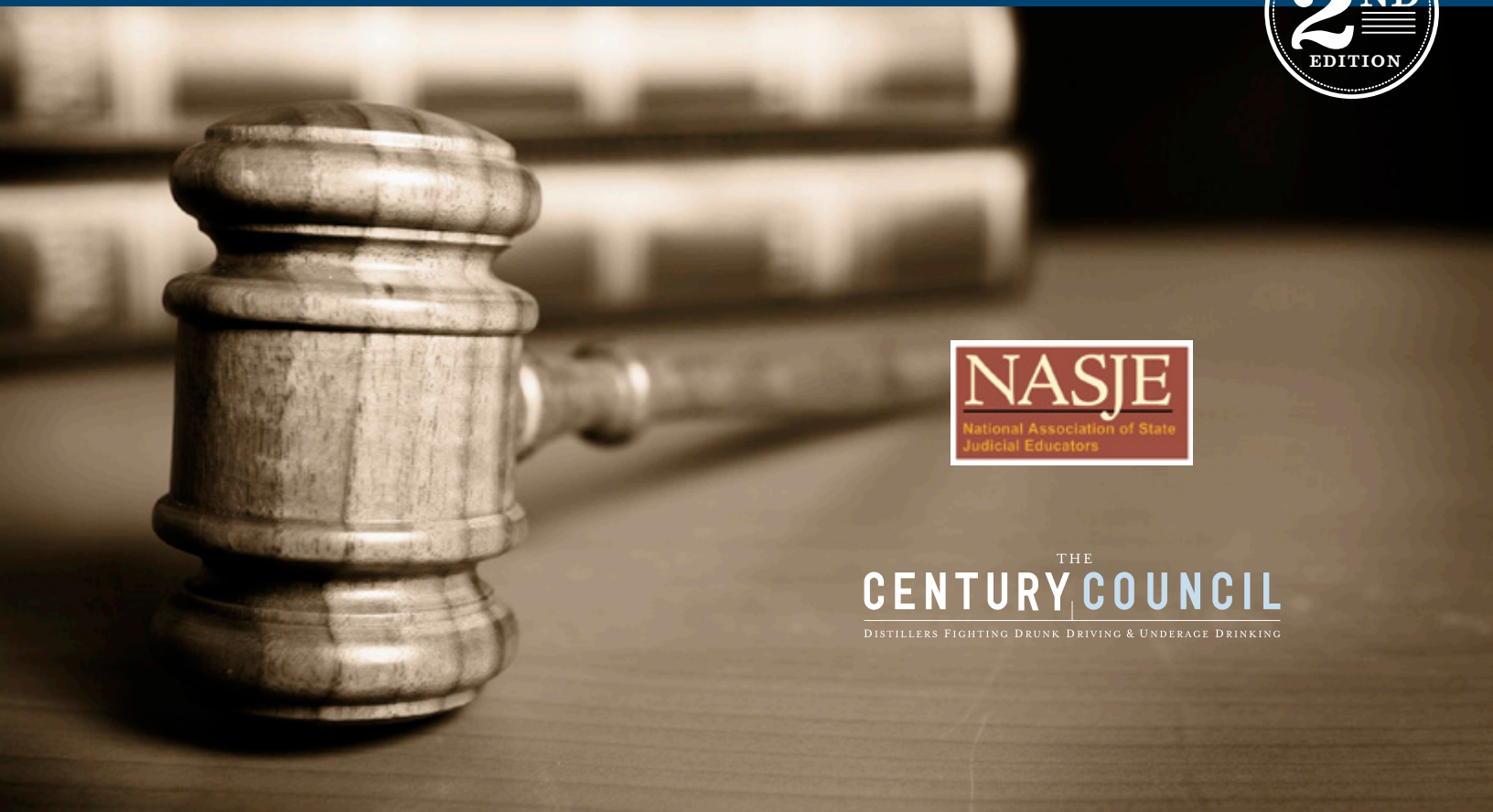




HARDCORE DRUNK DRIVING JUDICIAL GUIDE

A Resource Outlining Judicial Challenges, Effective Strategies and Model Programs



THE
CENTURY COUNCIL
DISTILLERS FIGHTING DRUNK DRIVING & UNDERAGE DRINKING

THE NATIONAL ASSOCIATION OF STATE JUDICIAL EDUCATORS (NASJE) is a non-profit organization, founded in 1975, that strives to improve the justice system through judicial branch education. NASJE is a leader in defining the practice of judicial branch education and in gathering and sharing resources among educators.

THE CENTURY COUNCIL (TCC), founded in 1991, is a national not-for-profit organization funded by America's leading distillers to fight drunk driving and underage drinking. The Council develops and implements innovative programs and public awareness campaigns and promotes action through strategic partnerships.

THE CENTURY COUNCIL IS FUNDED BY THE FOLLOWING COMPANIES:

Bacardi U.S.A., Inc., Beam, Brown-Forman, Constellation Brands, Inc., DIAGEO, Hood River Distillers and Pernod Ricard USA.

ABOUT THE TERM

DWI

The DWI acronym is used throughout this guide as a catch-all term for convenience and consistency, although some states use other terminology, such as DUI (driving under the influence), OUI (operating under the influence), OWI (operating while impaired) and impaired driving.

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The Century Council is tremendously grateful for the expertise and advice of our Judicial Education Advisory Panel members who have given their time and talent to help us educate judges across the nation. The Advisory Panel was created to examine the judiciary's critical role in reducing hardcore drunk driving. Founding members included: Mr. Paul Biderman, The Honorable Ernest Borunda, Ms. Pam Castaldi, The Honorable Richard Culver, The Honorable Jim Dehn, The Honorable Michael Fields, The Honorable Karl Grube, The Honorable Birdie Jamison, Mr. Thomas Langhorne, The Honorable Christopher McNeil, The Honorable Robert Pirraglia, The Honorable John Sherman, and The Honorable William Todd.

The Advisory Panel comprises a national panel of judges and judicial educators who are recognized experts on the drunk driving issue. Together they examine key adjudication issues and opportunities and identify effective strategies.

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SECTION I:

PREFACE

HISTORY OF THE HARDCORE DRUNK DRIVING PROJECT

SECTION I:

PREFACE

HISTORY OF THE HARDCORE DRUNK DRIVING PROJECT

The Century Council's efforts to eliminate drunk driving have included a special focus on the most deadly offenders, hardcore drunk drivers, who account for nearly six out of ten alcohol-impaired traffic fatalities on our nation's roads. The Council has played a leadership role in addressing the hardcore drunk driver problem and has highlighted effective strategies and tactics for the swift identification, certain punishment and effective treatment of these offenders.

THE DEFINITION:

The Century Council defines hardcore drunk drivers as those who drive with a high blood alcohol concentration of .15 percent or above; or who drive repeatedly with a .08 or greater BAC, as demonstrated by having more than one impaired driving arrest; and who are highly resistant to changing their behavior despite previous sanctions, treatment or education.

The Hardcore Drunk Driving Project was launched by The Century Council in 1997. Since the project's inception, numerous materials have been developed and distributed including two comprehensive sourcebooks with state specific statistics, a documentary, community forums, the creation of a national agenda on the issue, and ongoing research regarding hardcore drunk drivers.

In 2000, prior to our work with the judiciary, The Century Council joined with like-minded traffic safety organizations to form The Coalition to Fight Hardcore Drunk Driving. Current members include The Century Council, The National Transportation Safety Board (NTSB), The American Automobile Association (AAA), The National Center for DWI Courts, The National District Attorneys Association and Alcohol Monitoring Systems, Inc. This coalition has provided expertise, effective strategies and tactics, and assistance with comprehensive hardcore drunk driving legislation in states across the country.

JUDICIAL EDUCATION

Over time, there have been numerous studies investigating the criminal justice system as it relates to driving while intoxicated (DWI). Judges adjudicating DWI cases, especially those involving hardcore offenders, face a myriad of challenges, including interpretation of constantly evolving law and of complex technical and medical-based evidence. Many judges are not aware of the innovative and effective sentencing options that are available to them.

The Century Council believes the judiciary is a critical component in addressing hardcore drunk driving. In 2002, The Council formed a strategic partnership with the National

Association of State Judicial Educators (NASJE) and other judicial education organizations to provide judges and judicial educators with a comprehensive resource designed to help them effectively adjudicate hardcore drunk driving cases in their courts.

The Judicial Education Advisory Panel created *The Hardcore Drunk Driving Judicial Guide*. This publication combined the panel's ideas and experiences with research in the field of hardcore drunk driving and highlighted effective strategies, tactics and programs appropriate for implementation across the nation. It was designed to serve as a resource for judges and judicial educators as they addressed the growing number of drunk drivers appearing in their courts.

The publication of *The Hardcore Drunk Driving Judicial Guide* was accompanied by an aggressive judicial education initiative. The Century Council and NASJE worked with state supreme courts to incorporate educational sessions on hardcore drunk driving adjudication within annual judicial conferences. Each hardcore drunk driving judicial education workshop emphasized interactive teaching techniques employing a panel of judges, subject matter experts and a judicial educator.

This format created an interactive, supportive learning environment during which judges were encouraged to articulate their systemic frustrations with DWI adjudication. They were then instructed on how to apply *The Hardcore Drunk Driving Judicial Guide's* recommendations to help reduce drunk driving recidivism.

The Hardcore Drunk Driving Judicial Education workshop was presented to more than 4,000 judges in more than 34 states and also during national judicial conferences.

The Century Council then funded an independent evaluation of the effectiveness of the program by Maureen Conner, Ph.D., an associate professor in the School of Criminal Justice at Michigan State University and the director of the Judicial Administration Program. The evaluation measured knowledge, attitude, and behavior gained from the judicial education workshop in a three-phase evaluation design (pre-workshop, post-workshop, and follow-up interview).

The evaluation showed that the Hardcore Drunk Driver Judicial Education Workshop had a positive impact on participants. Most notably, it conveyed new knowledge and changed judges' behaviors and attitudes towards sentencing, treatment and sanctions. The workshops were effective in:

- Improving judicial knowledge of the DWI offender
- Creating a better understanding of the judiciary's role in sentencing drunk drivers
- Improving perceptions and attitudes of adjudication and sentencing strategies
- Increasing the likelihood judicial officials would utilize specialized adjudication and sentencing strategies

The evaluation results also revealed significant increases from the pre-test to follow-up in all areas that measured attitudes toward adjudication and sentencing strategies. These results suggested that the workshop was not only effective in the short run, but that the impact was sustained over time. Additionally, workshop participants reported a significant change in the use of the key adjudication and sentencing strategies highlighted during the workshop presentations.

In 2007, The Century Council was awarded the prestigious Peter K. O'Rourke Special Achievement Award by the Governors Highway Safety Association in recognition of its judicial education program's notable achievement and contribution in the field of highway safety.

This second edition of *The Hardcore Drunk Driving Judicial Guide* has been expanded to include programs, emerging issues and practices such as the traffic safety resource prosecutor program, the judicial outreach liaison program, continuous transdermal alcohol testing, proliferation of alcohol ignition interlocks both in the car and for use in offender's homes, no refusal programs, and 24/7 sobriety programs, to name a few. All of these issues are addressed in this new edition of *The Hardcore Drunk Driving Judicial Guide* and will appear in the pages that follow.

Successful approaches to stop hardcore drunk driving require a comprehensive system that provides for swift identification, certain punishment and effective treatment. The judicial community is uniquely positioned to lead the effort to reduce hardcore drunk driving through strong, consistent sentencing and creative, comprehensive sanctions. These measures not only sanction the offender and protect the public but also promote behavior changes leading to reduced recidivism. See Appendix B for *The National Hardcore Drunk Driver Project's National Agenda: A System to Fight Hardcore DWI*.

However, judges are but one component of the criminal justice system and cannot effectively address hardcore drunk driving alone. For this reason, The Century Council worked to include additional criminal justice stakeholders such as prosecutors, community supervision and law enforcement in its judicial education program. All of The Century Council's educational resources are available free of charge and can be accessed online and downloaded at www.centurycouncil.org/drun-driving/materials.

SECTION II:

THE PROBLEM OF HARDCORE DRUNK DRIVING

SECTION II:

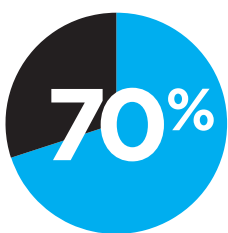
THE PROBLEM OF hardcore DRUNK DRIVING

Too often one hears of a tragedy involving a hardcore drunk driver, but the issue can seem too complicated to address. Even as national alcohol-impaired traffic deaths have steadily declined, hardcore drunk driving deaths have persisted. Offenders may be difficult to detect, prosecute and properly sanction and treat. Those who are apprehended often manipulate the judicial system's weak spots and avoid appropriate sanctions and treatment, leading to continued recidivism.

Comprehensive countermeasures that target the hardcore drunk driving population are critical and have been cited by the National Highway Traffic Safety Administration (NHTSA) as an immediate need on which the nation should focus. Strides are indeed being made as more successful tactics and programs are implemented in the fight against hardcore drunk driving. In this resource, the focus is on how judges can best contribute to those efforts.

Since NHTSA began recording alcohol-related statistics in 1982, alcohol-impaired driving fatalities have decreased 52 percent: from 21,113 in 1982 to 10,228 in 2010. Despite this tremendous progress, hardcore drunk drivers continue to be over-represented in alcohol-impaired traffic deaths.

