laws."[49] Additionally, in 2000, President Clinton signed the Transportation Equity Act for the Twenty-first Century.[50] The Act instituted a national standard for presumptive intoxication to be at a minimum 0.08 BAC for drunk

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44. Birchfield v. North Dakota, 579 U.S. 438, 444 (2016).

45. *Id.*

46. 23 U.S.C. § 405(c).

47. *Id.* § d(6).

48. *Id.* § d(1) ("In [g]eneral – [s]ubject to the requirements under this subsection, the Secretary of Transportation shall award grants to States that adopt and implement – (a) effective programs to reduce driving under the influence of alcohol, drugs, or the combination of alcohol and drugs; or (b) alcohol-ignition interlock laws"); *see also* 23 C.F.R. § 1225 (1999) ("Under the [Transportation Equity Act for the 21st Century], states can qualify for incentive grant funds if they enact and enforce a law that provides that any person with a blood alcohol concentration of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense.").

49. *See* 23 C.F.R. § 1225 (2025) (implementing regulation).

50. Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, 112 Stat. 107 (1998).

driving offenses.[51] Today, all states have a minimum BAC limit of at least 0.08.[52]

Shortly after the BAC limit was lowered, the Centers for Disease Control (CDC) conducted a study to determine how effective the 0.08 BAC laws were in reducing drunk driving-related fatalities. In this early 2001 review, the CDC found a median seven percent reduction in alcohol-related deaths and strongly recommended the enactment of the 0.08 BAC laws "as a measure for reducing alcohol-related fatalities and injuries."[53] For the past two decades, studies have routinely supported the effectiveness of 0.08 BAC laws, and recent studies support an even stronger connection between the 0.08 BAC laws and lowering drunk driving-related fatalities; a conglomerate study found that the BAC laws resulted in a 10.4% reduction in annual drunk driving fatalities.[54] Since the first laws were enacted, the 0.08 BAC law is "estimated to have saved an average of 1,736 lives" each year from 1983 to 2014 and over 25,000 lives.[55]

Though the minimum BAC limit remains 0.08, in 2013 the National Transportation Safety Board recommended lowering the BAC limit to 0.05 and continues to support the imposition of a lower limit.[56] To see the benefit of a lower BAC limit, Utah serves as a valuable case study. In 2016, the state legislature passed a law that lowered its state minimum BAC level to 0.05.[57] Overall, the lower limit was successful in reducing drunk driving-related fatalities. A comparison of the number of drunk driving-related fatalities in Utah from 2016 to 2019 shows that there was a 19.8% reduction in the fatal crash rate and an 18.3% reduction in the fatality rate.[58] As there is credible evidence that a lower BAC limit leads to lower drunk driving fatality rates, it is a likely possibility that the federal government will step in again in the future to impose lower BAC limits nationally.[59]

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51. *Id.* § 163 ("The Secretary shall make a grant, in accordance with this section, to any State that has enacted and is enforcing a law that provides that any person with a blood alcohol concentration of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated (or an equivalent *per se* offense).").

52. KIRLEY ET AL., *supra* note 23, at 39.

53. Michael Scherer & James C. Fell, *Effectiveness of Lowering the Blood Alcohol Concentration (BAC) Limit for Driving from 0.10 to 0.08 Grams per Deciliter in the United States*, 20 TRAFFIC INJ. PREVENTION 1, 2 (2019).

54. *Id.* at 6.

55. *Id.* at 1.

56. KIRLEY ET AL., *supra* note 23, at 18.

57. *See* UTAH CODE ANN. § 41-6a-502(1) (West 2025).

58. KIRLEY ET AL., *supra* note 23, at 1–18.

59. In addition to a general statewide 0.05 BAC limit, some states have enacted specialized legislation that lowers the BAC limits for individuals who have been previously convicted of a drunk driving offense. A law was passed in Maine that "established a 0.05 g/dL BAC limit for 1

C. *How the National Government Provided Financial Incentives to Entice States into Adopting Federal Legislation*

Though states have the power to create and implement laws to penalize drunk driving within their jurisdictions,[60] the federal government has historically played a role in influencing legislation-based policies that target the problem.[61] As demonstrated by the acts studied above, the government's approach to implementing federal drunk-driving laws in the states has historically been to provide financial incentives for states to comply with and adopt federal rules and regulations.[62]

To raise the national drinking age from eighteen to twenty-one and to provide uniformity among the states, the legislature implemented the National Minimum Drinking Age Act by directing "the Secretary of Transportation to withhold a percentage of federal highway funds otherwise allocable to States 'in which the purchase or public possession . . . of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.'"[63] Additionally, in 2000, the national BAC standard for *per se* intoxication was officially lowered to 0.08, and was similarly implemented providing financial incentives for state compliance.[64]

Whether through granting additional money or withholding federal funds, the government has historically been successful at incentivizing states to adopt national drunk driving laws within their jurisdictions. Today, all fifty states continue to have these minimum standards in place,[65] apart from some states having enacted even lower BAC standards,[66] substantiating the value of these measures.

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year after a first DWI offense and for 10 years after a subsequent offense," and a study found that the proportion of fatal crashes that involved repeat drunk driving offenders reduced by 25% since the law was implemented. *See id.* at 1–19.

60. *See* U.S. CONST. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.").

61. Article VI, clause 2 of the U.S. Constitution explains that "as long as [the federal government] is acting within the powers granted it under the Constitution, Congress may impose its will on the States. Congress may legislate in areas traditionally regulated by the State." *See* Gregory v. Ashcroft, 501 U.S. 452, 460 (1991); *see also supra* Parts I.A and I.B.

62. *See supra* Parts I.A and I.B.

63. South Dakota v. Dole, 483 U.S. 203, 205 (1987) (quoting 23 U.S.C. § 158).

64. 23 U.S.C. § 163(a) ("The Secretary shall make a grant, in accordance with this section, to any State that has enacted and is enforcing a law that provides that any person with a blood alcohol concentration of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated (or an equivalent *per se* offense.").

65. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., *supra* note 4.

66. As explained in Section II.B., Utah serves as an example of a state that chose to enact a BAC limit lower than the federal standard. *See* UTAH CODE ANN. § 41-6a-502 (West 2025).

II. RECIDIVISM IN THE CONTEXT OF DRUNK DRIVING, WITH A COMPARATIVE LOOK AT SEX OFFENDER RECIDIVISM

Generally, legislatures craft laws targeting recidivism, as the purpose of the criminal justice system is to hold people accountable for their transgressions, provide justice to the victims, and rehabilitate the offender in a way that deters them and others from committing similar offenses.[67] Though criminal recidivism is a highly researched topic, and much has been learned about why the average criminal offender reoffends, "DWI recidivism is a separate phenomenon from general recidivism"[68] that requires different measures to deter these repeat offenders.

