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Are drunk drivers getting a bargain?

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In September 2004, Peter James Rappe, then 24, was driving down the 100 block of Woodley Street when he was pulled over by a Northfield police officer who had reason to believe Rappe was driving drunk. Tests on the scene and a Breathalyzer result confirmed the officer's suspicions — Rappe blew over the legal limit of .08 percent blood alcohol content. The officer gave Rappe a notice of revocation, which instantly removed his driving privileges, and issued an incident report that would later go to the city prosecutor as a recommendation Rappe be formally charged with DWI — driving while intoxicated. The city prosecutor offered Rappe a deal: probation for a year, random testing, and the license revocation in exchange for a careless driving conviction. Rappe agreed. That's how he became part of a little known statistic in Rice County's battle against drunk driving. The arrests Rice County has a problem with drunk drivers. That's what the state Department of Public Safety tells us in press releases and posters. Each year, the DPS puts out a poster that lists the deadliest drunk driving counties in the state. For years, Rice County has made the list. According to a Northfield News examination of state statistics, local law enforcement is pulling over drivers they suspect are impaired at a rate that always equals and at times exceeds the state average. Since 1997, 14 other counties in the state have had more arrests for driving while impaired than Rice, according to stats provided by the state Office of Traffic Safety. Nearly 1 in 10 of the county's drivers have been busted at least once for driving while impaired in that same time. That's about the same as the statewide average. In 2008, the latest year for which statistics are available, Rice County ranked 18th of 87 counties in the number of times cops caught someone driving under the influence. Rice ranked 16th in the state for first-time offenders and 14th in catching those with three or more incidents of driving while intoxicated already on their records. When alcohol was involved in 2008, Rice County exceeded the statewide average for percentages of those killed or injured in a crash, or when property was damaged. The Rice County sheriff has two to three officers patrolling the county's roads and unincorporated areas at any given time. Faribault has five to six patrols and Northfield averages four, depending on the day of the week and time of the night. Smaller communities like Lonsdale, Dundas and Morristown also have patrols. Federal and state grants have allowed for "saturation patrols" like the county's MOD Squad, NiteCAP, and Safe & Sober programs, that pay for extra officers on any given night to look specifically for drunk drivers. Rice County has about the same number of officers on its roads as other counties with comparable population, according to the federal Bureau of Justice, and yet it exceeds the average for arrests, state statistics show. "We have to do something, and we are," said Faribault Police Chief Dan Collins. The convictions In 2008, law enforcement pulled over, conducted sobriety tests and issued a notice of revocation 408 times in Rice County. Here's how the process generally works. An officer on traffic patrol notices a car that's weaving or fails to stop completely or maybe is missing a brake light. The officer pulls over the car and, if through Breathalyzer and field sobriety tests determines the driver is intoxicated, two things simultaneously happen: the officer can issue a notice of revocation and can also arrest the driver on suspicion of DWI. The notice of revocation starts an administrative process that, depending on the number of times the driver has been previously convicted of driving impaired, ends with the loss of driving privileges for an extended period of time. This civil process is handled entirely by the state and allows for appeals and granting of a limited driving license. At the same time, the driver faces criminal charges of driving while intoxicated that, depending on the driver's blood alcohol level, involvement in an accident or the number of previous DWI convictions, can range from a misdemeanor to a felony. The same year Rice County cops made 408 stops on drunk driving charges, 80.6 percent resulted in DWI convictions. That puts Rice County 73rd out of the state's 87 counties. Marshall County leads the state with a 61-for-61, 100 percent conviction rate. Twenty counties' rates top 90 percent. Those are not just small, rural counties with few incidents, either. Stearns County, the seventh most populous county in the state, had 1,067 driving while intoxicated arrests and 961 convictions, for a 90.1 percent conviction rate. Olmstead, the eighth largest county, had nearly 1,000 incidents and a 91.9 percent conviction rate. Of the five counties in the state with comparable population, Rice County ranks lowest for conviction rate and only two have fewer incidents. On its face, it would seem Rice County has a problem convicting drunk drivers. But a closer look at the statistics reveals that local prosecutors are allowing first-time offenders who "blow" .08, .09, or .10 percent blood alcohol content to plead guilty to careless driving charges instead of going to trial to get a DWI conviction. They say the civil revocation process serves the same punitive purpose as criminal prosecution and saves taxpayer dollars. And it's not just a Rice County practice. The six counties that surround Rice all have conviction rates ranging from 78 percent in Dakota County to 87.4 percent in Le Sueur. In 2008, Kurt Fischer prosecuted