In 2010, 32,885 people died in traffic crashes in the United States. The estimated 10,228 people who died in alcohol-impaired driving crashes accounted for 31 percent of all traffic deaths (NHTSA 2010). Further, 57 percent of all alcohol-related fatalities involving passenger vehicles occur on rural roads. Also, the majority of impaired driving fatalities involved hardcore drunk drivers:



70% of drunk driving fatalities involved a driver with a BAC of .15% or higher. Drivers with a BAC level of .15% or higher in fatal crashes are nine times more likely to have a prior conviction for driving while impaired than drivers with no alcohol.
(Source: NHTSA 2012)

2X
LEGAL
LIMIT

Among drinking drivers involved in fatal crashes the median BAC level remains at .16%, twice the legal limit.
(Source: NHTSA 2012)



0.18

BLOOD
ALCOHOL
CONCENTRATION

The most frequently recorded BAC level among drinking drivers in fatal crashes was .18.
(Source: NHTSA 2012)

While comprising a relatively small proportion of drivers, hardcore drunk drivers exert a disproportionately high human and monetary impact. For example:

- It is estimated that while drivers with BACs in excess of .15 percent are only 1 percent of all drivers on weekend nights, they are involved in nearly 50 percent of all fatal crashes during that time period (Simpson et al., 1996).
- About one-third of all drivers arrested for DWI are repeat offenders and over half have a BAC over .15 percent (Hedlund and McCartt, June 2002).
- In the United States in 2007, 25 percent of all drivers killed in motor vehicle crashes and 60 percent of all drivers involved in an alcohol-related fatal crash had BAC levels of .15 percent or greater (FARS, 2007).
- Drivers with a BAC of .15 percent or above are 385 times more likely to be involved in a single vehicle fatal crash than a non-drinking driver (Zador, 1991).

A strong relationship exists between a high BAC and the likelihood of having a previous DWI conviction.

“The latest numbers tell us people are not only making poor decisions and drinking and driving – they are getting deeply intoxicated before getting behind the wheel.” *said NHTSA Administrator David L. Strickland.*

At any BAC level, the risk of apprehension for drunk driving is extremely low, depending on the level of enforcement and the method of calculation. Estimates range from about one arrest in 50 DWI trips to one arrest in 100 DWI trips. Consequently, many hardcore drunk drivers go undetected and aren't reflected in statistics. Compounding the problem is that hardcore drunk drivers are highly resistant to changing their behavior.

That resistance is often characterized by repeat DWI convictions despite previous sanctions, education or treatment. Approximately 30 percent of all drinking drivers arrested for DWI have been caught in the past by police and sanctioned by judicial and administrative agencies (Wiliszowski et al., 1996).

COMMON CHARACTERISTICS

Research continues to show strong links between substance use, DWI, criminal behavior, homelessness and underlying mental health issues. As this research progresses, so will the desire to institute programs that assess and address the underlying mental health issues that influence these behavioral problems.

More and more research has identified the fact that repeat DWI offenders often suffer from a number of disorders. In one study, in addition to a lifetime alcohol disorder, 41 percent of the participants had an additional drug-related disorder; 44 percent had a major mental health disorder that was not alcohol or drug-related (Shaffer et al., 2007). However, treatment for DWI offenders, which has been part of the criminal justice system for more than 30 years, most commonly consists of alcohol education and possibly some form of alcohol treatment only.

Compared to all drivers, hardcore DWI offenders are often more aggressive, hostile, thrill seeking and more likely to have a criminal record and a poor driving record (Simpson 1996). Multiple studies have shown the common characteristics of hardcore drunk drivers include:

- High school education (or less)
- Low incomes
- Unmarried/divorced
- Caucasian males
- Alcohol dependency issues and
- Multiple prior DWI offenses and many previous involvements with the criminal justice system

(Jones & Lacey, 2000; Siegel et al., 2000; New Jersey Division of Addiction Services Intoxicated Driving Program Statistical Summary Report, 2006)

SECTION III:

THE ROLE OF THE JUDICIARY

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“It is the role of the judge in the 21st century to assume a leadership position with regard to the DWI issue. We should set standards for new judges and chief justices alike, identifying what is expected of judges handling DWI cases.” — Judge Robert Pirraglia

While judges must be careful to maintain neutrality in handling DWI cases, they can and should have an important role in reducing the prevalence of hardcore drunk driving and the deaths and injuries it causes. A growing number of judges across the country have developed and adopted promising and innovative programs to address hardcore drunk driving.

These efforts are necessary because drunk driving cases present the most challenging legal and evidentiary issues a judge can hear in a courtroom and hardcore drunk driving cases present even thornier challenges for the judiciary.

While thousands of DWI laws have been enacted to effectively deal with convicted drunk driving offenders, simply having a law on the books isn't enough. For a variety of reasons, many laws are not well-enforced and sometimes drunk driving cases are not given the priority they deserve.

Judges who handle drunk driving cases must ask themselves what sentencing strategies are available to prevent and discourage the hardcore offender from continuing to drive while impaired. They must start by recognizing that drunk drivers vary greatly in their responses to specific deterrents and thus, to the extent possible, individual sentencing should be exercised. Additionally, research shows that swift and certain sanctions are more effective in deterring all such offenders than the imposition of punishment alone (NHTSA, 1996).

Unfortunately, swift and certain rarely apply to drunk driving proceedings. Significant delays routinely occur between arrest and disposition (by trial or plea) due to the sheer number of DWI and other criminal cases pending before most of the nation's courts. As a result, plea agreements and pretrial diversion programs can result in a reduced charge that oftentimes allows a drunk driver to escape a DWI conviction and avoid the sanctions imposed by law. Sentencing guidelines are commonly ignored and licensing sanctions are reduced or eliminated (Voas, 1995).

Studies show that when a hardcore drunk driver receives a lenient sentence, the deterrent effect is weakened and the likelihood of recidivism increases exponentially. In order to prevent this result, judges must adopt policies and procedures that minimize such outcomes.

It is also in the interest of the judiciary to comprehensively sentence the hardcore drunk driver. Without such judicial action, state legislatures may try to remedy this problem through legislation. This can lead to ineffective laws and can restrict judicial flexibility in imposing individualized sentences that present the best chance to reduce recidivism.

JUDICIAL LEADERSHIP:

It is no easy task to identify, sanction and also treat hardcore drunk driving offenders. Too often, they thwart attempts to effectively adjudicate their cases and they successfully defeat the system in the following ways:

- They refuse to take BAC tests when arrested. Studies show that more than 50 percent of repeat offenders refuse BAC tests.
- They seek to delay timely hearings and try to appear before a judge of their attorney's choice.
- Their defense attorneys misuse discovery requests to damage the prosecution's efforts and law enforcement testimony.
- They file an appeal even if the grounds are weak.
- They fail to complete their sentences.
- They fail to return for court reviews and are not brought to justice for months or years thereafter.

It is crucial that judges maintain the integrity of the judicial process by short-circuiting such actions. Judges should ensure trials are held in a timely manner and, upon conviction, that punishment and treatment will be certain and sure. Defendants must understand that their repeated high risk behavior, if detected, will result in meaningful sanctions, counseling and treatment.

To do this, judges must prioritize hardcore drunk driving cases. More effective case management is needed for these defendants. Judges must work with colleagues to reduce case backlogs. Judges should seek additional resources to handle and dispose of these cases and should request sufficient supervisory help to ensure judicially imposed sentences are carried out.

THE IMPORTANCE OF INDIVIDUALIZED SENTENCES BASED ON RISKS/NEEDS

“You cannot simply place all offenders into a single sentencing track. Judges must use tools to appropriately place offenders into a sentencing track correlated to their individual risk levels. It’s the only way to change their behavior and to implement effective strategies.”

— *Robin Wosje, National Judicial College*

In the second edition of the *Hardcore Drunk Driving Judicial Education Guide*, the focus is on the growing body of research that emphasizes the critical importance of individualized sentencing for hardcore drunk drivers. In fact, research has begun to suggest that cookie-cutter sentencing can actually increase the hardcore drunk driving problem.

A 2006 survey sponsored by the National Center for State Courts (NCSC) queried the general public about sentencing practices. **Among the respondents:**

- 75 percent thought sentencing practices needed some/major changes
- 79 percent thought many offenders could be rehabilitated
- 59 percent thought prisons were unsuccessful at rehabilitation
- 88 percent thought alternative sentences for non-violent offenders should be used often/sometimes
- 66 percent thought judges should have a big or leading role in this effort

On the heels of this research, The National Center for State Courts produced *“Using Offender Risk and Needs Assessment Information at Sentencing – Guidance for Courts from a National Working Group.”* The publication proposes usage of the Risk-Needs-Responsivity (RNR) model and the information below is excerpted from the publication:

- The Risk principle holds that supervision and treatment levels should match the offender’s level of risk. In practice this means that low-risk offenders should receive less supervision and services, and higher-risk offenders should receive more intensive supervision and services...
- The Needs principle maintains that treatment services should target an offender’s criminogenic needs – the dynamic (changeable) risk factors most associated with criminal behavior...
- The Responsivity principle contends that treatment interventions should use cognitive social learning strategies and be tailored to the offender’s specific learning style, motivation and strengths...

Taken together, these principles can lead to reductions in recidivism as outlined in the graph below.

The principles of evidence-based sentencing suggest that effective interventions focus on the offender’s likelihood of reoffending and the offender’s “criminogenic needs.” Sentences should then be crafted to address the offender’s individual characteristics. The level of supervision should match the risk level of the offender.

RISK & NEEDS MATRIX

	HIGH RISK	LOW RISK
HIGH NEEDS	Accountability, Treatment & Habilitation	Treatment & Habilitation
LOW NEEDS	Accountability & Habilitation	Prevention

*Source: Douglas B. Marlowe, J.D, Ph.D., Targeting Dispositions by Risks and Needs
Treatment Research Institute at the University of Pennsylvania*

After offenders are identified according to high, moderate and low risk of re-offending, their sentences should be tailored to their risks and needs. For instance, a low risk offender who is very unlikely to re-offend does not need the same level of supervision and intervention as a high risk offender. Conversely, an extremely high risk offender who is likely to resist all treatment efforts and is likely to re-offend despite any approach may be a challenge for the scarce resources of traditional courts. These offenders are appropriate candidates for DWI Courts that specialize in treating high risk offenders.

Additionally, a growing body of research reveals that low risk offenders who are subject to intensive interventions and programming often produce little, if any, positive effect on recidivism rates (Bogue, 2004). There is also evidence to suggest that subjecting low risk offenders to intensive services can backfire and result in increasing their chances of re-offending (Latessa & Lowenkamp, 2006; Bonta, Wallace-Capretta, & Rooney, 2000).

Potential reasons for this include that low risk offenders may actually adopt the antisocial attitudes and behaviors of high risk offenders with whom they are placed and/or placement of low risk offenders in intensive interventions may actually disrupt any positive social bonds or activities that may have existed prior to their placement. However, it is still important to hold low risk offenders accountable for their behavior (Latessa & Lowenkamp, 2006).

Identification of risk and needs by using risk assessment tools along with assessment tools to identify alcohol, drug and mental health issues is priority number one when dealing with hardcore DWI offenders. Numerous experts have agreed that exposing offenders to the wrong interventions can actually increase recidivism.

Actuarial risk assessment tools cannot take the place of professional judgment, but they can absolutely provide better information for the judiciary to use in the decision-making process. Some criminal risks change over time and therefore offenders should be re-assessed to measure progress and provide an accurate prediction of recidivism over time.

In order to stop hardcore drunk drivers from re-offending, it is necessary to change their thinking patterns, target their criminogenic needs and teach them pro-social skills and behaviors. What will not stop these offenders are random sanctions that are meted out without regard for individual offender needs. The first step in this process is offender assessments and evaluations that judges can use to guide sentencing. As judges pursue individualized sentencing, it is important to remember that there are limits on judicial discretion. Judges must ensure that they know and understand their states' legal parameters and craft effective sentences that fall within those parameters.

“The assessment of the hardcore drunk driving offender leads everything else in the adjudication process.”

— Judge Richard Vlavianos

SECTION IV:

CHALLENGES AND OBSTACLES FACED BY JUDGES

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CHALLENGES AND OBSTACLES FACED BY JUDGES

“Each court has constraints. The question is, what can we do despite these constraints to creatively sentence DWI offenders? What programs and ideas transcend limitations?”

— *Tom Langhorne, Director, Judicial Institute, Supreme Court of Utah*

To successfully sanction the offender and protect the public, judges must work through a myriad of complex challenges and utilize any and all available tools and policies to creatively and comprehensively sentence hardcore drunk drivers. What does “comprehensive sentencing” mean? Simply put, it involves building a roadmap to changed behavior for the offender. As such, a judge must approach sentencing with an eye to identifying the offender’s individual issues that may lead to recidivism and tailoring a sentence that will best prevent recidivism, using the tools allowed by law. Some of the most critical elements of this process are offender risk and needs assessments, comprehensive alcohol assessments, individualized sentencing and early interventions.

Judges must take care to ensure a legally sufficient sentence. Even when constrained by statutory minimum and maximum parameters, judges still have considerable latitude and discretion in fashioning sentences for DWI offenders. Such discretion is generally applied through the imposition of probation conditions and court-ordered activities. Judges should aim to accomplish as many recognized sentencing objectives as possible to achieve a legally sufficient sentence. These include punishment, incapacitation, deterrence, rehabilitation, restitution, protection of the public and education. Pre-sentence reports, statements from employers, family and friends, crash reports and violation records can all provide information to help judges impose meaningful and legal conditions of probation or conditional release.

CHALLENGE: Incomplete or unavailable records

AMONG THE FOREMOST CHALLENGES:

Too often hardcore offenders are not identified, which creates a public safety issue. A lack of records makes it difficult for judges to identify and assess a hardcore drunk driver. Hardcore drunk drivers are frequently misidentified as first-time offenders and are either convicted of, or plead guilty to, reduced charges. When treated as first-time offenders, they don’t face the tough sanctions and treatment options available to hardcore offenders that are designed not only to punish but to produce changes in conduct.

“You can’t effectively treat people without knowing what they’re bringing to the bench in terms of BAC levels and prior offenses.”

—*Judge Christopher McNeil*

A lack of complete records impedes a judge’s ability to determine an offender’s criminal history,

assess a plea agreement and determine the appropriateness of sanctions and/or treatment. Without complete and accurate records, the judge cannot reference previous sanctions imposed on the offender or determine whether they were correctly imposed or the sentence was completed. This information also needs to be available at the time the court sets bail or bond for offenders. Failure to appear in court is a common problem associated with repeat DWI offenders.

