

# Enlisting Bars and Restaurants in the Prevention of Intoxication and Subsequent Harms

## Why It Matters

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In the review paper<sup>1</sup> in this issue of the *American Journal of Preventive Medicine*, the Task Force on Community Preventive Services (the Task Force) looks at two different strategies by which servers of alcoholic beverages might be motivated to implement responsible beverage service (RBS) practices on their premises. Whether via the deterrent effect of exposure to large liability costs or more direct penalties of the law, these mechanisms are meant to achieve a reduction in intoxication and related harm through the intervention of a server who is expected to monitor the drinker's consumption and refuse service when and if the patron reaches a point of obvious intoxication. The other major strategy to achieve the same end, not covered in this review but in an earlier Task Force review,<sup>2</sup> is the use of server training to make servers aware of the laws requiring responsible service and to provide skills in identifying intoxicated patrons and how to deal with them effectively.

The independent Task Force, via their Community Guides, not only provides valuable guidance to policymakers and practitioners, it also helps the entire field of prevention research to celebrate progress that has been made but too often obscured until a coherent set of related articles is brought together and evaluated. In their review, the authors of this specific review have found that "the number and consistency of findings indicate strong evidence of the effectiveness of dram shop laws in reducing alcohol-related harms."<sup>1</sup> The evidence in support of enhanced enforcement was too limited and inconsistent to form a recommendation.

That dram shop laws encourage responsible service may seem obvious in retrospect, but as the authors make clear, current dram shop liability varies widely across jurisdictions, can result from either statutes or case law, and may have provisions restricting their application or possible penalties. To find that dram shop liability can be effective nev-

ertheless in promoting responsible service and reducing harm, despite all its variety and complexity, is a significant conclusion. Its significance derives from the likelihood that responsible beverage service, if fully and successfully implemented, may arguably be one of the most powerful prevention interventions available to us.

This potential, however, has yet to be realized. One review of the RBS literature concluded that "there is no reliable evidence that interventions in the alcohol server setting are effective in preventing injuries."<sup>3</sup> In addition to weak evaluation designs, those review authors suggested that a major problem for RBS was lack of compliance with the intervention. Thus, finding a way of maximizing motivation to comply is a major need for this prevention strategy, and the current review gives us hope that it is possible.

In concept, RBS comprises several different qualities that give us reason to develop it as a prevention tool. First, it is directed at drinkers directly at the times and places that their behavior puts them at risk, that is, as they are ordering another drink at licensed businesses. Second, the intervention does not require the drinker to monitor their own drinking and/or make a personal decision to stop. Instead, a commercial server is present to make the determination of the need for intervention and to act when necessary. Finally, the intervention is precisely targeted at the drinking and not the drinker. This means that an otherwise light drinker who drinks excessively one time is equally likely to be refused service as a heavy drinker. This is a tremendous asset from a population perspective, as most impaired drivers are likely to come from low and moderate drinkers because of their sheer numbers in the population, even while each of them has a lower personal risk than the heaviest drinkers.<sup>4</sup>

The challenge, then, becomes how to get commercial servers to adopt responsible beverage service. The usual approach to gaining compliance with similar laws is via the use of enforcement or inspection. The review here, however, was able to find only two reports that looked at enforcement as a mechanism for promoting RBS. This contrasts sharply with the number of studies focused on enforcing laws prohibiting the sale of alcohol to minors. The lack of RBS enforcement studies is not difficult to understand. Unlike the well-established procedures for enforcing underage drink-

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ing laws (e.g., use of underage decoys who attempt to buy alcoholic beverages), no such protocol has been developed for enforcing laws prohibiting sales to obviously intoxicated patrons. Although, in principle, it may be possible to use decoys who display obvious signs of intoxication, use of such decoys would inevitably raise the question of whether displaying signs of intoxication is the same as “being” intoxicated. No such ambiguity exists when police use actual minors when they attempt to buy alcohol.

This leaves the option of using plainclothes officers to observe alcohol service to see if anyone who is “obviously” intoxicated is served another drink. Although there may be bars or restaurants where such an occasion is frequent and routine, the perception of most agencies is that observing a naturally occurring violation would be sufficiently rare as to make this kind of enforcement too inefficient. It follows, then, that if direct enforcement is perceived to be unworkable, then inspections would be even less directly relevant.

That brings us to the threat of liability for serving patrons who then cause harm to themselves or others. This would seem a much more diffuse and indirect motivation for bar and restaurant owners, and yet we find in this review that legal liability may well, indeed, provide necessary impetus to adopt responsible serving practices. On reflection, the results are surprising, given the lack of clear guidelines for what constitutes “risky” business practices among bars and restaurants and, therefore, what insurance companies could specify as good risk management. Without clearly specified guidelines, bar and restaurant owners and managers can be motivated only by a vague fear of a lawsuit and yet not be sure what, if anything, would reduce their risk. Nevertheless, this seems to have been a sufficient condition for creating the positive outcomes cited in this review.<sup>1</sup> Imagine, then, how much more effective this incentive could be.

In fact, the findings reported here suggest a number of potentially fruitful strategies that communities could adopt to take advantage of exposure to liability as a motivator. First, a coalition or task force could make sure to publicize any recent or existing liability lawsuits involving licensed outlets. Ideally, these would arise in the same state as the community (and therefore under the same state statutes and/or case law), but even if such cases do not exist, cases from other jurisdictions, especially those involving large sums of money, could be publicized in order to raise the consciousness of licensees with respect to responsible service. Although the review cites several issues (e.g., penalty caps) that often weaken the direct impact of liability laws, most people’s knowledge of the law and the actual risk of liability is quite low. This can work in favor of a community prevention effort, of course.

In addition, a community may approach the insurance industry with the objective of having it provide both guidance for risk management (including RBS) and, even better,

to provide discounts for those who can demonstrate compliance with these principles. If such arrangements can be made, these too should be well publicized to licensees.

This leaves the question of whether owners, managers, and servers know how to implement effective responsible practices. As a precaution, responsible beverage service training can be offered as a resource, but it is likely an inefficient use of time to attempt recruiting staff to attend the training on a voluntary basis. The positive results cited in the review were achieved in most cases without the need for RBS training.

Communities may have other options as well. Although formal police procedures seem to preclude the use of decoy patrons to appear intoxicated (sometimes referred to as “pseudopatrons”), there is no reason that coalitions cannot use them as a means of either publicizing the lack of responsible service (if that is the case) or as part of a larger plan to direct attention to bars and restaurants most likely to be producing impaired drivers.

There is a final note of caution to keep in mind when reading the review. As valuable as it is to have the guidance this review provides for practitioners and researchers alike, we should not take this summary of the “state of the art” as a reason to drop any efforts for enhanced enforcement of commercial serving laws. Although communities need to know where to put their limited resources at present to achieve the best prevention impact, others should resist the urge to drop interest in the question of whether there may be a way to enforce laws prohibiting sales to obviously intoxicated patrons. It would be a shame to take the useful work of the Task Force and use it as a reason to drop all efforts on strategies that have yet to prove their worth. It may well be that a creative practitioner, community member, or even a researcher may develop a unique strategy that overcomes the apparent weaknesses found in some approaches today.

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