

Dram Shop Liability and Overservice Law Enforcement Initiatives

A Commentary

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Introduction

Candy Lightner, responding to the senseless death of her daughter caused by a repeat drunk driving offender, organized Mothers Against Drunk Driving (MADD) in 1980 to bring attention to the tragedies associated with alcohol-related motor-vehicle crashes. Her one-person crusade touched a nerve across the country and prompted a national grassroots movement that resulted in a sea change in social norms, public perceptions, and public policy regarding the problem.^{1,2}

The reforms, however, left a major contributing factor to the drinking driving problem largely untouched—the role of retail alcohol establishments. As documented by Rammohan et al.³ and the Task Force on Community Preventive Services (the Task Force),⁴ approximately 50% of binge drinking occurs in on-sale establishments (e.g., bars and restaurants). Various studies suggest that approximately 50% of drinking driving incidents originate in these venues.^{5–7}

The lack of attention to the role of alcohol retailers in the national debate is perplexing because 47 of the 50 states prohibit sales to obviously intoxicated people, and most states recognize dram shop liability to at least some degree (laws that hold retailers potentially liable for injuries caused by their intoxicated or underage patrons).^{8,9} Retailers have both a legal and ethical responsibility as well as the tools to reduce intoxication among their patrons, a responsibility that is too often ignored.

Dram Shop Liability: Evidence of Effectiveness

Rammohan et al.³ are therefore to be commended for deciding to focus on retailer responsibility in the latest Task Force systematic review. The authors' assessment of the research literature regarding the impact of dram shop laws is thorough and enlightening and their conclusion

that “dram shop liability is an effective intervention for reducing alcohol-related harms, as indicated by reduced motor-vehicle crashes” is well justified.

As is often the case, the research evidence comes late in the policy process and has not, to date, had the desired effect from a public health and safety perspective. As suggested by Rammohan et al.,³ dram shop liability laws have been substantially eroded during the last 10–20 years, in many cases after the research showing effectiveness had been published.⁹ Many state legislatures have undercut the law's effectiveness by imposing various limitations such as damage caps and higher standards of evidence and proof, sometimes to the point that the laws have effectively been repealed.⁹ In California, for example, the California Supreme Court issued several landmark decisions establishing dram shop liability during the 1970s only to have the state legislature reverse those decisions through legislation in 1979.¹⁰

The Task Force review can therefore play an important role in the public policy process, by providing evidence to forestall further weakening of existing dram shop laws and to remove barriers to their effectiveness. As the authors note, most of the research was conducted before this weakening trend took hold, and it is unclear whether a study conducted today would show similar effects.

Overservice Laws: Evaluation Is Premature

The Task Force process for evaluating policy interventions appears less suited to the second policy review by the group—the assessment of enhanced enforcement of overservice laws. Rammohan et al.³ identified only two studies for inclusion in their review. McKnight and Streff¹¹ reported on a study that involved a strong intervention and well-designed evaluation and reported significant outcomes. Ramirez et al.¹² had mixed results, which the authors attributed to its weak design, numerous problems in implementation, and small sample size.

Rammohan et al.³ nevertheless appear to give the two studies equal weight and conclude that there is “inconsis-

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0749-3797/\$17.00

doi: 10.1016/j.amepre.2011.06.019

tent findings” regarding effectiveness. Their analysis ignores the far superior design, execution, and methodology found in the McKnight and Streff study,¹¹ which deserves much greater weight in the Task Force summary of the research literature. Giving the two studies the same weight, however, does not affect the outcome of the analysis. Even if the Ramirez et al.¹² study had been excluded, there is clearly insufficient evidence to recommend the policy under Task Force guidelines.

In another analysis⁸ of overservice laws and their enforcement, the authors concluded that the laws formed the basis for a promising intervention strategy for reducing alcohol-related problems, including traffic crashes and violence. They also found that overservice laws suffer from the same legislative neglect as dram shop laws in that they often have daunting evidentiary requirements that make enforcement difficult or impossible. In addition, states generally give overservice laws a low priority and do not provide adequate resources for their enforcement (a weakness not found in dram shop laws, because they rely on civil law suits by victims, not enforcement by state and local agencies). These two problems provide the basis for the conclusion that despite their promise, the laws are poorly drafted and largely unenforced.

Rammohan et al.³ note this promise and the need for additional policy development and evaluation at the end of their article. The primary purpose of the Task Force process, however, is to provide guidance regarding the effectiveness of particular policies as evidenced in the research literature. Their conclusion that there are “inconsistent findings” regarding effectiveness and “an insufficient body of evidence to determine the effectiveness of enhanced enforcement of overservice laws” when taken as shorthand summaries of their analysis could be misinterpreted as a recommendation to give the policy a low priority because there are multiple, well-designed studies that have inconsistent results.

This raises the question: Why include this policy in the Task Force process? In the case of overservice laws, we need policy development, attention to intervention design, pilot studies, and, eventually, outcome evaluations, not a review of the very limited research literature regarding its effectiveness.

This question is not merely academic. The purpose of the Task Force is to provide guidance to public health practitioners and policymakers regarding evidence-based prevention strategies and in this sense seeks to influence the policy process. If its conclusion is taken out of context, it could undermine efforts to develop the overservice policy to a point where evaluation research would be justified. The process appears more suited to assess the effectiveness of policies that have been subject

to multiple evaluations than to policies that are so clearly still in the development phase.

Conclusion

The Task Force dram shop liability conclusions⁴ will provide public health practitioners an important tool for promoting this evidence-based intervention strategy. Practitioners will need to ensure that the conclusions regarding enhanced enforcement of overservice law do not become a barrier to policy development and law enforcement. This risk is heightened by the likelihood that the influential alcohol lobby will attempt to use the Task Force finding to convince lawmakers and law enforcement officials that they should continue to ignore overservice laws.

No financial disclosures were reported by the author of this paper.

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