CHALLENGE: Lack of system coordination

Different components within the judicial system sometimes operate irrespective of the actions and capabilities of the others. This piecemeal approach results in ineffective handling of hardcore drunk driving cases, with treatment too often an afterthought, if it is considered at all. The hardcore drunk driver is in need of effective pre-sentence (ideally pretrial) screening, assessment and individualized sentencing, which should include alcohol treatment and rehabilitation, where appropriate. However, treatment resources are scarce, the system does not always mandate it, or the offender refuses to attend treatment programs. Their noncompliance often goes unnoticed by the courts.

CHALLENGE: Heavy court caseloads

The high volume and lack of resources in many courts risk the development of a “fast food” justice system where offenders are processed quickly and without regard for the individual rehabilitation and restriction needs that are absolutely critical to prevent recidivism among hardcore drunk drivers. Some 1.5 million DWI arrests are made each year, with most requiring some form of processing by a judge. Judges are often hamstrung by heavy caseloads that severely limit the amount of time available to discern case specifics and an offender’s behavior patterns. This can allow repeat DWI offenders to avoid identification and proper sanctioning; ineffective plea-bargaining and charge reductions often result. Heavy caseloads can also lead to prolonged adjudication, which in turn produces more dismissals and acquittals and prevents the swift, certain punishment that research shows hardcore drunk drivers need.

“Case volume is a big issue. Judges assume that prosecutors and defense attorneys have done their jobs and don’t question before accepting their pleas.” —*Judge Birdie Jamison*

CHALLENGE: Lack of financial resources

Insufficient funding is a frequent problem, including lack of funding for special DWI courts, DWI tracking systems, supervised probation and treatment programs. For example, while a judge can order intensive supervision probation for a hardcore offender, if caseloads for probation officers are unmanageable, compliance monitoring will be lacking and it is unlikely the sentence will be meaningful. Further, many courts do not have access to probation for these types of cases.

CHALLENGE: Variations in alcohol assessments

The Substance Abuse and Mental Health Services Administration (SAMHSA) defines a substance abuse assessment as a process for defining the nature of a problem and developing specific treatment recommendations for addressing the problem.

Judges may observe a disparity of skill among evaluators and the absence of a model or uniform definition of what should be included in a court-ordered evaluation.

Additionally, more and more research shows psychiatric comorbidity in DWI populations and a probable link between mental health issues and recidivism. Yet screening for mental health issues beyond alcohol use disorders is rare in DWI treatment programs and DWI treatment providers rarely have the training or experience to identify mental health issues in their clients. In fact, research by Shaffer et al. shows that evaluators repeatedly underestimate their clients' substance use problems.

Substance abuse assessments are the piece of information that should help the judge design individualized sanctions for hardcore drunk drivers. A thorough assessment and diagnosis leads to more effective penalties, better rehabilitation efforts and a greater chance at preventing recidivism.

Justice professionals provide more referrals for treatment than any other source; however, many who are referred to treatment do not receive it for a variety of reasons. It is important for criminal justice professionals to monitor referrals and maintain close communication with providers to ensure offenders receive appropriate treatment (Traffic Injury Research Foundation, 2008).

CHALLENGE: Defendants' failure to appear

Failure of defendants to appear at hearings is another serious problem in prosecuting hardcore drunk driving cases; yet typically, only nominal penalties apply. Failure to appear reduces the court's ability to determine guilt and to devise appropriate sanctions for an offender who is found guilty. Offenders who live near state lines and commit crimes in a neighboring state may be tracked only if the two states have a linked, computerized system of warrants.

Defendants who fail to appear frequently are not caught and therefore not sanctioned. When a defendant fails to appear, an arrest warrant is often issued, but the defendant may cross state lines and may never be found. Prosecutors say hardcore drunk drivers are less likely to appear in court because they typically know all of the legal loopholes and the low risk of apprehension (Robertson and Simpson, 2002).

CHALLENGE: Unrestricted plea agreements

In the judicial system, plea agreements are not uncommon and some argue they can be an appropriate means of resolving criminal cases. However, it is critical that judges give plea

agreements a meaningful judicial review before approving them. Plea agreements between prosecutors and defense attorneys sometimes reduce DWI offenders' sentences to those of non-alcohol-related offenses, such as reckless driving. Such unlimited plea agreements undermine the penalties of the initial charge and any specific deterrent value the arrest might have had. Allowing defendants to plead to non-alcohol-related offenses exempts the defendants from participating in alcohol education, screening for alcohol dependence, and, if appropriate, referral for treatment. It also deprives law enforcement officials of a standard method of identifying recidivists. Reducing a DWI charge to a non-alcohol-related offense hinders swift identification by allowing the next DWI to erroneously be viewed as a first offense.

Judges must exercise judicial responsibility and oversight to ensure plea agreements are appropriate and should not hesitate to reject a plea agreement when necessary in order to preserve public safety.

CHALLENGE: Pretrial Diversion and Deferred Adjudication Programs

Recently, some courts have begun to use diversion as a way to sanction DWI offenders while easing an impossibly large court docket and avoiding costly incarcerations in tough economic times. It is important to remember that judges must give each case a meaningful review before approving a diversion agreement.

Hardcore drunk drivers pose an undeniable public safety risk. Diversion programs make it more difficult to identify hardcore drunk drivers. Most offenders seek diversion programs to avoid having a driving record or criminal history showing a DWI conviction. These types of programs allow certain DWI offenders to be diverted from criminal sanctions by entering alcohol education or treatment programs. Diversion programs can prevent or delay information about an offense from appearing on the offender's driving record. Where records are not consistently kept, an offender may become eligible for a diversion program several times as a first-offender. In some states, diversion allows the offender to retain a valid driver's license.

CHALLENGE: Sentencing discretion

Many drunk driving laws allow judges considerable discretion in sentencing. Sometimes these laws are enforced effectively, but for a variety of reasons unique to each locality, many times they are not. When judges do not utilize the tools available to them that reduce recidivism, it can result in inconsistent sentencing and increased public danger.

CHALLENGE: Lack of ability to supervise offenders

Extended and intensive probation can be one of a judge's greatest tools in combating recidivism because it allows the judge to hold the offender accountable for completing the sentence imposed and ensuring responsible, law-abiding behavior. Unfortunately, in many

cases, community supervision is underfunded and understaffed which allows offenders to slip through the system and go unnoticed.

“As long as there was a loophole, I was climbing through it, until I had no other choice.” — repeat DWI offender and focus group participant from the San Joaquin DUI Monitoring Court.

CHALLENGE: Sentence noncompliance

Hardcore drunk drivers often don't comply with their sentences and many don't suffer swift and certain consequences for their noncompliance. In fact, a 2003 Robertson and Simpson study found that nearly half of repeat drunk drivers are returned to court for failing to comply with the terms of their sentence. When sentences are ignored and there are no repercussions, conviction becomes meaningless — an idle threat. Driving on a suspended license is a particular concern because the driving public remains at risk. One of the primary reasons given for sentence noncompliance is a scarcity of monitoring and follow-up after sentencing. Technology can greatly enhance supervision and compliance efforts.

Judges should monitor hardcore drunk drivers (judicial monitoring, probation, or both) to ensure compliance. A good example of judicial monitoring can be found in the staggered sentencing program from Isanti County, Minnesota. The imposition of realistic and research driven conditions are key to successful management of hardcore drunk drivers.

CHALLENGE: Sensitizing all judges on the impact of hardcore drunk driving

Hardcore drunk driving is sometimes lower on the judicial agenda below other social problems and safety challenges. Homicides, assaults and other types of violent crime, as well as additional acute social issues, occupy a much larger place in the media. Over the years there has been a substantial decline in impaired driving deaths. Political leaders and members of the media may be inclined to think drunk driving isn't as much of a problem as it was in years past. However, hardcore drunk driving has not declined over the years. More than two-thirds of alcohol-impaired traffic fatalities are caused by drivers at high BAC levels of .15 and above, while one-third are caused by repeat offenders. Repeated attempts to address the hardcore drunk driver have been minimally successful. Comprehensive, individualized approaches are needed to effectively reach this population.

CHALLENGE: The critical need for judicial education

Judges acknowledge they need more training to handle the technical and scientific evidence involved in hardcore drunk driving cases and to deal with all of the obstacles highlighted in this publication.

NHTSA has funded judicial outreach liaisons and impaired driving judicial education efforts and the federal government has authorized funding for state judicial education efforts. But

hardcore drunk driving still needs an enhanced education focus. The complexities of cases involving hardcore drunk driving pose distinct judicial challenges that sentencing seminars, workshops, and conferences focusing on the hardcore drunk driver would help address.

Judges should be trained to deal with the special issues presented by impaired driving, beginning with recognizing the signs of a hardcore drunk driver. These signs include drivers who repeatedly refuse to take blood-alcohol tests or standardized field sobriety tests; drivers whose blood alcohol levels are substantially higher than the limits allowed by law; and underage and adult drivers with multiple DWI convictions.

Cases involving hardcore drunk drivers are typically litigated with intensity and require the judge to be prepared to resolve vigorously contested factual and technical disputes. Judges note the value of learning how to handle such cases through peer-to-peer education taught by experienced judges. By using a coordinated system of sanctions and programs, judges can better build the roadmap that leads the hardcore drunk driver to changed behavior so he or she no longer presents a menace to the driving public.

OTHER CHALLENGES CAUSING JUDICIAL FRUSTRATION

CHALLENGE: Evidentiary Deficiencies

A number of evidentiary deficiencies can lead to cases being dismissed or resulting in reduced charges. These shortcomings include lack of convincing or sufficient evidence, including BAC test refusal, incomplete or erroneous paperwork, ineffective officer testimony and inexperienced prosecutors.

▪ Blood Alcohol Concentration (BAC) test refusals

Test refusal (breath, blood, urine) is often the first step a hardcore drunk driver takes in avoiding prosecution and sentencing. Many DWI suspects refuse to cooperate with the police in any way by refusing to answer questions, take the field sobriety test, or take a breath test. But test refusals are most common with hardcore drunk drivers, primarily because they know they'll test high; they are familiar with the loopholes in DWI laws; and in most jurisdictions, sanctions for refusing to cooperate with police are much less severe than sanctions for a DWI conviction, especially repeat offender sanctions. When drivers refuse, police officers are hindered in gathering the evidence needed to support a DWI charge. As a result, in many states, drivers who are drunk and refuse testing avoid a criminal conviction and may not be identified as repeat offenders the next time they are stopped. Test refusal is one way hardcore drunk drivers continue to evade prosecution and sentencing.

In a 2002 study on DWI prosecutions, three-fourths of the prosecutors interviewed said the BAC test was the single most critical piece of evidence needed for a conviction, evidence they are frequently without (Simpson and Robertson 2002). Some states report refusal rates of up to 50 percent for drivers with a prior DWI (Jones and Lacey, 2000). Even without the test results, DWI charges may still be brought against the offender, but conviction depends

entirely on the law enforcement officer's observations and subsequent testimony.

The National Committee on Uniform Traffic Laws and Ordinances (NCUTLO) recommends in its DWI model law that the penalty for test refusal should be double the penalty for test failure. It also recommends that a driver's refusal to take a BAC test be admissible in court. Forty-one states and the District of Columbia have administrative license revocation laws for DWI test refusal or failure (NHTSA 2010). In most states, the penalties involve administrative license suspensions of 90 to 180 days. This is much less severe than the criminal penalties for failing a chemical test for DWI, and many continue to drive without a license. Currently 15 states have established criminal penalties for BAC test refusal (Alaska, California, Florida, Kansas, Maryland, Minnesota, Mississippi, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Rhode Island, and Vermont).

▪ **Ineffective officer testimony**

Witness testimony is a vital part of the evidence in a jury trial. Police officers need to be able to properly articulate their cases. Omissions or insufficiently detailed testimony can lead to the dismissal of a case or acquittal of the defendant. This is especially important since repeat offenders are more likely to opt to go to trial. In a number of states, officers rarely testify on DWI cases because of the high number of cases that result in plea bargains and enrollment in diversion programs. In addition, electronic arrest reports do not allow for officers to record notes on specific arrests. As a consequence, when officers testify they are poorly prepared to provide compelling testimony, even on cases where the evidence would appear to be overwhelming.

In a 2001 study by Simpson and Robertson, police officers said their credibility as witnesses was undermined by a lack of opportunity to prepare for cases, a lack of experience testifying in general and the difficulty of providing the court with the desired level of specificity upon cross-examination.

▪ **Prosecutors unprepared to try DWI cases**

Often prosecutors also feel unprepared for DWI cases. Another study by Robertson and Simpson (2002) found that 48 percent of prosecutors surveyed reported they were not provided with adequate training or preparation before handling DWI cases in their jobs as prosecutors, and over one-third (34 percent) of judges believe prosecutors do not have the same knowledge or expertise about DWI as defense attorneys. Coupled with inexperience and high turnover, prosecutors also face the additional burden of inadequate staff and resources for the number of DWI cases they are charged with handling.

Technically, drunk driving cases are extremely challenging to try. One needs only to examine Standardized Field Sobriety Tests (SFST), typical toxicology reports or experts' crash reconstruction data to appreciate the complexity of DWI litigation. Cases involving DWI are also legally challenging given states' conflicting statutes and varying constitutional standards. Moreover, the criminal defense bar has meticulously crafted a highly specialized DWI practice, complete with technical, legal and scientific defenses.

SECTION V:

EFFECTIVE STRATEGIES

“There is a small window of opportunity when someone considers that drinking and driving impaired isn’t safe. But the thought is so small and quiet that it needs an amplifier. This could be a helping hand or a person who takes one minute to ask, ‘What can I do to help you?’”

Caroline Taito, third-time DWI offender convicted of vehicular manslaughter and sentenced to 15 years-life at the age of 24.