more drunk drivers than any other attorney in Rice County. He's the city prosecutor for Lonsdale, Morristown and Faribault. City prosecutors handle all DWI cases except those that happen in the county's unincorporated areas or that are felonies. Those are handled by the county attorney's office. According to Fischer's informal count, in 2008 he handled 201 cases between the three communities he represents. Of those, 176 were convictions. The rest were a combination of plea agreements, dismissals or stays. That puts his conviction rate slightly above the county's 80.6 percent. Other city prosecutors, including Dundas' Adam Dowd and Northfield's prosecutor in 2008, Tim Morissette, report similar results. All agree that they offer plea bargains when the accused has a lower blood alcohol content and if it's their first offense. "From a prosecutor's standpoint, we don't give up anything," Morissette said. "There isn't much to be gained from a court trial since the sentence is the same." In Minnesota, someone convicted of a misdemeanor careless driving charge faces the same penalties as someone convicted for the first time of driving while intoxicated. Both lose their license for up to 90 days and face fines and other costs to get it back. Insurance premiums go up. Their driving record reflects the forfeiture, which, despite a careless driving conviction, alerts law enforcement that likely alcohol was involved in the incident. Most importantly, under current state statute, if that first-timer shows up in front of the prosecutor again accused of driving drunk, despite the previous careless driving criminal conviction, the prosecutor can pursue more serious, enhanced DWI penalties - just as if he had tried and received a DWI conviction in the first place. "We're all money-conscious for our cities," said Dundas Prosecutor Dowd, who is also a finalist for a Third Judicial District judgeship. "For the purposes of battling drunk driving, the revocation works. It gets them off the streets. That 20 percent (of arrests that don't lead to DWI convictions in Rice County) isn't because we're soft on drunk driving or losing cases. I can't remember the last time I lost a DUI. They're slam-dunks. The 20 percent are first-timers." The legislation But are you depriving someone of their constitutional right to a trial by punishing them with a civil process? At least one state senator thinks so. St. Paul Sen. Mee Moua this year introduced an amendment to the DWI Sanctions Bill - the one that would mandate the use of an ignition interlock device with a DWI conviction - that would bar the use of civil revocation to enhance the criminal penalties for future DWI offenses. Moua said the amendment was struck from the bill in the Finance Committee when concerns were raised about the increased judicial costs other senators said it would create through more DWI trials. In a voicemail message to the Northfield News, Moua said the move was made against her wishes and prompted her to consider re-introducing the amendment on the senate floor during the sanctions bill debate. But in assessing support for the move, Moua discovered she didn't have the votes needed. So, for this session, the amendment is dead. "But it's definitely an issue for me and one I plan to raise again next session," Moua said in her voicemail. "I'm going to keep it on the front burner." Moua's amendment is part of a recent effort by legislators to toughen the state's DWI laws. There are currently 11 senate and five house bills proposed that would change the state's current DWI laws. District 25 Sen. Kevin Dahle (DFL-Northfield) introduced legislation signed into law that added language allowing any qualified individual to draw blood from someone accused of DWI. The existing law listed just a few people, creating a loophole for defense attorneys whose clients had blood drawn by someone in a position not on the list, Dahle said. Dahle had not heard about Moua's amendment, and he could see local prosecutors' arguments that the pleas save money. "But I really believe that if it was a DWI, it should say DWI on their record," Dahle said. The County Attorneys Association opposes the legislation, said Bill Lemons. Lemons is the association's traffic safety resource prosecutor. "The due process arguments have been made by the defense bar to the courts and have been rejected for years," Lemons said. The attorney said those offered a plea bargain have the opportunity to reject it and take their case to trial. Thus, due process is served. "Now they're just taking it to the Legislature instead." Lemons said he was a prosecutor for about 10 years and didn't offer plea bargains on DWIs, even if it was a first-timer. "I'm not saying I agree with it (what the prosecutors are doing with plea bargains), but I do get what they're doing and why." District 26 Sen. Mike Parry (R-Waseca) is more conflicted. "Some look at it as was justice served for that first-timer who blew .08 or .09? And the answer is yes, I think losing the license hurts more," Parry said. "I've always thought that in taking the license away you've taken away a freedom." But for Parry, it's less about the constitutional argument than it is about finances. "If we would quit taking money away from the judicial system we wouldn't have to wait to get cases through and we could try all the cases we need to," he said. Amen, said Northfield Chief of Police Mark Taylor. Every time an officer has to testify in a DWI case, it likely means overtime for his department, Taylor said. "I'm not advocating for drunk drivers to get any kind of deal," Taylor said. "But my concern with the legislature is ... there's no financial support. It's all fine and dandy to say let's get tough, but if you don't have the resources, how do you do that?" The future After his 2004 careless driving conviction, it took Peter James Rappe exactly 10 months to get pulled over again on suspicion of DWI. This time, he blew .14. Less than a month after that, he was arrested again, this time in Goodhue County, on the same charge. On March 6 this year, he was picked up again in Rice County, charged with two counts of DWI and now faces seven years in prison and a \$14,000 fine. The initial license revocation Rappe received in that September 2004 careless driving conviction was a factor in the penalties the county is now pursuing against him, according to the

criminal complaint.FACTOIDS—The 2008 number of impaired driving incidents statewide, 35,794 is 7 percent fewer than in 2007.—There is a high consistency, year after year, with when drinking and driving occurs during the week. In 2008, Fridays accounted for 16 percent of total incidents, Saturdays for 27 percent and Sundays, 22 percent.—Average alcohol level among first-time violators was .146 percent in 2008.—There is a strong correlation between age and drinking and driving. 20-34-year-olds accounted for 56 percent of the impaired driving incidents in 2008. —There is also a strong correlation between gender and drinking and driving. In 2008, men committed 74 percent of the impaired incidents (when gender was reported).—Although the seven-county metro area accounts for 60 percent of the state’s population, it accounts for half the impaired driving incidents in 2008. The other 80 counties accounted for the other 50 percent.—60 percent of all violators in 2008 statewide had no prior alcohol incidents on record.—50 percent of those who incur a second DWI incident will incur a third. Half those who incur a third will incur a fourth.—Reach Jaci Smith at 645-1116 or jsmith@northfieldnews.com

