The Role of Civil Lawsuits in Solving Bloomington’s Drunk Driving Problem
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The United States has made major strides in reducing drunk driving accidents in recent years. As the National Highway Traffic Safety Administration (NHTSA) reports, alcohol-impaired driving fatalities dropped by 21 percent between 2003 and 2012.¹

Despite this encouraging progress, drunk driving remains a serious issue in Indiana and across the country. Fatal drunk driving crashes rose by 4.6 percent nationally between 2011 and 2012, according to the NHTSA. In Indiana, there were 228 drunk driving deaths in 2012, marking a 9.2 percent increase from the year before (and a 14.9 percent increase from 2010).²

In particular, drunk driving remains a significant problem in Midwestern college communities, including Bloomington. Monroe County has a higher rate of drunk driving deaths than many other counties that are home to Big Ten colleges.³ This is true even though Monroe County’s rate of drunk driving fatalities was lower than that of other Indiana counties with major colleges.

Clearly, Bloomington — and the state of Indiana as a whole — still has room for improvement.

In the battle against alcohol-impaired driving, law enforcement efforts, public awareness campaigns and educational activities play important roles. These approaches get drunk drivers off our streets and help to shape public perception about the dangers of drinking and driving.

However, our civil justice system also contributes in a meaningful way. Damages awarded in personal injury and wrongful death lawsuits — particularly punitive damages — send a strong message to the public. The message: Drunk drivers will be held fully accountable.
With 32,000-plus students at Indiana University and a lively social scene, Bloomington has the basic ingredients for a drunk driving problem. An estimated 65 percent of college students drink alcohol in a given month, according to the National Institute on Alcohol Abuse and Alcoholism. A high percentage engage in “binge” drinking, or consuming five or more drinks in a single night, according to the National Institute on Alcohol Abuse and Alcoholism.

Students, including those under the legal drinking age of 21, consume alcohol in sororities, fraternities, off-campus homes and apartments as well as the many bars and restaurants along Kirkwood Avenue and throughout Bloomington’s downtown district. Drinking surrounds football games, basketball games, concerts and other events at or in the vicinity of the university. These events include the annual Little 500 — often referred to as “The World’s Greatest College Weekend.”

Still, the Monroe County drunk driving fatality rate is the lowest among Indiana counties with colleges, according to NHTSA data showing the rate of fatalities per 100,000 population in crashes involving at least one driver with a blood-alcohol concentration of .08 or above.

Of the 12 counties on this list, Monroe has the fifth-highest rate of drunk driving fatalities. In fact, Monroe County’s rate is roughly five times higher than that of Hennepin County, the home of the University of Minnesota’s flagship campus in Minneapolis.

But numbers alone fail to reveal the human damage caused by drunk driving. Mothers Against Drunk Driving (MADD) puts it this way:

“Behind every drunk driving statistic is a person whose life was full of family and friends, love and life, joy and laughter. Collectively, they are mothers, fathers, sons, daughters, brothers, sisters, aunts, uncles, friends, neighbors and co-workers.”

A single drunk driving crash can have devastating physical, emotional and financial consequences. Clearly, the problem of drunk driving in Bloomington demands a solution.

A three-pronged approach has emerged in recent years to fight the problem of drunk driving in Indiana: Enhanced law enforcement, robust public awareness campaigns and widespread educational activities.

The Indiana Criminal Justice Institute’s Traffic Safety Division summarizes the effectiveness of this approach in its most recent annual report:

1. LAW ENFORCEMENT

Under Indiana law:

• It is illegal to operate a motor vehicle on a public roadway with a BAC of .08 or above. (For drivers under age 21, the limit is .02; for commercial drivers, it is .04).10

• If you are convicted of operating a vehicle while intoxicated, or OWI, in Indiana, you can face serious criminal penalties, including fines, community service, jail, and loss of your driver’s license.11

• You can also lose your driving privileges for “implied consent” offenses — or refusing to submit to a breathalyzer or blood test upon being stopped by law enforcement officers.12

• It is unlawful to sell alcoholic beverages to a minor (under age 21) or to “sell, barter, deliver, or give away an alcoholic beverage to another person who is in a state of intoxication if the person knows that the other person is intoxicated.” This statute is also known as the Indiana “Dram Shop Law.”13

Better funding has allowed the Indiana State Police, local law enforcement and prosecutors to step up enforcement of these laws. Police and prosecutors have gone after drunk drivers and the bars, restaurants and stores that sell alcohol to minors and visibly intoxicated drivers.

• Indiana’s DUI Task Force issued 4,946 misdemeanor and 623 felony OWI citations in 2012 as the result of high-visibility patrols and sobriety checkpoints. The task force consists of 146 local law enforcement agencies in 34 counties.

