

## Missing the Cutoff

### Local, societal problem is over-consumption, official says

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A man walks into a bar. He has one drink too many.

And this time, the punch line isn't funny.

He may get in a fight, get in a car, or he may return home safely. Only one thing is clear: The bar in which he bought the drinks broke the law.

But if that bar is in Iowa City, it is not likely to be punished. In fact, no bar in Iowa City has faced criminal repercussions for serving drunk customers in at least the last eight years.

That's because one of the laws to prevent excessive service is decried as too ambiguous to enforce, while the other can only be used after someone gets hurt.

Saturday night, 10:30 p.m., two DI reporters enter a downtown bar. A young woman slips in her black high heels and tumbles to the floor. "It's her birthday," a friend in a bar-crawl T-shirt says as a waitress rolls her eyes. She then places a full pitcher of beer on the table and returns to the bar.

A recent study of Iowa City's bar scene conducted by the Responsible Retailing Forum, a project of Brandeis University of Waltham, Mass., shows it is not uncommon for local bars to admit and serve overtly drunk patrons.

Since last summer, a team of actors schooled in the intricacies of simulating intoxication have periodically visited local liquor licensees.

The game was a simple one: An actor, faking drunkenness, enters a bar and demands a drink. If he's refused, the bar passes; if he's served, the bar fails.

More than 50 percent have failed, receiving notice of their lapses from the group but no legal ramifications from police.

Researchers chose three communities to study: Waltham (for its laid-back party culture), Albuquerque (considered a battle zone in the war against drunk driving), and Iowa City.

"If one were to look for an environment where there were egregious problems of over-consumption, Iowa City would recommend itself," said Brad Krevor, the forum's president and a Brandeis University professor. The organization also chose Iowa City because state and local officials willingly accepted its help.

And bar owners readily say they welcome help; when it comes to spotting drunks, they are often at a loss.

"It's very hard for someone to detect an intoxicated person," said Leah Cohen, the owner of Bo-James, 118 E. Washington St. "It's usually someone staggering, being loud, boisterous, and obnoxious. But there can also be very quiet drunk people sometimes. It's just very hard, very difficult to tell."

A man wearing a blue-and-white striped polo confidently saunters up to a friend standing at the bar. "I'm so effing drunk," the first man says, casually cradling a bottle of Coors Light. "Me, too," his friend replies, turning to the bartender with a \$5 bill in hand. Moments later, after downing a shot, he, too, has a Coors Light.

Police say they have just as much difficulty prosecuting bars for excessive service as the bars say they do identifying those who should be cut off.

“In the reality, do intoxicated people get served?” Iowa City police Sgt. Troy Kelsay said. “If you are you trying to draw some bright line [for intoxication], and you are drawing it at the same line we hold OWIs, .08, then absolutely - every night, intoxicated people are getting served. Is that what the law means by obviously intoxicated? I don’t know. There isn’t that bright line for me.”

But that doesn’t mean officers are not out enforcing other liquor laws. They visited bars more than 1,100 times last year, working more than 1,600 hours on foot patrol downtown.

In that time, police ticketed 836 people for possession of alcohol under the legal age in downtown bars. They also wrote 1,106 tickets to those who were publicly intoxicated - an infraction whose wording is similar to that of the excessive-service law.

Since 2000, police have successfully cited 28 bars 44 times for serving minors during compliance checks.

And all the while, no excessive-service tickets were issued.

“If I were to file a complaint, it would go straight to criminal court, and I think that I would have a difficult time, especially in this community, making a stand,” said Kelsay, who oversaw alcohol enforcement before becoming the department’s public-information officer. “There just is no foundation for it.”

For police to successfully bring a simple-misdemeanor charge against a bartender for serving someone who is drunk, an officer must witness the sale and be able to prove that the customer was visibly intoxicated. The reality for the Iowa City police is that an over-serving charge would take more resources and time than other drinking charges.

So instead, the police focus turns to 21 and not the issue of drunks drinking.

Mike Porter, the owner of the Summit and One-Eyed Jakes, both on South Clinton Street, said that while society generally accepts younger adults having a drink, he feels that the community doesn’t condone excessive drunkenness.

“It is infinitely more important to not serve an intoxicated person than a person who is underage,” he said.

Lynn Walding, the administrator of the state’s Alcoholic Beverages Division, agreed, saying, “I’ve raised the issue that underage drinking sometimes masks the bigger issue of public intoxication or serving intoxicated patrons.”

Two women climb a stairwell up from the restroom. One, in a pink polka-dot dress, falls forward. Her friend pulls her up, and they round the corner to a beer tub. The waitress, who saw the incident, laughs and sells them two more bottles of Bud Light.

So what is intoxication? The law doesn’t really say.

The terms “intoxication” or “intoxicated” appear in the Iowa Code more than 600 times, but they are never expressly defined. Many laws are further beclouded when provisions simply refer to people “appearing” or “acting” intoxicated. Because of this, people can be punished for offenses, such as public intoxication, even if they haven’t had a drink, though that rarely occurs.