Both general and specific deterrence play equally critical roles within the framework of deterrence theory.[69] General deterrence "aims to dissuade all persons from violating the laws"[70] and to "discourage the citizenry from offending in the first place and is 'considered to be the main social benefit of punishment.'"[71] In the drunk driving context, "general deterrence strategies are those that are applied in general to drivers who may drive impaired, but haven't yet been arrested and entered into the criminal justice system".[72] Further, policies aimed at general deterrence are "only effective if potential offenders perceive the certainty, severity, and celerity of punishment to outweigh the benefit of the offense."[73]

Specific deterrence "aims to change a particular individual's behavior through negative reinforcement"[74] by "seek[ing] to deter offenders from repeating their conduct after apprehension."[75] When referring to the drunk driving problem specifically, "specific deterrence strategies are those that are applied to specific offenders, such as driver's license suspensions, installation of ignition interlocks, enrollment in DWI courts,

67. 18 U.S.C.S. app. § 717 (LexisNexis). President Reagan signed the Comprehensive Crime Control Act in 1984, a landmark piece of legislation that enacted many changes to the federal criminal justice system. *See id.* Within the language of the Act, the statutory mission is to "foresee [] guidelines that will further the basic purposes of criminal punishment, i.e., deterring crime, incapacitating the offender, providing just punishment, and rehabilitating the offender." *Id.*

68. Matthew DeMichele & Nathan C. Lowe, *DWI Recidivism: Risk Implications for Community Supervision*, 75 FED. PROB. 19, 23 (2011).

69. *See, e.g.*, Darnell, *supra* note 9, at 28.

70. *See* Bae v. Shalala, 44 F.3d 489, 494 (7th Cir. 1995).

71. Darnell, *supra* note 9, at 28–29.

72. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., DOT-HS-811-991, DWI RECIDIVISM IN THE UNITED STATES: AN EXAMINATION OF STATE-LEVEL DRIVER DATA AND THE EFFECT OF LOOK-BACK PERIODS ON RECIDIVISM PREVALENCE 6 (2014) (internal quotations omitted).

73. Darnell, *supra* note 9, at 29 ("Certainty of punishment is realized when potential offenders believe there is a high probability of arrest, prosecution, and conviction.").

74. *Shalala*, 44 F.3d at 494.

75. Darnell, *supra* note 9, at 28 (quoting James D. Stuart, *Deterrence, Desert, and Drunk Driving*, 3 PUB. AFF. Q. 105, 105 (1989)).

other close supervision strategies or jail for individuals who are arrested and convicted of impaired driving."[76]

Though the Supreme Court has held that "punishment serves the twin aims of retribution and deterrence,"[77] and while specific deterrence may be effective in curbing other types of criminal offenders, "in the DUI arena [it] is not optimal; punishing a drunken driver after a fatal crash does not provide the protection the public expects."[78] Therefore, to effectively curb drunk driving, future measures must encompass both general and specific deterrence.[79]

A. *Drunk Driving Recidivism Generally*

An estimated thirty percent of all drunk driving accidents are caused by individuals with previous drunk driving convictions.[80] To illustrate the problem further, in 2021, among the 13,384 alcohol-impaired-driving fatalities that occurred in the United States, sixty-seven percent involved crashes in which at least one driver in the crash had a BAC of 0.15 g/dL or higher.[81] For that year, the most frequently recorded BAC among drunk drivers in fatal crashes was 0.16 g/dL, and the median BAC among drunk drivers was 0.15 g/dL.[82] When reviewing the driving records of those drunk drivers, it was estimated that drunk drivers involved in fatal crashes were almost four times more likely to have prior DWI convictions than drivers with no alcohol.[83]

Accordingly, "one of the most effective means to reduce drunk driving is to target known offenders . . . ."[84] These offenders pose a greater risk of reoffending: Repeat offenders tend to be involved in more crashes, take more health risks, and report being able to drive safely after more drinks than first offenders.[85] As a result, they tend to drive with

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76. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., *supra* note 8, at 6.

77. United States v. Halper, 490 U.S. 435, 448 (1989).

78. Darnell, *supra* note 9, at 28.

79. But deterrence is most effective "when consequences are swift, sure, and severe," and the state policies currently in place do not ensure such consequences because the DWI system is very complex and allows for many offenders to escape accountability for their crimes. *See* KIRLEY ET AL., *supra* note 23, at 1-4.

80. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN, DOT-HS-810-879, TRAFFIC SAFETY FACTS LAWS: REPEAT INTOXICATED DRIVER LAWS (2008).

81. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN, DOT-HS-813-450, TRAFFIC SAFETY FACTS 2021 DATA: ALCOHOL-IMPAIRED DRIVING 1 (2023).

82. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., *supra* note 81, at 6.

83. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., *supra* note 81, at 5.

84. *See* Tina L. Freiburger & Alyssa M. Sheeran, *Evaluation of Safe Streets Treatment Option to Reduce Recidivism Among Repeat Drunk Driving Offenders*, 30 CRIM. JUST. POL'Y REV. 1368, 1369 (2019).

85. Victor Flango, *Treatment or Punishment: Sentencing Options in DWI Cases*, 54 CT. REV. 32, 38 (2018).

higher BAC levels, producing more dangerous drivers on the road disproportionately responsible for fatalities and carnage.

Because the majority of repeat drunk-driving offenders suffer from alcoholism,[86] the road to drunk-driving deterrence offenses tracks different constraints than other crimes.[87] Alcohol's high addictiveness, combined with high relapse rates, limits the effectiveness of deterrence relying on voluntary self-regulation.[88]

Drunk drivers pose a risk to the community, and studies have shown that even at lower BAC concentrations an average individual's mental and physical capacities can be diminished.[89] Still, individuals with higher BACs pose a much greater risk of causing a fatal car accident than those with lower BACs.[90] As those who have alcohol use disorder often build a higher tolerance to alcohol, over time these individuals must consume more drinks to achieve a similar level of intoxication, leading to higher BAC levels. Then, these individuals decide to get behind the wheel and drive, leading to more dangerous drivers on the road, posing a significant risk to the community.[91]

To make a bad situation worse, as stated previously, drunk driving is challenging for law enforcement officials to detect. It has been estimated that an individual may drive drunk between 200 and 2,000 times without being arrested or apprehended.[92] To make detection more difficult, the average drunk driving offender dramatically differs from the average criminal offender in the sense that "drunk drivers are older, more likely to be married, and much more likely to be employed than other offenders

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86. For clarification, alcoholism is defined as "an addiction characterized by a preoccupation with alcohol, overconsumption, and the development of tolerance to its effects." Darnell, *supra* note 9, at 33.

87. Michael Weinrath & John Gartrell, *Specific Deterrence and Sentence Length: The Case of Drunk Drivers*, 17 J. CONTEMP. CRIM. JUST. 105, 108 (2001) (citing M. Argeriou et al., *Criminality Among Individuals Arraigned for Drinking and Driving in Massachusetts*, 46 J. STUD. ALCOHOL 525, 530 (1985)).