SECTION V:

EFFECTIVE STRATEGIES

BUILDING THE SENTENCING ROADMAP

So how can judges combat hardcore drunk driving from the bench? How can they manage the hardcore drunk driver in a way that protects the public and leads to long term behavior change? Research and the experience of judges reveal that certain, consistent and coordinated sanctions are key to reducing hardcore drunk driving, with certainty and consistency having greater impact than severity. Alternative sentencing methods, DWI Courts and sentences tailored to each offender can have a profound effect on an offender's ability to avoid re-offending (Jones and Lacey, 1998). Likewise, drunk driving sentences handed down without factoring in the seriousness of a hardcore drunk driver's problem may be followed by another DWI offense or worse, death or injury.

No one sanction or strategy is successful unless used in conjunction with other measures. It is the coordination of a variety of measures that prove most effective. For example, the combination of home confinement with electronic monitoring, intensive supervision, treatment, and an alcohol interlock can be quite effective in controlling the hardcore drunk driver. But the overseeing agencies need to coordinate their initiatives so that, for example, the person conducting the intensive monitoring has access to the record of the interlock. That way the monitor knows if the offender has attempted to drive after drinking and can take any necessary action.

THE JUDICIAL HARDCORE DRUNK DRIVER SENTENCING ROADMAP

The following steps, based on NHTSA's list of factors to help reduce DWI recidivism, give the general overview of what needs to happen when judges face potential hardcore drunk drivers.

- First, properly identify the hardcore drunk driver. Require a thorough records check, including compliance with any previous sentences;
- Evaluate offenders for alcohol-related and mental health problems and recidivism risk (via criminogenic risk and needs assessments);
- Act swiftly to prevent the offender from driving drunk again and punish him or her, using sanctions and remedies based on the offender. No single sanctioning and treatment strategy is effective for all offenders;
- Mandate appropriate sanction combinations designed to produce behavioral changes. Include provisions for appropriate alcohol treatment in the sentencing order for offenders who require treatment. Treatment alone never substitutes for sanctions or remedies, and sanctions and remedies do not substitute for treatment;
- Monitor the offender's compliance with sanctions and treatment; and
- Act swiftly to correct noncompliance (NHTSA, 1996).



Tear out your
ROADMAP for
easy reference.



ROADMAP TO CHANGED BEHAVIOR

EFFECTIVE

PRETRIAL CONDITIONS

Conduct pretrial investigation

Use measures to protect public and reduce failure to appear

Consider pretrial intensive supervision programs

EFFECTIVE

PRE-SENTENCE ACTIONS

Utilize offender evaluation

Recognize the impact of fines

HARDCORE DRUNK DRIVERS ENTER THE JUDICIAL SYSTEM

Recognize high BAC as indicator of Hardcore Drunk Driving

Employ vehicle sanctions

Consider ignition interlock device (IID)

Consider GPS monitoring

Conduct pre-sentence investigations

Restrict diversion programs

Monitor plea/sentence agreements

ONE WAY



EFFECTIVE

SANCTIONS

Employ vehicle sanctions

Use in-vehicle devices-IID

EFFECTIVE

POST-SENTENCE MONITORING & SUPERVISION

Use intensive monitoring, supervision and probation

CHANGED BEHAVIOR

results in reduced recidivism, increased public safety and sentence compliance

ONE WAY

Avoid using community service in place of harsher sanction

Utilize dedicated detention facilities

Supplement incarceration with treatment and aftercare

Consider staggered sentencing

Tailor sentence to the individual

Use home confinement with electronic and/or alcohol monitoring

Support DWI tracking systems to ensure sentencing compliance

Combine alternative and traditional sanctions

For the Hardcore Drunk Driver, comprehensive sentencing means there's only one way to travel on the roadmap to **changed behavior**

**THE JUDICIAL HARDCORE
DRUNK DRIVER SENTENCING**

ROADMAP

We have created the Roadmap to Changed Behavior which incorporates a number of proven effective sanctions. The Roadmap clearly illustrates how these sanctions and strategies can be combined to change the behavior of these serious offenders. Judges can create their own Roadmap utilizing those sanctions and strategies available to them in their own jurisdictions.



SPECIFIC TACTICS AND ACTIONS

Based on research and recommendations from The Century Council’s panel of judges, the following are some specific tactics and actions that have proven helpful to judges in combating hardcore drunk driving. To help ensure hardcore drunk drivers are correctly identified and sanctioned, judges should:

PRETRIAL

- **RECOGNIZE A HIGH BAC LEVEL AS AN INDICATOR OF A Hardcore DRUNK DRIVER AND A PUBLIC SAFETY RISK**

Forty-two (42) states, the District of Columbia and American Samoa have graduated penalty systems based on BAC at the time of arrest. The severity of the penalty increases with BAC level, and sanctions are the most severe for multiple offenders. The system recognizes that drivers with high BAC levels — defined as .15 percent and above — warrant stiffer sanctions because they are more dangerous on the highway and may also be more likely to repeat the behavior. Such a tiered system recognizes the increased problems caused by offenders driving with a high BAC and allows for more severe sanctions and more intensive treatment to be applied to high BAC drivers and repeat offenses.

The National Transportation Safety Board (NTSB) recommends that a model program to reduce hardcore drunk driving should incorporate legislation that defines a high BAC (.15 percent or greater) as an “aggravated” DWI offense that requires strong intervention similar to that ordinarily prescribed for repeat DWI offenders (NTSB, 2000). By calling attention to the seriousness of the crime, a higher-level charge acts as a deterrent for the general population. The primary objective of strong sanctions for high BAC offenders is to reduce recidivism by increasing the certainty and severity of punishment and by reducing loopholes in the system (McCartt and Shabanova, 2002).

States’ high BAC systems vary greatly, with enhanced sanctions including:

- Longer or more intensive alcohol education or treatment;
- Limitations on plea reductions, deferred judgments or diversion programs;
- Driver-based punitive sanctions such as longer license suspensions;
- Vehicle-based punitive sanctions such as mandatory ignition interlocks; and
- Courts’ consideration of a high BAC in sentencing as an aggravating or special factor (McCartt, 2001; *Combating Hardcore Drunk Driving*, 2003).

- **CONSIDER BAC TEST REFUSAL TO BE A POTENTIAL INDICATOR OF A Hardcore DRUNK DRIVER**

As discussed in the challenges section, offenders who refuse to take a BAC test are depriving the court of the most important evidence needed to assess the validity and severity of the

DWI charge. This is especially true for hardcore drunk drivers who are familiar with the legal system's loopholes and who may be trying to escape enhanced penalties associated with high BAC and repeat offender convictions. An offender who refuses the BAC test should be thoroughly evaluated and criminal history should be examined carefully.

■ **PRETRIAL RELEASE CONDITIONS**

Accused hardcore drunk driving defendants often re-offend between the time of arrest and the date of trial or resolution of that offense. This can create a significant public safety issue. Judges have many alternatives available to deal with the public safety issues caused by an accused hardcore drunk driving defendant during this stage of the court process that do not involve incarceration. Some of these alternatives include making use of technology such as ignition interlock devices, continuous alcohol monitoring devices, other forms of alcohol and drug monitoring, and global positioning devices (GPD) as a condition of release. Others may include the use of counseling programs, license restrictions and daily reporting centers as a condition of release. One promising practice that has been identified is to use pretrial intensive supervision programs run by probation to get repeat DWI offenders into monitoring and treatment programs such as the Wisconsin Intensive Supervision Probation program. Any pretrial release conditions imposed by the court should be related to public safety and/or the likelihood of appearance at future court dates.

PRE-SENTENCING

■ **MONITOR PLEA AGREEMENTS AND SENTENCING**

In order to deter offenders, apply appropriate sanctions and accurately identify hardcore drunk drivers. Placing limits on plea agreements can lead to more accurate identification of repeat DWI offenders and more appropriate sanctions being imposed. A meta-analysis of 52 studies on plea agreement restrictions combined with other policies found an 11 percent reduction in crashes and injuries, suggesting plea agreement restrictions are a vital part of an effective strategy for reducing drunk driving (Wagenaar et al., 2000).

According to a 2002 survey by the Traffic Injury Research Foundation, prosecutors support the idea of restricted plea agreements, such as removing the opportunity to plead down to a non-alcohol offense and discontinuing plea agreements in high BAC cases. Prosecutors also support stating the reasons for a plea agreement on the record (Robertson and Simpson, 2002).

New York is an example of a state that has enacted legislation to prohibit drunk driving offenses from being reduced to a non-alcohol related offense. A drunk driver whose plea agreement lessens the DWI charge is still identified as an alcohol-related offender. New Mexico also prohibits DWI offenses from being reduced to a non-alcohol related offense.

When presented with a plea agreement, a judge has the responsibility to ensure the appropriateness of the plea. Plea agreements should involve evidence-based practices and maintain the alcohol-related charges. A judge should not hesitate to reject plea agreements if they are inappropriate. A meaningful judicial review of the plea agreement is essential to reducing hardcore drunk driving.

■ UTILIZE OFFENDER EVALUATIONS FOR HARDCORE DRUNK DRIVERS

These evaluations (screening, substance abuse assessment, and criminal record check) should be delivered in a timely manner (ideally pretrial but absolutely prior to sentencing) to help ensure and expedite proper sentencing. Evaluations are particularly critical in dealing with hardcore drunk drivers because they provide information about their criminal record, propensity to re-offend, and about their drinking and driving habits. Whenever possible the evaluations should also screen for co-occurring mental health and drug issues (see CARS program in emerging practices section).

A major purpose of offender evaluation is to reduce recidivism by determining a defendant's criminal risk and the nature of his/her alcohol involvement so appropriate treatment options can be identified and assigned. The National Institute on Drug Abuse and the Institute of Behavioral Research at Texas Christian University provide several good examples of substance abuse assessments. Additionally, a confidential and simple alcohol screening is available through the Partnership for a Drug-Free America at <http://www.alcoholscreening.org/Home.aspx>

■ CONDUCT PRE-SENTENCE EVALUATIONS

These evaluations review the defendant's record, the previous sanctions imposed, including all diversions, and the defendant's compliance history. This information enables the judge to choose sanctions that effectively reduce recidivism and protect the public while also imposing rehabilitation requirements to treat the defendant for alcohol problems.

■ RESTRICT DIVERSION PROGRAMS

A 2002 AAA Foundation for Traffic Safety study recommends the elimination of diversion programs that allow offenders to escape license suspension and remove the DWI offense from the offenders' driving records. The NTSB and others have recommended the elimination of diversion programs. As mentioned earlier in this resource, diversion is being increasingly used as a means of easing impossibly large court dockets and achieving case resolution. While some diversion programs include innovative attempts to achieve offender rehabilitation, they also include expungement of the offender's record. One criticism of diversion programs is the potential for a repeat DWI offender to be classified as a first offender multiple times. Such abuse of diversion programs undermines the deterrent effect of sentencing, poses a public safety risk and erodes the public trust in the criminal justice system.

As a best practice, judges should avoid diversion programs for hardcore drunk drivers except in rare circumstances that clearly merit the use of them. It is a judge's responsibility to prevent the abuse of diversion programs that result in expungement. In the event that diversion is used, it should be very narrowly tailored to only very exceptional cases that are clearly transparent and justifiable to the public.

At a minimum, judges must ensure a diversion agreement does not allow the defendant to escape the penalties and assessments associated with a DWI conviction and, if possible, retain the DWI charge on the record to ensure any repeat DWI offenses are not presented as first offenses.

- **ENSURE DEFENDANTS' COURT APPEARANCES (REDUCE FTA)**

Failure of defendants to appear at hearings is another serious problem in prosecuting hardcore drunk driving cases. Yet typically, if a penalty applies at all, it is nominal. Defendants who fail to appear frequently are not tried and convicted and therefore are not sanctioned. When a defendant fails to appear an arrest warrant is often issued, but the defendant may cross state lines and may never be found.

Judges can utilize case management procedures to reduce this problem such as timely processing of cases, email/telephonic reminders for defendants, restrict stipulated contingencies, issuing warrants, requiring cell phones and conducting GPS monitoring.

Additionally, judges should consider swift and certain penalties for failure to appear such as bond forfeiture or increase, GPS requirements, contempt proceedings and jail time.

POST-CONVICTION

Traditional sentences that are limited to fines and suspended jail time do little to reduce recidivism. Attempts should be made to tailor sentences for every defendant by making use of the suggestions, where appropriate, below.

- **PLACE hardcore DRUNK DRIVERS ON INTENSIVE MONITORING AND SUPERVISION BY PROBATION**

Intensive supervision probation should run concurrently with the offender's rehabilitation program to ensure successful completion. Intensive supervision probation is one of the most effective strategies for hardcore drunk drivers. These programs usually require an offender to meet frequently with a judge or probation officer or both. Use several interventions, which can include alcohol abuse treatment, ignition interlocks, home detention, victim impact panels and community supervision. An average duration of the program is four to five months and may be followed by a period of "normal" probation.

If probation monitoring is not available, consider judicial monitoring or review dates. A good example of judicial monitoring is the San Joaquin County Superior Court's comprehensive DUI program.

“Probation is an important aspect of managing the offender. It keeps him on the hook since the sentence is just dangling before him. Probation is the key to a court being able to do something about recidivism.” — Judge Karl Grube

■ **RECOGNIZE THE IMPACT OF FINES ON HARDCORE DRUNK DRIVERS**

Research shows no correlation between fines and reduced recidivism. However, while their deterrent value appears minimal, fines and other financial sanctions serve as retribution, which is one of the objectives of sentencing.

Judges should take care to craft fines so as not to decrease the restorative value of the sentence. Judges can work with offenders to manage their obligation and use fines as a tool to achieve behavioral change. Judges are not bound by guidelines. Consider payment plans, suspend fines or stay payments as an incentive for offenders who comply with their sentences.

■ **HOME CONFINEMENT AND INCARCERATION**

HOME CONFINEMENT

Consider home confinement with electronic monitoring and sobriety testing, where appropriate. It relieves jail overcrowding and is a low cost, acceptable alternative to jail if the sanction period is longer than the jail sentence and if it is used in conjunction with treatment and other behavior reinforcing mechanisms. Under home confinement, offenders are ordered by the court to be at home during specified hours, allowing for pre-scheduled periods of work or treatment. It permits the offender to stay in the community, maintain employment and avoid the stigma of incarceration.