• SUDS (Stop Underage Drinking and Sales) targeted events where underage alcohol consumption tends to be prevalent (such as the Little 500). In 2012, the initiative led to 1,509 arrests of minors, citations to 42 businesses and warnings to 26 businesses.

• The “Cops in Shops” program, in which officers pose as employees or customers in package stores, netted 82 arrests during the course of the year.14

Other tools have helped prosecutors convict drunk drivers. For example:

• The FACT (Fatal Alcohol Crash Teams) program helped raise the rate of convictions in 2012 of drunk drivers who caused accidents that resulted in serious injury or death. FACT teams respond to crashes and help law enforcement officers and others to avoid mistakes that often lead to suppression of evidence in drunk driving cases.15
Prosecutors have also teamed up with hospitals to develop efficient and effective ways to test the blood-alcohol content of suspected drunk drivers. The Monroe County prosecutor’s office, for instance, has joined forces with IU Health Bloomington Hospital to develop such a program.16

Most drivers convicted of OWI in Indiana undergo alcohol and drug assessment and treatment. Courts may also require convicted drunk drivers to have ignition interlock devices installed in their vehicles.17 The device prevents a driver from operating a car with a BAC above a certain level.

Unfortunately, many drunk drivers aren’t deterred by a conviction. According to the NHTSA, drivers with a BAC level of .08 or higher who were in deadly accidents in 2012 were seven times more likely to have a prior conviction for driving while impaired than were drivers with no alcohol.18

2. PUBLIC AWARENESS
Safe driving advocates have launched many campaigns across Indiana to raise awareness about the dangers of drinking and driving. According to the Traffic Safety Division, these campaigns include:

• Media blitzes surrounding heavy travel periods and seasons when drinking and driving tends to be a concern, including Thanksgiving, Christmas, New Year’s Day, St. Patrick’s Day, Memorial Day, Fourth of July, Labor Day and Halloween. The campaigns use radio, TV, the Internet and social media to convey messages such as “Buzzed Driving is Drunk Driving” and “Drive Sober or Get Pulled Over.”

• Advertising at sporting events such as Indiana Pacers games, minor league baseball games, Big Ten basketball tournaments and motor races. In one of the more creative campaigns, “Johnny on the Spot” advertisements are placed strategically above the urinals at the Bankers Life Fieldhouse in Indianapolis and other venues.19

But these and other public awareness campaigns may miss the mark among certain audiences.

Some anti-drunk driving ads (depending on their tone and placement) may actually “do little to combat drunk driving, and may even encourage the behavior they seek to curb,” according to a study released in 2011 by Nidhi Agrawal, associate professor of marketing at Northwestern University’s Kellogg School of Management, and Adam Duhachek, associate professor at Indiana University.20
3. EDUCATION
Teaching high school students about the risks of drinking and driving can have a major impact. Recent initiatives include:

- **SADD (Students Against Destructive Decisions)**, a program based on peer-to-peer communication among high school and middle school students. SADD has been responsible for campaigns such as the “It Only Takes One” media blitz, which featured a 30-second ad shown in Indiana’s 18 largest movie theaters throughout 2012.

- **Rule the Road Indiana**, a program that gives students hands-on experience through such tools such as a “Fatal Vision” course and field sobriety tests.

Drug and alcohol education programs also take place at the college level, including those offered by programs such as OASIS at Indiana University.

CIVIL LAWSUITS AID THE BATTLE
While law enforcement, public awareness and education help to reduce drunk driving accidents, the civil justice system provides a critical fourth prong in this effort. Civil court actions protect the rights of people injured by drunk drivers and hold offenders accountable.

As William C. Cooper points out in the Pepperdine Law Review, punitive damages deter an individual from drunk driving by hitting him “where he is most sensitive — his pocket book.”

A person who suffers a serious injury or loses a family member in an accident caused by a drunk driver in Indiana may file a personal injury or wrongful death claim against the driver. This is a civil action, separate and distinct from any criminal actions against the driver.

The lawsuit may allege that the driver was “negligent per se” for violating Indiana’s OWI statutes. The suit may also allege that the driver was negligent based on a breach of a basic duty of safety that the driver owed to the victim.

Pursuant to Indiana’s Dram Shop Law, the victim may also file a claim against the bar, restaurant, package store or social host who served the drunk driver if the driver was visibly intoxicated or underage.

A personal injury or wrongful death claim may allow a victim to recover compensatory damages. These damages are aimed at making the victim whole. They include compensation for:

- Past and future medical expenses
- Lost past earnings and diminished future income
- Scarring and disfigurement

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• Physical pain and suffering
• Emotional distress
• Funeral expenses
• Loss of the care, companionship and services of a deceased loved one.