88. *Id.*

89. Darnell, *supra* note 9, at 52–53.

90. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., *supra* note 81, at 5–6 ("In 2021 among the 13,384 alcohol-impaired-driving fatalities, 67 percent (9,027) were in crashes in which at least one driver in the crash had a BAC of .15 g/dL or higher.").

91. *See* Flango, *supra* note 85, at 38 (distinguishing repeat drunk driving offenders from first offenders, "it was found that repeat offenders tend to be involved in more crashes, take more health risks, and report being able to drive safely after more drinks than first offenders").

92. Kenneally, *supra* note 7, at 129. Though this is a difficult statistic to define credibly, when Americans were polled, an estimated 43% admitted to having driven drunk in the past, and 45% admitted to receiving a ride home from a drunk driver in the past. And of those who admitted to having driven drunk in the past, 28% report having done so within the last six months. Andrew Hurst, *43% of Americans – and 56% of Men – Admit to Drinking and Driving*, VALUEPENGUIN (Jan. 4, 2021), https://www.valuepenguin.com/drinking-habits-survey [https://perma.cc/M4N9-EYTE].

who might be classed as predatory."[93] Drunk driving also poses unique challenges for state governments in terms of prosecuting and securing convictions.[94] Difficulties arise as "DWI laws are complicated, the evidence needed to define and demonstrate impairment is complex, and judges and juries may not choose to impose specified penalties if they believe the penalties are too severe."[95]

B. *Sex Offenders Recidivism and the Federal Response to Sexual Offenders*

During the 1990s, at around the same time that the federal government was addressing the drunk driving issue, the government was also addressing the issue of repeat sexual offenders.[96] Sex offenders pose a grave risk to the community because "[w]hen convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault,"[97] and, as such, "states . . . have a vital interest in rehabilitating convicted sex offenders."[98]

In the context of punishing sexual offenders, penalties for these offenders tend to be more severe and intrusive as the Supreme Court has held that sex offender "recidivism constitutes a legitimate basis for laws that may have the effect of an increased punishment"[99] as "[r]ecidivism is a serious public concern . . . throughout the Nation."[100] As aptly explained by the New Jersey State Legislature within the statutory language of their Megan's Law statutes, "'[t]he danger of recidivism posed by sex offenders and offenders who commit other predatory acts' mandates a registration system for 'law enforcement officials to identify

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93. Weinrath & Gartrell, *supra* note 87, at 109 (citing M. Argeriou et al., *Criminality Among Individuals Arraigned for Drinking and Driving in Massachusetts*, 46 J. STUD. ALCOHOL 525, 530 (1985)).

94. Darnell, *supra* note 9, at 28; KIRLEY ET AL., *supra* note 23, at 4 ("Detecting impaired drivers is difficult. Law enforcement agencies have limited resources and officers must observe a traffic violation or other aberrant behavior before they can stop a motorist for an investigation of impaired driving (except at checkpoints). There are times when a stop is for something completely unrelated, but the stop may turn into an impaired-driving investigation if indicators are present once the officer and the driver are face to face.").

95. KIRLEY ET AL., *supra* note 23, at 4.

96. *2024 National Crime Victims' Rights Week Resource Guide*: *Landmarks in Victims' Rights and Services*, U.S. DEP'T OF JUST. (Mar. 21, 2024), https://ovc.ojp.gov/ncvrw2024/helpful-resources-outreach/landmarks-victims-rights-and-services [https://perma.cc/C8QF-V4K4] (During the 1980s and 1990s, the federal government passed legislation targeting both sex offenders and drunk drivers).

97. McKune v. Lile, 536 U.S. 24, 33 (2002).

98. *Id*.

99. Michael J. Watson, *Carnage on Our Nation's Highways: A Proposal for Applying the Statutory Scheme of Megan's Law to Drunk-Driving Legislation*, 39 RUTGERS L.J. 459, 469 (2008).

100. *Id*. at 469–70 (quoting Ewing v. California, 538 U.S. 11, 26 (2003)).

and alert the public when necessary for the public safety.'"[101] The U.S. Supreme Court agrees, having affirmed that the heightened risk of recidivism in sex offenders is a reasonable basis for the government's aggressive response.[102]

1. History of the Federal Response to Sexual Offenders

The federal government has enacted three laws with the intent of decreasing sex offender recidivism: (1) the Wetterling Act;[103] (2) Megan's Law;[104] and (3) the Adam Walsh Child Protection and Safety Act.[105] Through the passing of the Wetterling Act, a registry system was established that required individuals convicted of sex crimes to provide their personal identifying information to local law enforcement agencies, who were then allowed to release their information to the public for notification purposes.[106] Congress implemented the Wetterling Act by "first condition[ing] certain federal funds on States' adoption of registration laws meeting prescribed minimum standards."[107]

The registry system was advanced when Congress passed Megan's Law in 1996, "which made the release of registry information mandatory when 'necessary to protect the public.'"[108] As Congress successfully implemented the state registry system requirement by conditioning federal funds upon their compliance, by the time the law was passed, every state and the District of Columbia had already enacted registration requirements for those convicted of certain sexual offenses.[109]

Though the states complied, the registration systems varied greatly from state to state. This led to disparities in how the law was being executed. Congress estimated that over 100,000 sexual offenders evaded registration due to the discrepancies among registration systems.[110] As such, a federal response was needed to provide a working standard for

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101. *Id.* at 468 (quoting N.J. STAT. ANN. § 2C:7-1 (West 2006)).

102. *Id.* at 469–70.

103. In 1989, an eleven-year-old boy was abducted by an individual who had been previously convicted of a sexual offense; this event spurred Congress to action, and the Wetterling Act was passed in 1994. *See* Matthew Jerrehian, Comment, *Sex Offenses and Due Process: When Public Opinion Contradicts Scientific Consensus*, 23 U. PA. J. CONST. L. 521, 523–24 (2021); *see* Pub. L. No. 103-322, § 170101, 108 Stat. 1796, 2038–42 (1994) (codified at 42 U.S.C. §§ 14071–73) (repealed 2006); *see also* People ex rel. T.B., 489 P.3d 752, 756 (Colo. 2021).

104. Megan's Law was enacted in memory of a seven-year-old girl, Megan Kanka, who was brutally murdered by her neighbor, a registered sex offender unbeknownst to Megan's parents. Megan's Law, Pub. L. No. 104-45, 110 Stat. 1345 (1996).

105. ARK. CODE ANN. § 20-16-1703 (West). Jerrehian, *supra* note 103, at 523–24.

106. Jerrehian, *supra* note 103, at 524.

107. Gundy v. United States, 588 U.S. 128, 132 (2019).

108. Jerrehian, *supra* note 103, at 523.

109. *See Gundy*, 588 U.S. at 132.