The costs of equipment, installation and monitoring should be paid by the offender. Numerous research studies have found home confinement with electronic monitoring to be effective. A study of the Los Angeles County Electronic Monitoring/Home Detention program found one year after entering the program the recidivism rate for offenders was cut by about 33 percent. Offenders said the program was effective because it offered monitoring, structure and support for an extended time period (Jones, Lacey, and Wiliszowski, 1996). Based on 2011 information from the NTSB, 43 states and the District of Columbia permit this sanction.

INCARCERATION

The number of DWI offenders under some form of correctional supervision almost doubled between 1986 and 1997 (Maruschak, 1999). In the past 15 years, most states have adopted some form of mandatory jail sentence for misdemeanor DWI and prison sentences for felony DWI. The effects of these laws have been hotly debated, and the evidence from studies of incarceration as a specific and general deterrent to DWI is mixed.

In general, the available evidence suggests that as a specific deterrent, jail terms are extremely costly and are no more effective in reducing DWI recidivism among either first-time or repeat DWI offenders than other sanctions. There are some indications that the short-term effectiveness depends on the extent of public awareness, the risk of incarceration, and the size of the community. These short-term effects are initially strong following the public announcement of a sanction, but often dissipate over a period of about three years. Some studies have found that the use of 2-day jail sentences had a general deterrent effect for first-time offenders yet others concluded that jail terms were ineffective.

■ **CONSIDER STAGGERED SENTENCING WITH INTENSIVE PROBATION**

Staggered sentencing has been widely implemented for several years in Minnesota and several other states. Staggered sentencing involves the court dividing or staggering the repeat offender's jail sentence into three or more equal periods with probation between each period. The offender serves the first period of incarceration, but each successive period can be forgiven if the offender proves to the sentencing judge that he or she is meeting rehabilitation criteria. In 2003, a preliminary analysis by the Minnesota House of Representatives research department found that staggered sentencing reduced DWI recidivism by nearly 50 percent while saving considerable jail resources.

A longer study released by NHTSA in 2011 showed staggered sentencing continued to reduce recidivism by over 30 percent. Staggered sentencing was pioneered by Judge James Dehn in Minnesota in 1998. For more information on his program go to <http://www.centurycouncil.org/drunk-driving/isanti-county-minnesota-staggered-sentencing>

The San Joaquin DUI Monitoring Court uses a similar approach, called a multi-track approach, with all repeat DWI offenders. Lower risk offenders who are not alcohol or drug dependent go into Track One, a monitoring track. Higher risk offenders who are assessed as needing drug and/or alcohol treatment go into Track Two, a treatment track. The program lasts a minimum of 18 months for most participants. This program has significantly reduced DWI recidivism and DWI crashes. A September 2012 study by NPC Research details the process evaluation and best practices for other courts to replicate this program.

■ **EMPLOY THE USE OF VEHICLE SANCTIONS**

Vehicle sanctions such as immobilization and impoundment are a means of separating hardcore drunk drivers from their vehicles while they are receiving sanctions and rehabilitation. These sanctions often are applied administratively. Immobilizing an offender's vehicle (such as using a "club" to lock the steering wheel or a "boot" to lock a wheel) has the advantage of preventing the vehicle from being used by the hardcore offender while avoiding the procedural problems and costs involved with vehicle confiscation and storage.

Impoundment is applied primarily against hardcore drunk drivers and its application varies among jurisdictions. Some target drivers who violate license suspension, while others use the sanction only after repeated DWI convictions.

▪ **ORDER THE INSTALLATION OF OFFENDER-FUNDED IGNITION INTERLOCK DEVICES**

Ignition interlock devices should be ordered on all cars under title of or driven by a hardcore drunk driver as a means of preventing the offender from driving drunk while receiving punishment and treatment. In order to achieve long-term reductions in recidivism, this sanction must be used in conjunction with treatment, when appropriate. When used as part of a comprehensive program of monitoring and reporting, interlocks reduce recidivism by 40 to 95 percent as long as the interlock remains on the car (Marques, 2001). But in absence of other measures, the effect on recidivism disappears when the device is removed. These devices can substantially reinforce the effectiveness of substance abuse treatment and should be required during the entire treatment and aftercare period.

Ignition interlock devices should not be used as a substitute for licensing sanctions but rather in concert with licensing actions. They should be required:

- To be installed by an approved technician, with all of the costs paid by the offender
- As a condition of license reinstatement after a period of suspension
- Whenever there are exceptions to license suspension or revocation, such as conditional licenses.
- For an appropriate time period of at least 6 months or longer after incarceration or until the offender has completed treatment satisfactorily and can prove through probationary monitoring that he or she is capable of driving responsibly.

All 50 states, the District of Columbia and Puerto Rico have either mandatory or discretionary interlock laws. However, most studies show that ignition interlocks remain underutilized.

▪ **UTILIZE DEDICATED DETENTION FACILITIES, WHERE AVAILABLE**

DWI detention facilities provide confinement in conjunction with supervised substance abuse treatment services. Detention usually ranges from two weeks to 90 days. These facilities, dedicated to DWI offenders, offer a sentencing alternative for multiple DWI offenders and help ease overcrowding at traditional correctional facilities.

Some DWI jails, which are used throughout the country, operate similarly to residential treatment programs. Others operate as lock-up facilities with a heavy emphasis on treatment and reform. In some cases, offenders are permitted to volunteer for these types of facilities.

In Suffolk County, New York, the courts and the penal system work together, giving the offenders a choice of either being sentenced to the state penitentiary for two or three years

or fulfilling their sentence through a DWI program that involves spending 6 months in the Suffolk County DWI jail followed by a 5-year intensive probation program. If they violate the terms of their sentence or probation at any time during the program, they must return to the state penitentiary and serve their full sentence. This program has been highly successful because of the combination of long-term treatment combined with close supervision and follow-up over a long period of time. The offender is highly motivated to change his or her behavior.

- **SUPPLEMENT INCARCERATION WITH TREATMENT AND AFTERCARE**

When confinement, including home confinement, is necessary, researchers recommend counseling and treatment to deal with addiction and lifestyle changes as deemed necessary by a thorough assessment of the offender. Incarceration alone, although feared, does not teach alternative behavior for individuals with alcohol-related problems. A research study in California found first-time offenders sentenced to jail had almost double the number of subsequent DWI convictions as offenders assigned to treatment and license restriction (DeYoung 1997).

- **AVOID SUBSTITUTING COMMUNITY SERVICE FOR HARSHER SANCTIONS**

As a stand-alone alternative to harsher sentencing, community service appears to have little beneficial effect on hardcore offenders. The Century Council, NTSB and Mothers Against Drunk Driving (MADD) all recommend eliminating the federal traffic safety provision establishing community service as an alternative to incarceration as outlined in Federal law. Difficulties of the program include finding suitable jobs, liability risk, the cost of supervision and the offender's failure to comply with the order.

MINIMUM 10-YEAR LOOK-BACK PERIODS

State laws should require a look-back period of at least 10 years to allow judges to consider an individual's previous 10-year history when evaluating their driving record and applying penalties and sanctions. Currently at least 20 states have a look-back period of less than 10 years.

Judges can also encourage the maintenance of records on test refusal and suspensions for the entire look-back period. The National Hardcore Drunk Driver Project, along with NHTSA, MADD and the NTSB recommend states maintain a look-back period of at least 10 years. Long record retention and look-back periods are important because of the low probability of arrest and the need for long-term measures to change the behavior of hardcore drunk drivers (NTSB 2000). Judges can require clerks of the court and departments of motor vehicles to retain records.

▪ STATEWIDE TRACKING AND RECORDKEEPING

Statewide tracking and recordkeeping should be supported as a means to identify hardcore drunk drivers and to ensure that all jurisdictions within a state have accurate information concerning an offender's record. Current technology allows automated electronic database management systems to connect law enforcement, motor vehicle administrators, the courts, and probation and treatment professionals so that a complete information loop can be achieved. Accurate, up-to-date information reduces the likelihood that repeat offenders will mistakenly be dealt with as first time drunk drivers.

▪ EFFECTIVE CASE FLOW MANAGEMENT

Case flow management techniques should be instituted and supported to reduce the likelihood of overloaded courts and the possibility that hardcore drunk drivers will fall through the cracks. According to the National Association for Court Management (NACM) in its Core Competency Curriculum Guidelines, "properly understood, case flow management is the absolute heart of court management."

Effective case flow management must be built on a solid management foundation that includes (a) leadership; (b) commitment among judges and court staff to managing the pace of litigation; (c) communication within the court and with lawyers and other institutional participants connected with the case; and (d) a learning environment that enables a court to be flexible in the face of changing events (Best Practices Institute, 2002).

"The misdemeanor case flow system in Harris County, Texas ensures that the docket moves fast and is not overloaded and that means defendants get the time and attention their cases deserve. Our court manager runs a rigid and intimate system and that is why it works. Plus, our court is big enough to handle all of the cases."

– Judge Michael Fields

PREVENTING RECIDIVISM

ASSESSMENT

As mentioned earlier, the use of assessment tools that identify both criminogenic factors and alcohol, drug and mental health issues are essential in predicting the risk of reoffending and identifying needs to be targeted for change (Latessa & Lowenkamp and Shaffer, et al.).

Ideally, hardcore drunk driving offenders receive a comprehensive assessment of risk and needs as well as screening for alcohol/substance abuse and mental health issues at the pretrial stage, but absolutely prior to sentencing. At a minimum, the offender needs a screening and criminal background review.

Judges should take care to use an assessment tool that is appropriate for drunk driving offenders, not one that is tailored for the general population. In some situations, hardcore drunk driving offenders may be assessed as low-risk offenders because their prior offenses are likely to be low-level and nonviolent/non-felony (Dunlap, Mullins, & Stein, 2007). Additionally, this sub-population of offenders is often typically functional in that they can maintain employment, familial responsibilities and other pro-social demands. The judge always has the right to seek out other assessment tools if needed.

Hardcore drunk driving offenders pose a significant public safety risk for several reasons: First, their reasons for offending are not always foreseeable or predictable. Second, the consequences of their actions, while possibly unintended, are often long-reaching and potentially fatal. Currently there is no single widely used tool that accurately predicts both risk of drinking again or drinking and driving again. Therefore, it is recommended that all hardcore drunk driving offenders begin community supervision as high-risk offenders until they are able to meet the qualifications for lower risk classifications.

When assessed for substance abuse problems, hardcore drunk driving offenders may not necessarily be determined as having an alcohol use/abuse problem. In those cases, it is likely that alcohol use/abuse is not their primary issue area that needs immediate attention. This is why it is essential to conduct comprehensive needs assessments on each hardcore drunk driving offender to isolate and prioritize each need area on an individual basis. It is important to keep in mind that the treatment needs of hardcore drunk driving offenders are not universal; each offender will present his own unique needs which should be targeted for intervention.

Comprehensive alcohol use assessment includes many elements. It includes a profile of drinking behaviors to highlight drinking patterns so a personalized picture of its effects on the offender's life can be developed. A comprehensive assessment also includes identification of situations in which the problem occurs, and a focus on the individual's strengths. Emphasizing the individual's strengths is important because having early successes is critical to his or her motivation to stay with the process of recovery. Motivation to change and commitment to the change process are also critical aspects of the assessment process.

A new assessment tool is under development at the Cambridge Health Alliance, a teaching affiliate of Harvard Medical School, that will provide a high quality computerized, standardized assessment tool that will assess alcohol, drug and mental health issues. It will be made available to the public at no cost in 2014 (see CARS program in Emerging Practices section).

FACTORS FOR JUDGES TO CONSIDER REGARDING PREVENTING RECIDIVISM

- **Mandatory screening and, if necessary, alcohol assessment and treatment:** Hardcore drunk drivers should obtain a screening and, if indicated, an alcohol assessment prior to the imposition of any sentence. Make the successful completion of any alcohol treatment a condition of sentencing and vigorously prosecute any offender who fails to comply with their alcohol treatment plan.
- **Familiarity with treatment and local providers:** Effective treatment for hardcore drunk drivers requires high quality treatment providers. It requires substantially more than a series of video tapes for offenders to view. Judges should have a basic understanding of treatment programs and be familiar with evidence-based approaches to ensure that treatment providers are using evidence based treatment methods.
- **Consistent reporting:** Nothing can be done about a problem if no one knows about it. All partners in the effort – judges, prosecutors, law enforcement officers, probation officers, social workers, treatment providers, and any others – must understand and appreciate the need to report violations of and conditions of pretrial release or sentencing in a timely manner (Allen et al., 1995).

Judges can utilize judicial monitoring tools such as requiring offenders to waive their rights under the Health Insurance Portability and Accountability Act (HIPAA) so the court can monitor any medically-required treatment. Judges can require waivers as a condition of probation. Frequent check ins and/or status reviews with hardcore drunk drivers can also help achieve sentence compliance.

“Judges should take a proactive role to ensure immediate reporting of violations and set up a system to deal with violations.”

— *Judge Richard Vlavianos*

MONITORING

IDENTIFICATION OF RESPONSIBILITY: A multi-disciplinary approach is essential to ensure compliance with bond conditions and conditions of sentencing. The criminal justice system’s responsibility does not end with the conviction. If a violation of a condition of sentence occurs, swift action should be taken in order to protect the public and change the behavior of the hardcore drunk driver.

- **Communication:** Violations of conditions of bond and sentences must be accompanied by a swift response. Communication with law enforcement agencies and the judiciary is crucial to effectively deal with the hardcore drunk driver. Law enforcement agencies should be instructed on how a violation will be handled. Law enforcement agencies and parole/probation officers must be aware of conditions of bond and sentence. This

may require that law enforcement dispatch agencies be provided with copies of these conditions. In jurisdictions where the court must first be presented with notices of violations of conditions of bond and sentence, consider obtaining court approval in hardcore drunk driving cases for arrests to be made upon discovery of violations.