EFFECT OF PUNITIVE DAMAGES

Additionally, a victim may pursue punitive damages in Indiana against the drunk driver or those who provided the driver with alcohol. These damages are not aimed at compensating the victim. Instead, they serve the purpose of punishing the defendant for “willful and wanton misconduct,” deterring the defendant from future offenses and deterring others from engaging in similar behavior.

To recover punitive damages in Indiana, a plaintiff must establish by “clear and convincing evidence” that the at-fault party “acted with malice, fraud, gross negligence or oppressiveness that was not the result of a mistake of fact or law, honest error or judgment, overzealousness, mere negligence or other human failing.”

A drunk driver may have to pay punitive damages if the driver’s conduct, under the circumstances, “subjected other persons to probable injury, with an awareness of such impending danger and with heedless indifference to the consequences.”

In considering punitive damages, a court may take into account the amount of alcohol the driver consumed, the way the accident occurred (such as speeding, ignoring a traffic signal, making a dangerous pass or driving the wrong way) and the driver’s history of OWI convictions.

The Indiana Court of Appeals decision in the case of Picadilly Inc. v. Colvin sheds light on the type of conduct that may lead to punitive damages against a shop or social host that furnishes alcohol to a drunk driver. In that decision, the court allowed punitive damages based on:

• The defendant permitting and encouraging, with heedless indifference to the consequences, the unfettered simultaneous consumption of alcohol by thousands of customers, with little if any restraints or opportunity to discern customers’ intoxication and curtail the serving of further alcoholic beverages when appropriate; and

• A reasonable inference, given the defendant’s location and volume of business, that it was aware that customers which it permitted and encouraged to become intoxicated would be departing its premises by motor vehicle, thus subjecting other motorists to impending danger and probable injury.
RESTRICTIONS ON DAMAGES

A victim’s ability to receive punitive damages is limited. Three provisions of Indiana state law restrict punitive damages:

1. The state places a cap on punitive damage awards. The award cannot exceed three times the amount of compensatory damages or $50,000, whichever is the greater. For instance, if a victim suffered $1.5 million in compensatory damages, the victim’s punitive damages award would be limited to $4.5 million.29

2. The trial court may in its discretion reduce the amount of punitive damages awarded by a jury if they are “excessive.” Factors the court looks at include:
   • The degree of reprehensibility of the conduct at issue.
   • The disparity between the harm or potential harm suffered by the complaining party and the punitive damages awarded.
   • The difference between the punitive damages remedy and the civil or criminal penalties authorized or imposed in comparable cases.30

Additionally, the court may consider the nature of the tort, the extent of the actual damages sustained by the victim and the economic wealth of the defendant.

3. Indiana allocates 75 percent of any punitive damages award to the state’s compensation fund for victims of violent crime. The plaintiff retains only 25 percent of the award. Attorney fees are not provided for in the statute.31 (Some have noted that the failure to provide these fees may have the effect of discouraging lawyers from pursuing such claims.32 However, there are no data showing that this is, in fact, the case).

Compensatory and punitive damages not only punish drunk drivers and those who recklessly provide alcohol to intoxicated drivers and minors, but they also can deter future misconduct.

For instance, a driver whose insurance rates have soared is likely to think twice and refrain from drinking and driving. By the same token, a store facing millions of dollars in damages is likely to have policies to prevent employees from selling alcohol to intoxicated patrons or minors. The store may require employees to check identification and look for signs that a customer is intoxicated, such as odor, slurred speech or red and glassy eyes.
CONCLUSION

By protecting victims and holding reckless drivers and businesses fully accountable for their misconduct, civil damages complement law enforcement efforts, public awareness campaigns and educational efforts in the fight against drunk driving in Bloomington and elsewhere.

As the Preamble to the Indiana Rules of Professional Conduct states, “Lawyers play a vital role in the preservation of society.”

Certainly, by pursing damages on the behalf of drunk driving accident victims and their families, they can play a crucial role in making our streets safer.

SOURCES


8 For the cited data please see, generally, National Highway Traffic Safety Administration Traffic Safety Facts, and the following URLs (in order):


11 Id.


15 Id.


19 Id.


22 Indiana University-Bloomington, Welcome to OASIS, http://studentaffairs.iub.edu/oasis/


24 See, e.g., Stroud v. Lints, 790 N.E.2d 440 (Ind. 2003), and Picadilly, Inc. v. Colvin, 519 N.E.2d 1217 (Ind. 1988)


27 Picadilly

28 Id.


30 Lints