110. *Id*. at 132–33.

states to implement that would ensure a unified, national approach to protecting the community from these violent offenders.

This response came in 2006 when Congress enacted the Adam Walsh Child Protection and Safety Act.[111] The Act, specifically Part A (referred to as "SORNA"), requires states to impose stricter penalties for sexual offenders, with the "express 'purpose' . . . 'to protect the public from sex offenders and offenders against children' by 'establishing a comprehensive national system for [their] registration.'"[112] Through SORNA, a Tier System was created that categorized individuals convicted of sexual offenses into three categories, dependent on the seriousness of their offenses and their danger of reoffending, and instituted an internet registry system that required offenders to register with local law enforcement by providing identifying information to be included on a public registry.[113]

2. SORNA's Tier System

SORNA's registration system provided states with the necessary resources to combat sexual offender recidivism as the Act "improve[d] the ability of law enforcement to supervise such offenders and investigate new offenses,"[114] and further "enable[d] members of the public to specifically protect themselves and their families from risks in their communities."[115] SORNA's Tier System provides three categories for sexual offenders,[116] and the more serious the sexual offense is, the more serious the penalties are.[117] Of the three tiers, the least restrictive tier is

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111. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (2006).

112. *See Gundy*, 588 U.S. at 133; Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (2006).

113. *E.g.*, Catherine L. Carpenter & Amy E. Beverlin, *The Evolution of Unconstitutionality in Sex Offender Registration Laws*, 63 HASTINGS L.J. 1071, 1087 (2012) ("Under SORNA, offenders are categorized by their convictions and are automatically assigned to a tier based on that offense. Tier I offenses are regarded as the least serious crimes, with each succeeding tier consisting of more dangerous offenses.") (citing 42 U.S.C. § 16911 (2010)).

114. Lori McPherson, *The Sex Offender Registration and Notification Act (SORNA) at 10 Years: History, Implementation, and the Future*, 64 DRAKE L. REV. 741, 745 (2016).

115. *Id.*

116. Sex offenders are defined in the Adam Walsh Child Protection and Safety Act as those "who [were] convicted of a sex offense," which it further defines at the most basic level as "a criminal offense that has an element involving a sexual act or sexual contact with another." *See* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (2006).

117. *Id.*; *see also* Erin Schoenbeck Byre, Note, *Recalibrating the Sex Offender Registration System*, 18 U. ST. THOMAS L.J. 229, 231 (2022).

Tier I,[118] and Tier II[119] is mildly restrictive comparatively, with the most restrictive tier being Tier III.[120] Tier III offenders are the most dangerous and are penalized as such.

3. How the Government Conditioned Federal Funds on State Compliance

Congress enforced the legislation within individual states through their federal spending power and encouraged states to adopt sex offender registration laws.[121] The government enforced the legislation by threatening to withhold federal funding from jurisdictions that did not comply. The states that failed to implement the federal legislation would "not receive 10 percent of the funds that would [have] otherwise be[en] allocated for that fiscal year to the jurisdiction under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968."[122]

In addition to incentivizing states to adopt the national scheme, the legislation has also been enforced on an individual level. Offenders must now register with local law enforcement to have their information included on the National Sex Offender Registry within a certain period following their adjudication. Otherwise, offenders face additional criminal penalties and charges, such as a prison sentence of up to ten years for failing to register.[123]

Though academics disagree as to whether the imposed Tier System is achieving the initial goal of reducing sexual offenders' recidivism or

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118. *See* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, § 111, 120 Stat. 587 (2006) (Tier I offenders are simply defined as sexual offenders who are not Tier II or Tier III offenders).

119. *Id.*

> Tier II offenders are defined as those who committed crimes that are punishable by a prison term of longer than a year and: (a) are comparable to or more severe than the following offenses: (i) sex trafficking; (ii) coercion; (iii) transportation with intent to engage in sexual activity; or (iv) abusive sexual contact, or; (b) involves (i) using a minor in a sexual performance; (ii) solicitation of a minor to practice prostitution; (iii) or production or distribution of child pornography, or; (c) occurs after the offender has already been categorized as a Tier I sexual offender.

Id.

120. *Id.*

> A Tier III sex offender is someone who has committed an offense that is punishable by a prison term of longer than a year and: (a) is comparable or more severe, or an attempt or conspiracy to commit, the following offenses: (i) aggravated sexual abuse or (ii) abusive sexual contact against a minor younger than 13, or; (b) commits a kidnapping of a minor, or; (c) occurs after the offender was categorized as a Tier II offender.

Id.

121. 42 U.S.C. § 14071(i) (2000).

122. 34 U.S.C. § 20927(a) (2018).

123. 18 U.S.C. § 2250 (2018); Carr v. United States, 560 U.S. 438, 453 (2010).

increasing the dangerousness of these offenders,[124] both state courts and the Supreme Court have upheld constitutional challenges to the law, concluding that "the Law is rationally addressed to remedy a substantial public problem and that public safety outweighs the potential for the law's unfair and severe impact on convicted sexual offenders."[125] Today, "[s]ex offender registries currently exist in all states, but . . . SORNA is only a baseline" as states may enact stricter laws for the registration system within their jurisdictions so long as they abide by the national standards.[126]

4. The Constitutionality of SORNA's Tier System

Through their federal spending power, Congress enacted SORNA's Tier System and encouraged states to adopt sex offender registration laws within their jurisdictions.[127] SORNA's "system ensures an offender's notification requirements are tailored to the risk she or he poses to society"[128] and provides offenders with an opportunity to rebut the presumption that they pose a danger to the community. Additionally, SORNA provides community members with notice and information to allow individuals to better protect themselves and their children from sex offenders.

Under SORNA, "the registration requirement is conditioned solely on the conviction offense, which prevents any procedural due process challenge to registration."[129] Due process "prohibits the use of irrebuttable presumptions that former sex offenders are a danger to the public when they can show that they pose no such danger,"[130] and to combat these concerns, there are procedures in place where offenders may present evidence showing they have been rehabilitated and are unlikely to reoffend.[131] Despite the arguments that the laws are unconstitutional, the Supreme Court found that Congress was within its power to enact SORNA through the Necessary and Proper Clause of the

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124. *Key Things to Know About Adults Who Sexually Offend*, U.S. DEP'T OF JUST. (May 2017), https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/adultswhosexuallyoffend.pdf [https://perma.cc/3PBQ-7XKV].

125. Watson, *supra* note 99, at 479.

126. Ann Weigly Deam, *Safety Net or Trap? A Policy-Oriented Analysis of the Public Sex Offender Registry as Compelled Speech*, 35 BYU J. PUB. L. 225, 229 (2021).