■ **Imposition of sanctions:**

- **Appropriate:** Sentencing of hardcore drunk driving defendants must be appropriate to the nature and severity of both the infraction and the individual defendant. Evaluation provides key information about the defendant, allowing appropriate sanctions to be tailored to fit the particular circumstances of that defendant.
- **Swift:** The quick detection, identification, and assessment of those who repeatedly drive drunk are essential to keeping the hardcore drunk driver off the road.
- **Certain:** The application of swift and certain penalties that restrict the offender from driving, punish the offense and rehabilitate the offender must be imposed consistently to change hardcore behavior.

TOOLS AND TECHNOLOGIES TO ASSIST IN THE SUPERVISION OF DWI OFFENDERS:

Technology is a rapidly changing field. It is also a tool and not a replacement for good supervision practices. There are many tools and technologies available to enhance offender monitoring. The following list contains some of the tools and technologies to consider when supervising the hardcore drunk driving offender:

The following list is not an endorsement of any particular product.

■ **ELECTRONIC MONITORING (EM)**

An electronic monitor is a device that is placed on an individual and used to monitor his or her location and activities. It is typically used as an alternative to incarceration or as a condition of community supervision.

How EM can aid in supervision of DWI offenders:

- Provides structure and close supervision, enables offenders to obtain or maintain employment, and supports and reinforces rehabilitation and treatment.
- EM devices can also have alcohol sensors attached to determine the use of alcohol. Offenders on sentencing alternatives, such as staggered sentencing, are often required to use EM devices with alcohol sensors as a supervision strategy.
- Less expensive than incarceration and reduces jail overcrowding.

- EM devices can be added as a sanction for noncompliant behavior or removed as an incentive for compliance. In most cases, the cost associated with EM is assessed to the offender and not having to pay is an incentive for compliant behavior.
- Officers can use hand-held devices to conduct “drive-by” verifications.
- Actively or passively reports data to an officer or central monitoring agency.

▪ **IGNITION INTERLOCK DEVICES**

An ignition interlock is a device that is installed on motor vehicles to prohibit individuals under the influence of alcohol from operating the vehicle. Individuals are required to blow into the device before starting the vehicle. If the device detects alcohol (usually at a .02 percent BAC or above), it will prevent the vehicle from starting. In addition, at random times during the operation of the vehicle, the driver will be prompted to blow into the device to ensure the driver is not under the influence. A report of the BAC level at the time of every ignition start-up is maintained in the unit.

When used as a condition of supervision in conjunction with monitoring and reporting, the ignition interlock provides DWI offenders with an alternative to full license suspension. Use of the device for repeat or high BAC offenders is often required by legislation and/or mandated by the motor vehicle department or other administrative authority. All states and the District of Columbia have enacted legislation providing for its integration into the DWI adjudication and sentencing process.

The cost of the ignition interlock is usually charged to the offender, which often denies indigent offenders access. Indigent funds should be established allowing access for those who are unable to pay.

How ignition interlock devices can aid in supervision of DWI offenders:

- Installation of an ignition interlock device prevents driving after drinking and allows the DWI offender to remain employed, in school, and involved in other pro-social activities when a driver’s license has been suspended.
- Data obtained through the recording device shows patterns of abuse that can lead to DWIs and the information offers insight into offender behaviors and triggers for relapse.
- Interlocks have been found to be beneficial for both first-time and repeat alcohol impaired offenders. “The interlock is very effective while it is on the vehicle, and the net benefit [accumulated during time on and off the interlock] in terms of reduced recidivism is substantial.” (Robertson, R.D., Vanlaar, W.G.M., & Simpson, H. M. (2006).

■ IN-HOME ALCOHOL MONITORING SYSTEMS

This is a portable, alcohol-specific fuel cell device equipped with a camera that allows for positive photo identification and is intended for home use. The device plugs into a wall outlet. The offender blows into the device whenever a test is requested by the monitoring authorities. A built-in microchip records all test results, disconnections, times and dates of tests and photos. The offender takes the device to a service center for data downloads as required.

How in-home alcohol monitoring systems can aid in supervision of DWI offenders:

- Can be used in tandem with EM devices during confinement to determine the use of alcohol.
- Can be added as a sanction for noncompliant behavior or removed as an incentive for compliance. In most cases, the cost associated is similar to an ignition interlock device and is assessed to the offender.
- Data obtained through the recording devices show patterns of abuse that can lead to DWIs and the information offers insight into offender behaviors and triggers for relapse.

■ CONTINUOUS TRANSDERMAL ALCOHOL MONITORING

A typical condition of sentencing or probation for DWI offenders is court mandated abstinence for a specified period of time. Courts have traditionally used random testing methods to enforce this condition. The shortcoming of random testing is it only shows if the individual is sober at the specific “point in time” the test was administered.

One of the more recent advances in alcohol testing is continuous transdermal alcohol monitoring which is being used across the varying spectrums of the criminal justice system. It is used in pretrial settings for DWI offenders, as an order of the court upon adjudication or sentence and as a condition of community supervision in a probation or parole setting.

Continuous transdermal alcohol monitoring technology measures an individual’s transdermal alcohol concentration levels as alcohol migrates through the skin as a byproduct of ingesting alcohol. If an offender has been drinking, the technology will detect the presence of ethanol vapor in the perspiration of an individual. These devices can determine if an individual has consumed a small, moderate or large amount of alcohol.

Continuous transdermal alcohol monitoring has been subject to validation by the Federal government and scientific research entities across the country. To date there have been 22 independent, peer-reviewed studies as well as judicial acceptance. Courts across the country have increasingly integrated this technology into their community supervision strategies, specifically using the data from the devices to better manage and supervise offenders. Recent advancement in the technology has incorporated dual function curfew monitoring

or home confinement functionality into the systems providing courts with the ability to implement sanction-based programming in addition to monitoring an individual for alcohol consumption.

Continuous transdermal alcohol monitoring is most effective when used with hardcore drunk drivers who are highly resistant to changing their behavior and in tandem with treatment efforts.

How continuous transdermal alcohol monitoring can aid in supervision of DWI offenders:

- Significant reductions in recidivism can be achieved when the technology is coupled with treatment in hardcore drunk driver populations.
- The technology provides courts with a tool that adds accountability to offender compliance and enhances treatment and rehabilitation efforts while allowing the offender to remain in the community as a productive member of society.
- The dual function device combines the benefits of EM and continuous alcohol testing.
- The cost (\$10-12 a day) is usually borne by the offender. The application of this technology results in reduced incarceration which is a cost savings to the community.

Today there are over 1,500 jurisdictions using continuous transdermal alcohol monitoring technology with more than 15,000 offenders monitored daily. To date there have been over 225,000 offenders monitored in 48 states, as well as in Canada and the United Kingdom.

▪ BREATH, BLOOD AND URINALYSIS TESTING

DWI offenders are usually required to abstain from the use of alcohol or drugs during the term of supervision. The chemical analysis of breath, blood, or urine testing can be used to monitor court-mandated compliance and detect the specific amount of alcohol and/or drugs in the offender's system. Breath and urinalysis (UA) testing allows the supervision officers to randomly test for the use of alcohol and other drugs during office or home contacts. The offender can also be referred to a hospital or a lab for UA or blood testing.

How breath, blood, and UA testing can aid in supervision of DWI offenders:

- With the proper equipment, or with equipment used by law enforcement officers, supervision officers can give quick on-the-spot breath tests to determine a specific BAC.
- Supervision officers can request that an offender submit to UA testing, for the detection of drugs other than alcohol, during office or home contacts.
- Because breath and UA testing can be required on a random basis, varying schedules can be developed.
- Testing can also be increased (sanction) or decreased (incentive) as needed to reward compliant behaviors or sanction noncompliant behavior.

REHABILITATION

THE TREATMENT PLAN: The treatment plan for the hardcore drunk driving offender should be based on a criminogenic needs assessment, a diagnostic and/or mental health assessment and a substance abuse assessment, as indicated. These assessment results collectively identify areas in need of intervention and assist the treatment provider in devising a comprehensive plan.

Ensuring Solutions to Alcohol Problems (ESAP) is a research-based project at George Washington University Medical Center that has identified 13 active ingredients of effective alcohol treatment.

The nation's system for treating alcohol problems continues to fall short of the comprehensive model envisioned more than 10 years ago by the Institute of Medicine. While several of the active ingredients identified by ESAP have long been prescribed for treating alcohol dependent individuals, many, including the use of prescribed medications to support clinically proven psychosocial therapies, are not widely found in clinical practice.

ESAP's 13 active ingredients of effective alcohol treatment are:

- **Early detection, including screening and brief interventions** (for non-dependent problem drinkers). The earlier the treatment for drinking problems begins, the better the chance for success.
- **A comprehensive assessment and individualized treatment plan.** Treatment for alcoholism and drug abuse is not a one-size-fits-all proposition. Not all patients require the "acute care" approach.
- **Care management.** Treatment programs need to be carefully managed every step of the way, sometimes involving family members and friends, from the initial assessment through continued follow-up after the intervention program ends.
- **Individually delivered, proven professional interventions.** Several interventions, based on different treatment philosophies, can be effective in reducing alcohol consumption depending on the patient's gender, severity of dependence and motivation to change. Effective treatment programs will offer more than one approach.
- **Contracting with patients.** Also called contingency management or behavior contracting, this rewards good behavior and punishes bad behavior to improve treatment outcomes.
- **Social skills training.** People with alcohol problems can be taught to recognize stressful situations in which their drinking has been a problem in the past, and taught skills to help them cope with those situations.

- **Medications.** Medical treatments cannot “cure” drinking problems, but they can be combined with other interventions and therapies to produce treatment that is even more effective. Medication-assisted treatment is the use of medications, in combination with counseling and behavioral therapies, to provide a whole-patient approach to the treatment of substance use disorders. Research shows that when treating substance-use disorders, a combination of medication and behavioral therapies is most successful. Medication-assisted treatment (MAT) is clinically driven with a focus on individualized patient care. For more information on MAT, go to <http://www.alcoholanswers.org/treatment-options/medication-assisted-treatment.cfm> and <http://www.enterhealth.com/about/media-kit/enterhealth-pharmacotherapy>.
- **Specialized services for medical, psychiatric, employment or family problems.** Treatment programs need to be targeted at the individual needs of the patient through “problem-to-service matching.”
- **Continuing care.** Most offenders that enter treatment have at least one relapse. Follow-up contact as well as participation in support groups have both been shown to improve long-term treatment outcomes.
- **Strong bond with therapist or counselor.** Research shows that counselors and therapists, who bond with patients through empathy rather than confrontation, are powerful motivating influences in alcohol treatment.
- **Longer duration (for alcohol dependent drinkers).** How long a patient stays in treatment matters more in most cases than if a patient is treated in an inpatient or outpatient setting. Studies indicate that outpatient treatment lasting less than 90 days results in poorer outcomes.
- **Participation in support groups.** Project MATCH and other studies in the 1990s definitively proved that participation in support groups, such as Alcoholics Anonymous and other faith-based programs, can be an active ingredient of treatment — both during a professional intervention and after.
- **Strong patient motivation.** All approaches to alcoholism recovery depend on the desire of the person to get and remain sober. Effective treatment programs enhance this motivation with intervention and therapy.

Source: Ensuring Solutions to Alcohol Problems, The George Washington University Medical Center. The Active Ingredients of Effective Alcohol Treatment (PDF). June 2003.

WHAT ARE DWI COURTS?

Except where DWI Courts have already been instituted, it has been left to the traditional courts and criminal justice system to deal with DWI cases, and it has become clear that the traditional process is not working for repeat offenders. Punishment, unaccompanied by treatment and accountability, is an ineffective deterrent for the repeat DWI offender. The outcome for the offender is continued dependence on alcohol; for the community, continued peril. However, a proven strategy exists to fight these repeat DWI offenders. It is called DWI Court.

A DWI Court is an accountability court dedicated to changing the behavior of the repeat DWI offender through intensive supervision and treatment. The goal of DWI Court is to protect public safety by using the Drug Court model to address the root cause of impaired driving: alcohol and other substance abuse. With the repeat offender as its primary target population, DWI Courts follow the Ten Guiding Principles of DWI Court, found here http://www.dwicourts.org/sites/default/files/ncdc/Guiding_Principles_of_DWI_Court_0.pdf and the Ten Key Components of Drug Courts, both as established by the National Association of Drug Court Professionals. Unlike Drug Courts, however, DWI Courts operate within a post-conviction model.

DWI Courts utilize all criminal justice stakeholders (judges, prosecutors, defense attorneys, probation, law enforcement, and others) coupled with alcohol or drug treatment professionals. This group of professionals comprises a “DWI Court Team,” which uses a cooperative approach to systematically change offender behavior. This approach includes identification and referral of participants early in the legal process to a full continuum of drug or alcohol treatment and other rehabilitative services. A DWI Court’s coercive power is the key to admitting DWI offenders into treatment and ensuring that they remain there for a period of time that is long enough to make a difference.

Compliance with treatment and other court-mandated requirements is verified by frequent alcohol/drug testing, close community supervision and ongoing judicial supervision in non-adversarial court review hearing. During the frequently held review hearings, the judge employs a science-based response to participant compliance (or non-compliance) in an effort to further the team’s goal to encourage pro-social, sober behaviors that will prevent future DWI recidivism.

Accordingly, if treatment is to fulfill its considerable promise as a key component of DWI reduction policy, DWI offenders not only must enter treatment but must remain in treatment and complete the program. To do so, most will need to be ordered or coerced into treatment. In the context of treatment, the term coercion - used more or less interchangeably with “compulsory treatment,” “mandated treatment,” “involuntary treatment,” “legal pressure

into treatment”- refers to an array of strategies that shape behavior by responding to specific actions with external pressure and predictable consequences. Moreover, evidence shows that substance abusers who get treatment through a court’s order benefit as much as, and sometimes more than, their counterparts who enter treatment voluntarily. DWI Court is the best vehicle within the criminal justice system to expedite the time interval between arrest and entry into treatment, and provide the necessary structure to ensure that a DWI offender stays in treatment long enough for treatment benefits to be realized.