Police and state officials often outline intoxication as a .08 blood-alcohol content, bloodshot, watery eyes, slurred speech, and a strong smell of alcohol.

That blood-alcohol level, however, is “certainly a ballpark average,” said Dave Barloon, an advanced registered nurse practitioner with the UI Hospital and Clinics’ Chemical Dependency Center.

Intoxicated people don’t always exhibit the telltale signs, he said.

“There isn’t anything magical about .08,” he said. “But certainly, at that level you don’t think clearly, and you don’t make good decisions. We see violence, we see fights, and we see women getting assaulted.”

Identifying a person who is legally “intoxicated” can be just as difficult as determining if one is visibly intoxicated.

Sara Riley, a partner at the Cedar Rapids-based Tom Riley Law Firm, said she encounters this difficulty regularly, having worked on more than 25 liquor-liability cases in the civil arena.

“When I’ve taken depositions of people working at a bar, when you ask them if the person was intoxicated, the answers are quite funny,” she said, noting that more exposure to alcohol influences definitions. “I have people who say, ‘Well, they weren’t vomiting,’ or ‘They weren’t falling down.’ But that doesn’t mean they weren’t drunk.”

A woman, wearing a 21 tiara along with a pointy “Where is the bar?” hat, sways up to the bar. She rifles through her wallet for a few minutes, then hands the bartender a punch card. In turn, she receives two pitchers and happily stumbles back to her friends.

Bars are answerable to more than just the criminal law. Both private individuals and the state can seek reprisal through civil means.

One avenue is through the Iowa Alcoholic Beverages Division - the state’s supreme booze broker.

After the repeal of Prohibition, Iowa became one of the first “alcohol-control” states, which means that now, one man, Walding, holds executive discretion over this \$84 million a year market.

It is his job to not only coordinate the dispensing of intoxicating liquor but also to make sure those licensed to sell the stuff follow the law. If they don’t, the agency can suspend or revoke their vending privileges.

Between 2003 and 2007, the board suspended 23 bars’ liquor licenses for excessive service, none of which were in Iowa City. During that time, however, the division did not permanently shut down any bar. Neither has Iowa City, though some local governments do take independent action for those who fail to abide by law.

Compliance begins with “the bar owners understanding their responsibility, understanding their ethical requirements in complying with Iowa law,” Walding said, noting that the police also have a duty to prohibit bars from serving drunks.

Complaints filed through either the Alcoholic Beverages Division or the civil courts, however, don’t have to meet the same stringent requirements that Kelsay says law enforcement must prove.

That’s why the most common consequences for excessive service in Iowa City manifest themselves in the civil realm.

When intoxication meets violence, those who provided the alcohol can be punished by those wronged using an Iowa law known as dram shop (see sidebar above).

This civil remedy has a downside: Injury must happen first.

After Michael Kearney was fatally injured by Daniel Corbett in 2003 at a Kum & Go parking lot on Burlington Street, Corbett was not the only person the UI engineering student’s family blamed. A judge approved a settlement in 2006 between the Kearneys and the Pedestrian Mall establishment Vito’s - one of the stops on underage Corbett’s sauce circuit - for nearly \$450,000.

While settlements of this amount are uncommon, claims under the law for lesser injuries are not.

Such lawsuits pending in Johnson County include a man suing a bar after another patron drunkenly assaulted him with a car in 2004. A different man contends that a bar is at fault for over-serving an assailant who later beat him with a cane in 2006. And yet another man is placing blame on a bar for over-serving an attacker who punched him in the face in 2006, breaking his jaw.

Dozens of these cases are filed every year, so bars must buy costly insurance - amounting to tens or hundreds of thousands of dollars - to settle claims brought against them.

Yet bar owners simply see the insurance premiums, amplified by the occasional lawsuit, as a cost of doing business.

To reduce their liability, liquor establishments often send their employees through a program known as Training for Intervention Procedures, or TIPS. The private program, paid for by the bars and administered by the police, helps teach bartenders and door staff, at \$35 a pop, how to identify intoxicated customers, while also helping bars receive a discounted insurance rate.

Iowa City police Officer Allan Mebus administers the program, teaching alcohol purveyors to watch out for such signs as slurred speech, stumbling, and talking loudly.

Participation in TIPS, and bar owners' enthusiasm for such programs as the Responsible Retailing Forum, are positive signs, said Krevor, the Brandeis professor who is studying Iowa City's compliance with alcohol regulations.

"These licensees are doing their best to prevent sales to intoxicated individuals, but there's this huge disparity between what owners and operators are asking their people to do and what is actually happening," he said.

Because ultimately, the liquor keeps flowing.

And when it flows to vandalism and violence, Kelsay said, Iowa City is bound to see the consequences.

"I could write underage-drinking tickets all night long; I could write speeders coming up on I-80 all day long. It's institutionalized. It's part of what is Iowa City," he said. "The community problem, the local problem, the societal problem is over-consumption."