127. *Id.*

128. Byre, *supra* note 117, at 248.

129. Jerrehian, *supra* note 103, at 532.

130. Jerrehian, *supra* note 103, at 531.

131. Jerrehian, *supra* note 103, at 533.

U.S. Constitution,[132] as it was a federal statute that required convicted sex offenders to register within the states where they lived and worked.[133]

In addition to the Supreme Court, other courts at varying levels across the nation have weighed in to contribute their opinion on whether internet registration statutes requiring sex offenders to provide identifying information to law enforcement agencies to be published online are unconstitutional.[134] Regarding privacy concerns related to the publication of their information on the registry, the resounding opinion of courts is that these registry requirements do not violate any right to privacy as "[i]nformation readily available to the public is not protected by the constitutional right to privacy."[135]

III. THE SUGGESTED LEGISLATIVE APPROACH

A. *Drunk Driving is a National Problem, Requiring a National Approach to Aggressively Combat the Issue*

The rate of recidivism in drunk driving is similar to that of sexual crimes, one solution is to implement a Tier System, like the one implemented by the federal government in SORNA, in the drunk driving context.[136] Since the actions taken by the federal government have been impactful in combating sexual offense recidivism, if the same approach is used to prosecute drunk driving offenses, it would presumably have the same result and significantly lower rates of recidivism, and allow the community to better protect themselves against these offenders.

To lower rates of drunk driving recidivism, the federal government must step in to adequately address the problem by implementing the following: (1) provide a standard for states to use as a guide when they are crafting legislation targeting drunk driving; and (2) attaching a federal

132. U.S. CONST. art. I, § 8, cl. 18 ("And, in the Necessary and Proper Clause itself, it grants Congress the power to 'make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers' and 'all other Powers' that the Constitution vests 'in the Government of the United States, or in any department or Officer thereof.'").

133. United States v. Kebodeaux, 570 U.S. 387, 389 (2013).

134. *See, e.g.*, State v. Stidam, 74 N.E.3d 787, 804 (Ohio Ct. App. 2016) (determining that an individual's constitutional rights were not violated by the sex offender registration requirements and that it was not a punishment that is cruel nor one that is unusual).

135. Jerrehian, *supra* note 103, at 535; *see, e.g.*, Doe v. Moore, 410 F.3d 1337, 1345 (11th Cir. 2005) ("A state's publication of truthful information that is already available to the public does not infringe the fundamental constitutional rights of liberty and privacy."). *See also* Nilson v. Layton City, 45 F.3d 369, 372 (10th Cir. 1995) ("Information readily available to the public is not protected by the constitutional right to privacy.").

136. Other authors have discussed implementing a Tier System like the one implemented by SORNA in the drunk-driving context. *See* Watson, *supra* note 99, at 461. However, the suggested Tier System differs significantly from the one in Watson's article. As the original article was published over ten years ago, this Note provides a modern look at the issue of drunk driving.

grant program to facilitate the implementation of the standard within individual states by providing financial incentives for compliance.

As the suggested Tier System was created by referencing SORNA, and like the Tier System created for sex offenders, it places drunk driving offenders into three categories dependent on their likelihood of recidivating and the seriousness of their offense(s).[137] As such, offenders with more drunk driving offenses, or those who have "aggravated offenses,"[138] are treated with more restraints compared to first-time offenders, as they are determined to be at a higher risk for reoffending.[139]

As the states differ tremendously in geography, demographics, economics, methods of public transportation, infrastructure, and more, it is unrealistic to assume that the suggested Tier System will apply to all states precisely as it stands.[140] As such, we expect flexibility in how the individual states implement some aspects of the suggested Tier System, so long as they act in good faith.

B. *The Suggested Tier System*

The suggested Tier System divides drunk driving offenders into three categories depending on the number of times that they have been previously convicted or charged with a drunk driving offense and the seriousness of their past offense(s). The punishments imposed on the offender depend upon their Tier designation, or rather their danger of recidivating, and become more severe as that risk increases. Due to the dangers presented by Tier II and Tier III offenders, the suggested Tier System includes the creation of a Convicted Drunk Driving Registry (referred to as the Internet Registry), like that created by the federal government as a response to sex offenders.

This Internet Registry will provide the states and the federal government equal access to an individual's driving records, including all drunk driving charges, whether they were dismissed, resulted in a plea

137. DeMichele & Lowe, *supra* note 68, at 20 ("For the purposes of the risk assessment tool, "risk" is defined as the probability of an individual convicted of one DWI being convicted of a subsequent DWI.").

138. An aggravated DWI for the purposes of the suggested Tier System is defined as having a BAC of over 0.15.

139. *E.g.*, Freiburger & Sheeran, *supra* note 84, at 1376 (noting that thirty percent of annual drunk drivers are recidivists).

140. For example, more rural states often have a larger population of people who commute to work every day by driving, and often for longer distances, compared to some smaller states, which have more cities and have more public transportation options as such individuals in rural states will feel the effects of a license suspension more seriously than someone who lives in a city, as the loss of one's license could lead to the loss of employment, health concerns, childcare issues, and more. In addition, some areas have lower minimum wages and lower costs of living, so states should determine the monetary amount for fines and fees associated with drunk driving offenses that are fitting for their own economic situation.

deal, or participated in other intervention methods that allow the charges to be dropped after completion.[141] When comparing an individual's driving record to one's medical history, "[c]learly, it would be unwise to remove evidence of cancer from a patient's medical records after a set number of years, and . . . it is just as unwise to remove evidence for prior alcohol-related violations from a person's driving history."[142] As such, every drunk driving offense must remain on an individual's record and be accessible to the federal government and states by inputting data on the Internet Registry.[143]

1. Tier I

First-time drunk driving offenders who had a BAC reading between 0.08 and 0.14 when tested and suspected of a crime are Tier I offenders. For first-time offenders, the suggested punishments are as follows: (1) alcohol screening and intervention methods; (2) at minimum, a ninety-day license suspension period; and (3) an ordered alcohol ignition interlock device installed for six months following the license reinstatement.[144] States that feel inclined may choose to impose stricter penalties or adjust sanctions while adhering to the intent of the system and relying on good faith.

States may choose to implement diversion programs that offer first-time offenders with lower BAC readings a second chance, but these original charges *must* remain in the system. This is so that individuals convicted of a subsequent drunk driving offense can be justly charged as second-time offenders. If the original charge is removed from their driving record, in a way, it essentially disappears and leads to individuals

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141. William J. Rauch et al., *Risk of Alcohol-Impaired Driving Recidivism Among First Offenders and Multiple Offenders*, 100 AM. J. PUB. HEALTH 919, 919 (2010) (noting that almost half of the states in the U.S. have diversion programs in place "that allow convicted drinking drivers to ultimately escape criminal sanctions by entering alcohol education, alcohol treatment, or other programs that permit judgment or prosecution to be deferred"). These education programs have their benefit and should remain in use for Courts to help facilitate rehabilitative services. Still, upon completing these programs, the offender should not be rewarded with the charges being dismissed.