Most importantly perhaps, DWI Courts serve as a potential unifying hub for the myriad agencies and organizations that have been part of piecemeal attempts to plug the gaps in the drunk driver control system. DWI Courts can and should serve as a unifying venue of accountability for the repeat DWI offender. By partnering with the respective state’s department of motor vehicles, Governor’s Highway Safety Commission, highway patrol, local law enforcement accident prevention squads, MADD and other crash prevention and victim support groups, DWI Courts can add teeth to the justice system’s response to repeat drunk driving.

▪ **WHERE ARE THEY BEING USED?**

In 2004 there were 176 DWI Courts—86 designated DWI, and 90 “hybrid” courts. (Hybrid DWI Courts are courts that started as Drug Courts, and then added a DWI offender track to the Drug Court program.) As of 2011, there were 192 designated DWI Courts, and 406 “hybrid” Drug Courts for a total of 598 in 39 states and territories. That is over a 339 percent increase in seven years.

▪ **HOW EFFECTIVE ARE THEY?**

Evaluation studies are vital in sustaining DWI Court programs. This understanding is discussed in Guiding Principle #9 of the Ten Guiding Principles for DWI Courts. Courts conduct outcome evaluation studies to demonstrate the dramatic effect of DWI/Drug Courts on the community, to assess relative costs, and to maintain or seek funding.

Additionally, other broader studies have been completed. An evaluation of three DWI Courts in Georgia asked the ultimate question: Were DWI Courts more effective than traditional courts in reducing recidivism? The conclusion was a clear yes; DWI Courts were more effective. The evaluation was conducted by the Pacific Institute for Research and Evaluation (PIRE) and funded by NHTSA, and it found:

- Repeat DWI offenders graduating from DWI Courts were up to 65 percent less likely to be re-arrested for a new DWI offense.
- All DWI Court participants had a recidivism rate of 15 percent, whether or not they graduated or were terminated, versus a recidivism rate of up to 35 percent for those not in DWI Court.
- The three DWI Courts prevented between 47 and 112 more repeat DWI arrests.

The study noted that the DWI Courts saved the Georgia courts a substantial amount of taxpayer money that would have been needed for incarceration, court time, and probation supervision.

Positive findings were also reported in a three-county evaluation of DWI Courts in Michigan. In nearly all of the comparisons, the trends favored better outcomes for the DWI Court participants. In one county, the participants were up to 19 times less likely to reoffend. The finding also noted that DWI Courts saved the criminal justice system time and money when compared to a traditional court.

OTHER ACTIONS JUDGES CAN TAKE TO BETTER PREPARE THEMSELVES FOR HARDCORE DRUNK DRIVING CASES

- Be aware that the expectation that a hardcore drunk driver will look a certain way in court is flawed: they may have acted irresponsibly on the road, but their behavior in court will likely be very different.
- Encourage and participate in judicial DWI seminars and request a hardcore drunk driver focus. Take advantage of judicial education opportunities across the country. For example, The National Judicial College in Reno, Nevada, offers a course called “DWI Primer for New Judges: Impaired Driving Case Fundamentals.”
- Develop or obtain an up-to-date list of all local alcohol treatment programs with descriptions of the services they provide.
- Create and maintain a list of sentencing options to ensure consistent sentencing.
- Refer to other resources, such as DWI information and sentencing tools available through the internet.
- Use DWI Bench books. For example, Colorado’s DWI Bench book is written by judges, for judges and covers the step-by-step procedures for conducting a DWI trial. New Mexico’s DWI Bench book is intended to serve as a comprehensive resource guide for trial courts in handling criminal proceedings involving DWI and other alcohol-related offenses.

SECTION VI:

OUTCOME MEASURES

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OUTCOME MEASURES

The development and execution of any new plan requires a formula or system for measuring success. It is strongly recommended that accurate records be maintained in order to gauge progress and to chart trends. Generally accepted methods of measuring success are anecdotal support and empirical support. While it is true that empirical support and evidence usually carry more clout and credibility, do not underestimate the value of anecdotal support. In order to make any form of innovative sentencing work, the on-going approval and commitment from judges is essential. Everyone loves a great success story. So, when that “poster-defendant” comes along, don’t be shy about sharing the story. Remember that the goal in accurately measuring success is to scrutinize all facets of the sentencing scheme and this must include a category reserved for “areas for improvement.”

In measuring success or failure, we generally tend to think of recidivism as the ultimate measure. The problem with solely relying on recidivism as a standard measure of success or failure is that it can be defined in so many different ways by different individuals, departments/programs, and jurisdictions. It can be defined as a new arrest, a new conviction, a new violation, a relapse incident, and/or revocation/incarceration. Furthermore, differing timeframes of when a behavior is considered as recidivism can differ as well. While measures of recidivism are important, it is also important for each discipline to develop their own definition of recidivism and measures of success. These measures may differ between offender types, risk levels, etc., but having clearly defined measures of success for all of these areas, outside of only recidivism rates, is fruitful in identifying what is working, and what is not. It may also be helpful to find out what other courts are doing and determine if their programs may be appropriate for implementation in your jurisdiction.

Make good use of the information you gather, keeping in mind the ultimate goal of reducing recidivism, increasing public safety and saving lives. Additionally, positive sentencing outcomes may also reduce first DWI offenses. Sharing the information, particularly outcomes and trends, with strategic partners encourages their future buy-in and cooperation. Victim and special interest groups, coupled with the media, may partner or take the lead in seeking changes in the law or development and funding of needed programs. Efforts regarding staffing levels and budget considerations may also benefit from this information.

A resource that may be helpful in measuring outcomes can be found at: http://www.acf.hhs.gov/programs/ocs/ccf/ccf_resources/measuring_outcomes.pdf.

SECTION VII:

EMERGING PRACTICES

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NO REFUSAL PROGRAMS

Test refusals are a major problem for the judicial system in confronting hardcore drunk drivers. Many DWI suspects refuse to cooperate with the police in any way by refusing to answer questions, perform the field sobriety test, or provide a breath sample. As mentioned in the Challenges section, test refusals are more common with hardcore repeat offenders, primarily because they know they'll test high, they are familiar with the loopholes in DWI laws, and in most jurisdictions, sanctions for refusing to cooperate with police are much less severe than sanctions for a DWI conviction, especially repeat offender sanctions.

When drivers refuse, the police officer cannot gather all of the evidence needed to support an illegal per se charge. All too often, drivers who are drunk and refuse testing avoid a criminal conviction and may not be identified as repeat offenders on a subsequent offense. Test refusal is one way hardcore drunk drivers continue to try to evade prosecution and sentencing. In a 2002 study on DWI prosecutions, three-fourths of the prosecutors interviewed said the blood alcohol test was the single most critical piece of evidence needed for a conviction, evidence they are frequently without (Simpson and Robertson, 2001).

In response to high BAC test refusal rates, a number of states have implemented No Refusal programs to reduce the number of test refusals. No Refusal programs ensure BAC test results by enabling police officers to obtain a search warrant from a judge or magistrate for blood samples of drunk driving suspects. While judges cannot initiate such a program, judicial cooperation with the program is essential to its success.

States that are conducting No Refusal or warrant programs include Arizona, Idaho, Illinois, Kansas, Louisiana, Michigan, Missouri, Texas and Utah. Many other states have the necessary legal authority to conduct No Refusal programs, including Alaska, Alabama, California, Colorado, Georgia, Indiana, Maryland, Michigan, Mississippi, North Carolina, North Dakota, Nebraska, New Jersey, Ohio, Oklahoma, Pennsylvania, South Dakota, Virginia, Washington, Wisconsin, and West Virginia (NHTSA, 2012). Each jurisdiction is implementing its No Refusal program differently, but the basic idea is outlined below:

After law enforcement officers arrest a DWI suspect who refuses the opportunity to give a breath sample, the prosecutor on site will review the case and may present a warrant to the judge on site. If the judge grants the warrant, it gives the qualified personnel (nurse, law enforcement) authority to draw a blood sample.

In Montgomery County, Texas, the No Refusal Program has reduced the county's refusal rate from 45 percent to 25 percent. The BAC levels for those who provide samples via the warrant are higher than those who submit to the test without a warrant (.19 percent versus .13

percent). The county's rate of alcohol-impaired driving fatalities has been reduced by about 70 percent. Other counties implementing the program report similar results.

Judges should refer to their own constitutions, case law, statutes and ethics rules to determine if No Refusal programs can be conducted locally.

24/7 SOBRIETY PROJECTS

South Dakota's 24/7 project was the first state-level program in the country to mandate and monitor hardcore drunk driving offenders. The project has one main goal for each DWI defendant: sobriety 24 hours per day and 7 days per week. The 24/7 Sobriety Project originated in South Dakota with former Attorney General Larry Long to address repeat impaired driving offenses. The pilot project began in January 2005 and expanded to 67 participating agencies, including police departments, sheriff's offices, and the Unified Judicial System. Today, the project is in place in at least four other states (Montana, Nebraska, New Mexico and North Dakota) and was included in the 2012 Federal Highway Bill as a way for states to utilize highway safety funding.

The 24/7 Sobriety Project provides unprecedented levels of supervision for first-time DWI offenders with a BAC of at least 0.17 percent and repeat DWI offenders. The 24/7 Sobriety Project is being used by the courts as a condition of bond, sentence/probation, and in family courts. The project stresses separating the offender from alcohol as a method of rehabilitating drunk drivers and changing behavior. The project uses a number of tools to ensure participant compliance. The tools include twice-a-day breath tests, transdermal monitoring systems, drug patches and urine tests. Some participants may be required by the court to use more than one testing/monitoring method. Of the participants who fail at least one test, 30 percent have their first failure within the first two weeks of beginning their participation in the project.

Participants who don't show up for a scheduled test or who test positive for alcohol use may have their probation, parole or bond instantly revoked and immediately be jailed. Sanctions are swift, certain, and measured. Sanctions most often afford a reinstatement into the project.

The project allows for a considerable amount of freedom for the offender. For example, participants can still drive, work and stay with their families. This reduces jail populations and allows participants to continue to be part of their community. The community also benefits because the program has evolved into a participant pay model with formal adopted rules and procedures. It requires no taxpayer dollars to operate.

According to an evaluation prepared for the South Dakota Attorney General, more than 20,000 DWI offenders have been placed on the program's twice-per-day testing regimen. Of those, over 99 percent have shown up on time for compliance (breath) tests and tested negative for alcohol use; 0.6 percent failed to show up or failed their breath tests. Compared

to DWI offenders not in the project, participants with two DWI arrests who were in the program for 30 consecutive days had a 74 percent reduction in recidivism when studied three years after their second DWI arrests. Those with three DWI arrests had a 44 percent reduction in recidivism, and those with four DWI arrests had a 31 percent reduction in recidivism.

The web-based 24/7 Sobriety project's management software coordinates data, testing sites, and communicates information to all agencies that touch the system and administer the project. Flexibility is built into the business model and allows the testing agency to utilize existing or new resources to maximize efficiencies. Price points for testing have been kept low, eliminating the need for indigency considerations by the courts.

The project was originally initiated as an alternative to incarceration for DWI offenders. As the project grew, judicial and corrections personnel began placing offenders on the project for whom alcohol or drugs was a contributing cause to their illegal behavior. In 2009, DWI offenses comprised 59 percent of program participants. For more information on this program go to <http://apps.sd.gov/atg/DWI247/index.htm>.

CARS - DWI ASSESSMENT AND TREATMENT PROJECT

Repeat drunk drivers represent at least one-third of all DWI arrests and likely contribute to consistent rates of DWI deaths and injuries on our nation's highways. These statistics emphasize the need to identify and address the factors that influence DWI recidivism.

Research continues to find strong links between substance use, DWI, criminal behavior, homelessness, and underlying mental health issues. More and more research has identified the fact that repeat DWI offenders often suffer from a number of disorders. In one study, in addition to a lifetime alcohol disorder, 41 percent of the participants had an additional drug-related disorder and 44 percent had a major mental health disorder that was not alcohol or drug-related (Shaffer et al., 2007). However, treatment for DWI offenders, which has been part of the criminal justice system for more than 30 years, most commonly consists of alcohol education and possibly some form of alcohol treatment only.

The Division on Addictions at Cambridge Health Alliance, a teaching affiliate of Harvard Medical School, is working to expand and test a Computerized Assessment and Referral System (CARS) for use with a structured diagnostic mental health assessment in DWI treatment settings. Already piloted with support from the National Institute on Alcohol Abuse and Alcoholism (NIAAA) and now supported by The Century Council, the CARS project examines the relationship between psychiatric profiles and repeat drunk driving offenders. The project is in the testing phase now and will be available to the public for use in 2014.

As a computerized clinical report generator tool, CARS is used with a structured diagnostic mental health assessment, effectively bringing comprehensive mental health assessment “from bench to bedside.”

Comprehensive clinical assessment tools can provide volumes of high quality diagnostic information that can facilitate effective treatment planning, but commonly are not user-friendly. Because such tools frequently require more time and expertise than many would-be users might have available, their use is limited. CARS will package a powerful mental health assessment tool with a user-friendly interface, increased flexibility, and immediate personalized output, to create a tool that can be used easily by lay people to administer comprehensive mental health assessments.

Research has shown that people with one mental health problem (e.g., a substance use disorder) also are at high risk for other mental health problems. For example, in DWI populations, additional mental health problems are prevalent and linked to recidivism. CARS provides a cost-effective tool that treatment programs in general and substance use programs in particular can use to screen their populations for mental health disorders.

Treatment programs and other settings that address mental health issues often employ staff who do not have expertise in mental health issues. CARS provides a computerized tool that allows these staff members to effectively screen for mental health issues. The reports CARS generates assist staff by providing personalized information about disorders and possible referral sources for their clients. Because CARS uses the internationally-recognized Comprehensive International Diagnostic Interview (CIDI), suitable for use by lay interviewers, programs can be confident that the assessments they conduct are well-validated and reliable.

Treatment programs around the world concerned with addressing mental health issues will be interested in CARS. Substance use programs and DWI treatment programs, as well as court settings and primary care settings have reason to screen for mental health issues in their clientele.