142. *Id.* at 923.

143. *Id.* at 919 ("Diversion programs generally lead to dismissal of a conviction after successful completion of the program by the offender and can prevent or delay the offense from appearing on an offender's public driving record."). This can lead to individuals who have been charged with DWIs in the past being treated as first offenders for sentencing purposes.

144. *See* Joseph Marutollo, Comment, *No Second Chances: Leandra's Law and Mandatory Alcohol Ignition Interlocks for First-Time Drunk Driving Offenders*, 30 PACE L. REV. 1090, 1107 (2010) (quoting NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., DOT-HS-810-876, REDUCING IMPAIRED-DRIVING RECIDIVISM USING ADVANCED VEHICLE-BASED ALCOHOL DETECTION SYSTEMS: A REPORT TO CONGRESS (2007) ("There would be no alcohol-impaired driving, and no crashes, injuries, or fatalities involving alcohol, if it were impossible for a person with a positive BAC to start or operate a vehicle.")).

being treated as first-time drunk driving offenders as opposed to recidivists. First-time offenders who are considered aggravated offenders are not eligible for such diversion programs, as they are classified as Tier II offenders.

2. Tier II

Tier II consists of both aggravated first-time drunk driving offenders and repeat offenders. Due to the seriousness of an aggravated driver's offense, these individuals are more dangerous to the public and at a higher risk of reoffending. Recidivists charged with another driving offense within five years of initially being charged are also considered in this Tier.

The sanctions for Tier II offenders are more severe, as the individuals in this category pose a serious threat to the community. Tier II offenders should receive higher sanctions and longer license suspension periods than those designed for Tier I offenders. In addition to the higher sanctions and extended license suspension periods, offenders should be mandated to install an ignition interlock device in their car for at least a year following the reinstatement of their license.

These offenders must participate in an alcohol screening and intervention method imposed by the State, where an evaluator determines their risk of recidivism, which the judge will then use for sentencing purposes. These offenders must also register with local law enforcement to be included on the Drunk Driving Internet Registry for at least five years following their license reinstatement.

3. Tier III

Tier III is reserved for the most dangerous drunk driving offenders, and the repercussions are the most severe. First-time offenders with a BAC reading of over 0.25 are highly dangerous and thus fall into Tier III. Second-time aggravated offenders with a previous DWI conviction with BAC readings over 0.15 also fall within this category, as they, too, pose a higher risk. Finally, any individuals with three or more previous DWI convictions with BAC readings between 0.08 and 0.14 are dangerous, as they have not been previously deterred by their punishments in the repeated attempts to rehabilitate, and as such are designated as Tier III offenders as well.

Tier III offenders are at the highest risk of reoffending and pose a significant danger to the community and themselves, as they have exhibited a continued history of a substantial lack of self-control and poor decision-making skills. Tier III offenders should have long periods of license suspensions and ignition interlock installations, with the option for a lifetime ignition interlock installation or the forfeiture of their driving privilege for those drivers who continuously reoffend. These individuals must pay the highest amount in sanctions, as their crimes are the most egregious.

In addition to the general alcohol screening and intervention programs offered by the state, these offenders must additionally participate in a psychological evaluation to determine whether more intensive treatment would be beneficial to their recovery before reinstating their license. Following their treatment, an evaluator must assess their risk of recidivating, which the judge can utilize for sentencing purposes.

Tier III offenders are required to register with local law enforcement to be included on the Internet Registry for at least ten years following the license renewal, with the option for the requirement of lifetime registration. In addition to the Internet Registry, Tier III offenders must abide by a lower BAC level standard of 0.05 rather than the 0.08 standard for the period that they have their ignition interlock device installed.

Tier III offenders must also display a Convicted Drunk Driver decal on their vehicle's front and back license plate when required to install an ignition interlock device. This decal gives the community a visual notice so individuals can better protect themselves. Further, the decal assists law enforcement officials in monitoring repeat drunk driving offenders.

C. *How the Federal Government will Implement the System*

Though the federal government can go through the arduous task of receiving bipartisan support for creating a drunk driving Tier System, the system does not automatically apply to individual states. The federal government must incentivize states to adopt the scheme, as it has done before. As explained in Part II, the federal government successfully lowered the BAC limit to 0.08 by providing financial incentives for states that adopted the standard. Conversely, the federal government threatened to withhold federal funds from states that chose not to adopt the minimum drinking age requirement of twenty-one.[145]

Similarly, in the context of sex offenders, Congress implemented SORNA's Tier System in individual states by using its federal spending power to threaten to withhold ten percent of federal funds from states that chose not to enact the sex offender registration laws.[146] Under the Necessary and Proper Clause, Congress was within its constitutional powers to enact legislation targeting sex offender recidivism and use its federal spending power to entice states into compliance.[147]

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145. *See supra* Part I.C for further discussion regarding how the federal government garnered state compliance for their drunk driving laws.

146. *See supra* Part II.B.3 for further discussion regarding how the federal government responded to the rise in sexual offenses by imposing a national standard and how they achieved total state compliance.

147. *See* Watson, *supra* note 99, at 479.

As such, the federal government will likely be successful in implementing the suggested Tier System within the individual states by providing financial incentives for states to comply, using a similar approach to how they have successfully implemented past federal legislation. Congress must pass a statute outlining the suggested Tier System and attach a grant program to the statute, allowing states that adopt the system to receive an additional five percent in federal highway and transportation funds. Through the Necessary and Proper Clause, Congress can enact the suggested Tier System to alleviate the drunk driving problem and implement its federal program within individual states by utilizing its federal spending power.

D. *Constitutionality of the Suggested Approach*

Americans do not have a right to drive that the government has historically protected.[148] State courts and legislatures have widely held that driving is not a constitutional right, but rather a privilege that the government can restrict for administrative purposes and in the interest of public safety.[149] For example, in Maryland, the highest court held "that one is not automatically and presumptively privileged to drive in Maryland. To adopt the State's contention would require us to conclude that the privilege to drive equates to a right to drive," and that "[s]uch a conclusion does not comport with the overall meaning and purpose . . . to existing case law."[150]

The Oregon Legislature passed a bill that expressed a similar sentiment, aptly entitled "Driving Privilege,"[151] which describes an individual's ability to drive as "the grant of authority by a jurisdiction to a person that allows that person to drive a vehicle on highways within that jurisdiction."[152] Similar to the convictions expressed by the state governments in Maryland and Oregon, federal and state courts throughout the country have affirmed that driving is not a right but a privilege and, therefore, can be controlled and regulated. Penalties for failing to abide by state drunk driving laws that could result in the suspension of one's license or, in the most extreme cases, permanent license revocation are constitutional.

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148. *See* United States v. Kingsley, 241 F.3d 828, 838 (6th Cir. 2001) ("However, this reviewing court initially observes, as a seminal analytic point of departure, that operating a motor vehicle on the public thoroughfares, under any circumstances, is not a fundamental personal right, but instead is a mere societally-bestowed privilege, granted by the grace of the state, which an adult citizen must earn, and which the government can restrict or invalidate, even administratively, in the rational furtherance of a legitimate public purpose.").

149. *E.g.*, Rauch et al., *supra* note 141, at 919.

150. State v. Sullivan, 966 A.2d 919, 923 (Md. 2009).

151. OR. REV. STAT. § 801.255 (2025).

152. *Id.*

1. Alleviating Due Process Concerns

Though there is no constitutionally protected right to drive, some counterarguments for stricter drunk driving sanctions concern due process infringements. Due process issues can be substantive or procedural, and both were considered when the suggested Tier System was created. "Substantive due process protects fundamental rights and liberty interests from unreasonable government interference,"[153] whereas "the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.'"[154]

2. Procedural Due Process

To safeguard procedural due process rights, the suggested Tier System has a process in place that guarantees an offender the opportunity to be heard by a court before they are evaluated and given a Tier designation. After being convicted of a drunk driving offense, and before they go through sentencing, offenders are entitled to a Tier Designation hearing.[155] At this hearing, before a judge, the state will present evidence to show that the individual poses a significant risk of recidivating and is a danger to the community. The state will then argue that, based on the evidence presented, and in the interest of public safety, the suggested restrictions should be put in place for this defendant. Following the state's presentation, the offenders are allowed to rebut the state's proposition by providing evidence that they do not pose a risk of recidivating. After hearing the evidence presented, the judge determines what Tier the offender will be placed in.[156]

In addition to the risk determination portion, after some time designated by the individual states, and if the offender has completed all the requirements and registered with local law enforcement to be included on the Internet Registry, Tier II and Tier III offenders can request an evidentiary hearing to show the court that they no longer pose a danger to the community. They can provide evidence of their progress and argue

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153. Jerrehian, *supra* note 103, at 533.

154. Fuentes v. Shevin, 407 U.S. 67, 80 (1972).

155. This process is an evidentiary hearing and functions similarly to a risk determination hearing does for sex offenders. Both the state and the defendant can present evidence of the risk they pose to the community, and a judge determines what Tier they should be placed in.

156. As explained previously, statutes where regulations are imposed upon sex offenders based on a risk determination pose a procedural due process concern. As such, offenders can provide evidence opposing the State's risk assessment. For example, in Millard v. Rankin, a Colorado statute violated procedural due process when a judge was instructed to determine whether a convicted sex offender was likely to recidivate but did not provide the offender with an opportunity to offer evidence as to why he did not pose such a risk requiring sanctions. *See* Jerrehian, *supra* note 103, at 533.

that they should be entitled to more driving privileges and fewer sanctions.

3. Substantive Due Process

License decals and mandatory registration on an Internet Registry are among the penalties for Tier II or Tier III offenders, which affect an individual's privacy. The privacy issues posed by the suggested Tier System are similar to issues raised by sex offender laws. Regarding substantive due process, there are equal protection[157] and privacy concerns[158] regarding some of the suggested penalties for Tier II and III offenders. However, the government has yet to uphold a fundamental right to privacy, and thus, government actions curtailing an individual's right to privacy must only be rationally related to a legitimate state interest to be constitutional. For this Note, we must determine whether the suggested Tier System is rationally related to a legitimate government purpose, as opposed to conducting a strict scrutiny analysis.

To address the privacy concerns regarding the requirement that Tier III offenders display a Convicted Drunk Driver Decal on the back license plate of their vehicle, we argue that state legislatures have required license decals in other contexts without constitutional concerns.[159] In the context of drunk driving, requiring Tier III offenders to drive with reflective decals on their license plates would assist law enforcement personnel in investigating impaired driving incidents and provide the public with notice.

Another criticism of the suggested Tier System is that, due to the nature of the Tier System, regarding categorizing individuals into different levels and basing the different sanctions and penalties on their Tier designation, there may be potential equal protection concerns. As the

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157. The theory of equal protection comes from the Fourteenth Amendment to the Constitution and guarantees that all Americans are guaranteed equal protection of the law within their jurisdiction. *See* U.S. CONST. amend. XIV.

158. It is unclear whether there is still a fundamental right to privacy that stems from the substantive due process clause, since the Supreme Court overturned Roe v. Wade. *See* Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022) (overturning Roe v. Wade, 410 U.S. 113 (1973)).

159. For example, some states have programs for drivers with a learner's driving permit, as opposed to a license, where beginner drivers are not allowed to drive without displaying two removable, reflective red decals on their license plates until they receive their driver's license. One state that issues permit decals to new drivers is New Jersey. Under New Jersey law, drivers who recently passed their driving exam and received their learner's driving permit must display red decals on their license plates for the period their permit is in place. *See* N.J. REV. STAT. § 39:3-13 (2023). The decals must be visible to law enforcement officials and remain on for the entirety of their examination period. *Id.* The decals provide law enforcement officials and other drivers on the road notice that this driver is still learning to drive, allowing individuals in the agency to make decisions based on that information. *Id.*

suggested Tier System functions similarly to the Sex Offender Tier System, the same arguments can be made for both when discussing equal protection concerns. State courts have generally held that the Tier System for sex offenders does not violate an individual's equal protection rights as guaranteed to them by their state constitutions and the U.S. Constitution.[160] Protecting the public from sexual offenders has consistently been found to be a legitimate state interest, and state courts have upheld the Tier System as being rationally related to that goal.[161]

For example, in New Jersey, the Supreme Court rejected the argument that an individual's substantive due process rights were violated because of the sex offender registration and community notification requirement, determining that "the State's interest in protecting the public is legitimate and substantial[,] and the incursion on a registrant's privacy interests 'is necessary for the protection of the public, as the means chosen are narrowly tailored to that interest.'"[162] Other state courts have expressed similar sentiments and reiterated that sex offenders are not considered a protected class, and therefore, the differential treatment must only be rationally related to a legitimate state interest.[163]

Courts have ruled that due process concerns regarding the sex offender registration system have been ultimately meritless: "[a]s the legislature intended to deprive all convicted offenders of these rights," and as such, "the deprivation is not erroneous."[164] Additionally, the current sex offender registration system has procedures in place for individuals to present an argument as to why they do not pose a significant risk of danger to the community and are unlikely to recidivate, as "an offender has a right to be exempted from the regulation if she can demonstrate that her risk level is low."[165]

Similar to the Tier System for sex offenders, the suggested Tier System for drunk drivers was created with the intent to reduce drunk driving fatalities and target recidivists by categorizing repeat offenders

160. *See supra* Part III.B for a detailed discussion regarding the state courts' opinions on a convicted sex offender's equal protection concerns in the context of the Tier System.

161. *See, e.g.*, Legg v. Dep't of Justice, 81 Cal. App. 5th 504, 511 (Cal. Dist. Ct. App. 2022); *see also* State v. B.T.D., 296 So. 3d 343 (Ala. Crim. App. 2019).

162. *In re* M.H., 295 A.3d 1258 (N.J. Super. Ct. App. Div. 2023) (quoting Doe v. Poritz, 142 N.J. 1, 90–91 (1995)).

163. Schlittler v. State, 488 S.W.3d 306, 311, 315 (Tex. Crim. App. 2016).

164. Jerrehian, *supra* note 103, at 532 ("As the legislature intended to deprive all convicted offenders of these rights, the deprivation is not erroneous."). *See also* Conn. Dep't of Pub. Safety v. Doe, 538 U.S. 1, 7 (2003) ("In short, even if respondent could prove that he is not likely to be currently dangerous, Connecticut has decided that the registry information of *all* sex offenders – currently dangerous or not – must be publicly disclosed.").

165. Jerrehian, *supra* note 103, at 531 ("When a restriction applies only to offenders who are likely to recidivate, due process requires that there be a procedure in which the offender may present evidence of her recidivism risk.").

into a system that imposes penalties on individuals dependent on their dangerousness and their risk of re-offending. The government action, imposing the suggested Tier System and issuing a grant for states that chose to implement a similar Tier System within their jurisdictions, is rationally related to the state's goal of saving lives by reducing the amount of drunk driving fatalities caused by recidivists.

CONCLUSION

The federal government should implement the Drunk Driving Tier System, advocated for in this Note, to provide a unified way for states to deter drunk drivers from recidivating by imposing stricter penalties for repeat offenders and by deterring the community generally. This program aids law enforcement individuals who investigate drunk driving offenses. By requiring past offenders to register to be included on the Internet Registry, officers are provided with a complete driving record for the individual.

A. *Potential Impact of this Approach*

Implementing the suggested Tier System would have an impact on reducing drunk driving fatalities and result in saving human lives. Drunk driving recidivists pose the most significant threat to society compared to first-time drunk drivers, as recidivists usually have developed higher tolerances to alcohol, often resulting in overconsumption and overconfidence in their perceptions.

A program that targets drunk driving recidivists by imposing more restrictive punishments for repeat offenders is beneficial to the community for three reasons: (1) deterrence; (2) incapacitation; and (3) rehabilitation. One goal of the suggested Tier System is to bring more uniformity to drunk driving laws throughout the nation, and with more uniformity, prosecutions become more predictable and inevitable. Since deterrence is best achieved when individuals believe committing a criminal act will result in unwanted consequences,[166] the suggested Tier System will provide the necessary deterrents for the public and recidivists, specifically by ensuring the increasing severity of punishment for those who choose to reoffend.[167]

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166. KIRLEY ET AL., *supra* note 23, at 1-4 ("[D]eterrence works by changing behavior through the fear of apprehension and punishment. If drivers believe impaired driving is likely to be detected and impaired drivers are likely to be arrested, convicted, and punished, many will not drive while impaired by alcohol.").

167. Like the Tier System in place for sex offenders, the suggested Tier System punishes drunk drivers depending on their offense and their risk of reoffending.

The suggested Tier System also allows for individuals who drink and drive to lose their license and be legally incapacitated.[168] The length of the administrative license revocation period increases with the severity of the crime and the number of previous offenses, ensuring that the more dangerous offenders are removed from the roads for longer periods. This protects the community by ensuring these offenders are off the street.[169]

In addition to deterrence and incapacitation, the suggested Tier System provides avenues for rehabilitating these offenders. Within the suggested Tier System, each Tier has, at the minimum, a requirement for individuals to participate in an alcohol screening program prescribed by the state before being allowed to reinstate their license.[170] The screening is an opportunity for offenders to be evaluated by a medical professional to determine what rehabilitative measures would have the highest likelihood of success.[171] Tier III offenders must complete an additional evaluation with a state-appointed psychiatrist to determine whether more intensive treatment is necessary before license reinstatement.

The suggested Tier System accomplishes the goals of protecting the public from drunk drivers and providing drunk drivers with the necessary sanctions and rehabilitative services to deter them from committing a drunk driving offense again.

B. *Community Benefits from Approach*

In addition to aiding law enforcement officials in investigating drunk driving offenses by creating a registration system, there are regulations for the most severe offenders to better protect the community. In the suggested Tier System, Tier III offenders are required to place a "Convicted Drunk Driver" decal on the back license plate of their vehicle once their license is reinstated. This is so other drivers sharing the road can be better informed and provide a way to notify individuals sharing the road with drunk driving recidivists. These individuals can then decide

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168. The suggested Tier System strongly favors administrative license revocations, as all Tiers require a term of license revocation for every drunk driving offense. *See* KIRLEY ET AL., *supra* note 23, at 1-1, 1-11–1-12.

169. Though the suggested Tier System legally incapacitates drunk driving recidivists by revoking their license for a certain period following their DWI conviction, it does not entirely prevent these recidivists from drunk driving. Studies support that drunk driving recidivists often continue to drive while their license is revoked, and they continue to do so impaired. *See* KIRLEY ET AL., *supra* note 23, at 1-12.

170. KIRLEY ET AL., *supra* note 23, at 1-45 ("Alcohol screening uses a few questions to estimate the level and severity of alcohol use and to determine whether a person may be at risk of alcohol misuse or dependence.").

171. See *supra* Part II.A (noting that many repeat drunk driving offenders suffer from alcoholism and are prone to relapse, which necessitates targeted intervention to reduce recidivism); *supra* Part III.B (requiring alcohol screening and evaluation prior to license reinstatement).

how they want to proceed, as opposed to these severe drunk driving recidivists driving without any identifiers, leading individuals to be helpless in defending themselves. The decals provide individuals who share the road with drunk drivers with notice and information regarding the driving records of those driving around them.

In addition to saving lives, the suggested Tier System will save the federal government money. The estimated economic cost of all motor vehicle traffic crashes in the United States in 2019 was $340 billion, of which $58 billion resulted from alcohol-impaired crashes.[172] In addition to the economic cost to the country, when "quality-of-life valuations are considered, the total value of societal harm from motor vehicle traffic crashes in the United States in 2019 was an estimated $1.37 trillion, of which $296 billion resulted from alcohol-impaired crashes."[173]

As the societal and economic costs of the drunk driving epidemic are so high, and as the number of fatalities continues to increase annually, the federal government must step in and act by providing states with a unified Tier System created to attack drunk driving recidivism, as drunk driving recidivists pose the highest risk of danger to themselves and the community.

172. *See* NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., *supra* note 6, at 3 ("[I]ncluded in the economic costs are: lost productivity, workplace costs, legal and court costs, medical costs, emergency medical services, insurance administration costs, congestion impacts, and property damage.").

173. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., *supra* note 6, at 4.