As this research increases, so will the interest from programs that address behavioral problems. CARS can be adapted for use in many kinds of community programs, as well as educational and primary care settings.

DRIVING UNDER THE INFLUENCE OF DRUGS

The issue of driving under the influence of drugs (DUID) has been percolating as a traffic safety issue for many years. While many in the public safety field have believed it may be a significant problem, there has been little quantifiable data to confirm its magnitude. Serious gaps in national crash data exist. After almost 40 years since the Department of Transportation’s Fatal Analysis Reporting System (FARS) program was initiated, only 33 percent of the drivers in fatal crashes are being tested with known test results.

However, recent studies have confirmed DUID is a significant traffic safety concern. The NHTSA 2006 National Roadside Survey showed that over 16 percent of nighttime drivers tested positive on an oral fluid or blood drug test (as compared to two percent who tested at or above a .08 percent BAC limit). A 2009 study published in the *Journal of Forensic Sciences* that examined fatally injured drivers in Washington State showed 39 percent of fatally injured drivers had drugs in their system. A 2005 study published in *Accident Analysis and Prevention* examined seriously injured motor vehicle crash victims admitted to the Maryland Shock Trauma Center and showed that over 50 percent of drivers admitted to the center had drugs in their systems.

Driving under the influence of drugs is a very complex issue. The challenge presented by this research is that the mere presence of drugs does not necessarily confirm driver impairment. Many studies have concluded that specific drug concentration levels cannot be reliably equated with effects on driver performance. There is no BAC chart of impairment for drug-impaired driving.

Another complicating factor is that many drug categories may be detected long after the potential for driving impairment has passed. For example, presence of marijuana may be detected for weeks after ingestion by heavy or chronic users.

Additionally, a number of positive drug tests were for legally prescribed drugs that may have been ingested at pharmaceutical levels. While it is legal to use these types of drugs, it is illegal to drive while impaired. Also, there are no laws that cover designer drugs (such as bath salts). The drugs and other substances that are considered controlled substances under the Controlled Substances Act are divided into five schedules found here, <http://www.deadiversion.usdoj.gov/schedules/index.html>. If a drug is not recognized as a controlled substance, DUID offenses involving that drug cannot be prosecuted.

This issue has reached a point where evidence shows it is a real highway safety issue and it has been a focus of the Office of National Drug Control Policy, the Department of Transportation and other traffic safety groups including MADD. The NTSB is also likely to issue strong recommendations regarding DUID. The question is: Will the states and communities have the necessary resources to combat this emerging highway safety issue? Significant hurdles must be overcome before DUID can be more effectively addressed such as:

- **LACK OF TRAINED LAW ENFORCEMENT PERSONNEL**

Law enforcement officials have some reliable weapons to use in identifying potential DUID offenders, but they are not available to the vast majority of traffic law enforcement officers. NHTSA's Drug Evaluation Classification program, of which drug recognition experts (DREs) are a part, has only a few thousand officers nationwide to identify these drivers. The Advanced Roadside Impaired Driving Enforcement (ARIDE) program has promise, but is still in its infancy and is dependent upon DREs for final arrest decisions.

Most departments do not have trained DREs. Several states have less than five DREs and some only have one per county. Traffic units across the country are being drastically reduced or even eliminated due to budget constraints. Even many state police/patrol forces are being reduced. Many additional priorities demand officers' time, such as distracted driving and occupant protection.

▪ LIMITED TESTING PROTOCOLS

Testing protocols are limited. For the most part, officers who make arrests for DUID have to rely on urine or blood tests to confirm the presence of drugs. These arrests are usually made when a suspected DWI offender is heavily impaired, but the BAC level is considerably lower (below the .08 percent BAC level) than what would be expected for the observed level of impairment. Often these offenders are released because the officers do not believe they have the ability to make a case for DWI and lack adequate knowledge/experience with DUID to make their case on DWI drug impairment.

▪ DIFFICULTY OBTAINING BLOOD SAMPLES

The ability to draw blood samples has created evidential problems for some jurisdictions. A number of medical facilities have not been cooperative in taking samples from DWI offenders. Uniform policy provision laws (alcohol exclusion laws) in some states make it difficult for these facilities to get reimbursed for their services. Many departments do not have ready access to appropriate labs to conduct the testing of the samples or are limited by budget concerns.

▪ PER SE LEGISLATION

Most states lack legislation to facilitate the collection and testing of fluid samples. According to a NHTSA 2010 Report to Congress, only 17 states (Arizona, Delaware, Georgia, Illinois, Indiana, Iowa, Michigan, Minnesota, Nevada, Ohio, Pennsylvania, Rhode Island, Utah, Virginia, and Wisconsin) have definitive drugged driving per se legislation that prohibits people from driving with drugs in their system. With no BAC impairment chart for drugs and no clear idea of the amount of individual drugs that cause impairment, per se laws are very difficult to pass. Nevada, Ohio and Virginia have threshold limits to increase the likelihood that an offender has been using recently. But even with these laws there is also a great deal of confusion as to which drugs (legal or illegal) or categories of drugs to prohibit. Additional information on per se laws can be found at www.stopdruggeddriving.org.

▪ LACK OF SCREENING TOOLS

Few screening tools exist to confirm arrest decisions based upon SFSTs and DRE examinations. A mobile oral fluid screening device is being field tested in several jurisdictions to determine its accuracy and reliability. A European device which tests fingerprints for drugs will be introduced in the U.S. in 2013. These screening instruments must undergo scientific

scrutiny before they can be considered admissible in criminal prosecution. NHTSA has not created Federal performance standards for these devices. Assuming these hurdles can be addressed, widespread deployment of the devices would require considerable effort.

■ PROSECUTOR TRAINING

Special training is needed for prosecutors to effectively prosecute DUID cases. While a small number of prosecutors are already trained in DUID prosecution, hundreds more still need such additional training. Delivery of existing DUID training materials will require time and resources.

FEMALE DRUNK DRIVERS

Historically, the drunk driving offender population has been predominantly male. However, drunk driving arrests involving females has been a source of growing concern since the late 1980s. Thirty years ago just 9 percent of those arrested for DWI were women. Since then the number of women arrested for DWI has dramatically increased – up 29 percent from 1997 to 2007. These statistics emphasize the need to better understand the increase in female DWI offenders and to accurately prioritize female drunk drivers in the context of the overall drunk driving problem.

The Traffic Injury Research Foundation (TIRF) conducted research to summarize the current state of knowledge about drunk driving among female drivers. The objectives of the research were to describe the magnitude of the female drunk driver problem, the characteristics of these offenders, the current involvement of female drivers testing positive for alcohol in fatal crashes, and effective strategies that are available and being applied to manage this segment of the drunk driving population.

The study, *State of Knowledge: Female Drunk Drivers* (2011), revealed more females are entering the criminal justice system as a result of the increase in DWI arrests, while self-reported drunk driving and alcohol crash data involving females has remained stable for many years with only incremental changes. While female and male drunk drivers share some similar characteristics, they are different on some key attributes. Prominent among these differences are dependence, co-occurring substance use, and mental health disorders as outlined below:

- Women may experience different barriers in relation to initiating and completing treatment for a substance abuse disorder as compared to men (Green, 2006).
- Data suggests an estimated 15-25 percent of female DWI offenders are involved in various sanctions such as interlock programs and DWI courts. However, few research studies have specifically re-examined the effectiveness of sanctions in relation to gender. Some research suggests interventions that increase women's negative emotions may increase their risk of recidivism (McMurran et al., 2011).

- Women tend to enter alcohol treatment with a broader set of problems, such as depression and higher BAC levels. Despite this, women have the same rate of relapse as men and more effectively recover from relapse (Walitzer and Dearing, 2006).
- Many women who enter substance treatment also have mental health issues. The prevalence of co-occurring disorders among females with substance use disorders is higher than that of males and this has been shown to have a negative impact on the response to treatment (Greenfield et al., 2007).
- On-site child care services can make it easier for mothers to attend treatment (Sun, 2006). It has been found that single-gender treatment may be perceived more positively than mixed-gender treatment (Greenfield et al., 2007).
- Individual counseling has also been shown to be related to better treatment outcomes for women, specifically when counselors were supportive, non-confrontational, and non-judgmental (Sun, 2006).

To learn more about female drunk driving offenders, their characteristics and involvement in fatal crashes, and how these offenders are managed in the criminal justice system in terms of sanctions and treatment, please view the Executive Summary and Final Report, found here http://tirf.ca/publications/publications_show.php?pub_id=274.

DRIVER ALCOHOL DETECTION SYSTEM FOR SAFETY (DADSS)

In 2008, NHTSA and the Automotive Coalition for Traffic Safety (ACTS), representing the nation's leading automakers, began a five-year, \$10 million cooperative research effort to create the Driver Alcohol Detection System for Safety (DADSS). In 2012, Federal passage of MAP-21, Moving Ahead for Progress in the 21st Century, reauthorized the Federal Aid Highway Program and allowed continued funding of this project through September 2014.

The purpose of the DADSS research effort is to develop non-invasive technology that will prevent a person from starting a DADSS equipped vehicle if the driver has an illegal BAC limit of .08 percent or above. While there is still much work to be done, NHTSA estimates the technology could be ready for general use and integrated into vehicles in the next 8 to 10 years.

The goal of the research is to develop technology that is absolutely reliable, accurate, affordable, precise, tamper-resistant, durable under extreme environments and requires minimal maintenance. Additionally, this technology must be unobtrusive, especially to those drivers who don't consume beverage alcohol. In other words, for these devices to be acceptable to the motoring public, they must be seamless to operate. Technologies developed under this project are envisioned to be voluntarily installed as an option on new cars.

The current technology used in alcohol ignition interlock devices is accurate, but the devices require drivers to provide breath samples each and every time they attempt to start their

vehicles. The devices also require periodic rolling tests while the vehicle is in operation and prohibit motor vehicle operation at any measureable BAC level. Additionally, it requires regular maintenance to ensure proper operation. While this approach is acceptable for use with convicted DWI offenders, it is far too intrusive for widespread use.

During Phase I of the DADSS project, two technological approaches were identified as promising for measuring driver BAC non-invasively. The first is tissue spectrometry, a touch-based approach allowing estimation of alcohol in human tissue, and the second is distant spectrometry, a breath-based approach that will allow measurement of alcohol concentration from the subject's exhaled breath.

The touch-based approach allows BAC estimation by measuring light absorbed at particular wavelengths from a beam of Near-Infrared (NIR) reflected from the subject skin. Touch-based systems require skin contact.

The breath-based approach requires that infrared or laser light be transmitted to the subject from a source that receives and analyses the reflected and absorbed spectrum, to assess chemical content of liquid in vapor. No skin contact is required.

In Phase II of the project, two technology providers were selected to develop the technologies: Autoliv Development AB of Vårgårda, Sweden; and Takata TruTouch Automotive Solutions of Pontiac, Michigan. Their two approaches demonstrated the potential development to measure BAC quickly and with high levels of accuracy and precision. Their challenge in Phase II is to incorporate this technology into such a form that it may be installed in a research vehicle and meet all of the requirements of DADSS.

SAFECAB

A successful program for decreasing drunk driving incidents and engaging multi-community stakeholders was started in Minnesota in 1997 and continues today. Judge James Dehn, concerned about the number of DWI cases that were appearing in his court, began tracking every DWI plea by having the offender identify their "last place of drink" before their DWI arrest.

Judge Dehn enlisted the help of a University of Minnesota professor to run the data he was collecting from every offender. The data he gathered from 1997-2004 revealed that 62 percent of the pleading drunk drivers identified specific bars as the "last place of drink" before their DWI arrests. The average BAC level of these offenders was .17 percent.

In 2004, Judge Dehn approached his local Towards Zero Death (TZD) community group and invited the bar owners and other stakeholders to a community meeting where they privately shared with the bar owners their individual average bar BAC content reports and number of DWIs coming from their bars.

The alcohol retailers embraced the concept of being part of the solution to this problem and teamed up with the court and other community groups to reduce the drunk driving numbers. Out of the partnership came the SAFE CAB program in 2005. The program costs were financially shared in thirds by the participating bars, the local beer distributors and a community fund called Safe Ride (a non-profit that was created to support the SAFE CAB program).

The goals of the partnership are:

- Reduce number of DWIs in the county
- Reduce average BAC readings coming from bars
- Educate public about drunk driving and
- Work with alcohol retailers to establish best practices for serving patrons

The SAFECAB program, supported by participating bars, has resulted in Isanti County becoming the number one county in Minnesota for reducing overall DWI arrests by over 60 percent since its inception. The server training partnership has reduced the average BAC reading to below .15 percent.

The SAFECAB program has spread to several counties in Minnesota and is showcased by the Center for Excellence in Rural Safety (CERS) as the model for rural counties across the United States.

THE NEED FOR AN ETHICAL, MULTI-DISCIPLINARY STAKEHOLDER APPROACH

“Successful present and future dispositions of hardcore drunk driving defendants cannot be accomplished in a vacuum. Reliable communication, rapport building and collaboration among criminal justice professionals are all essential components.”

— Judge Karl Grube

The complexity of adjudicating the hardcore DWI offender is exacerbated by rapid changes in technology, case law and statutes. These complexities can be mitigated by convening multiple disciplines to discuss hardcore drunk driving issues. These include judges, prosecutors, defense attorneys, probation officers, law enforcement, driver’s license representatives, court clerks, and treatment providers.

A multi-disciplinary approach will materially enhance the adjudication and management of hardcore drunk drivers including improved public perception and support, improved delivery of justice services, and safer communities and citizenry.

Judges can ethically organize and serve on stakeholder committees whose purpose is to improve the delivery of justice in hardcore drunk driving and other traffic-related cases. This extrajudicial activity is encouraged by the Code of Judicial Conduct (see Canon 3, New Model Code Comment [1]: “To the extent that time permits and independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities”).

THE PARAMOUNT IMPORTANCE OF ETHICS

Ethical considerations are always paramount when undertaking any extrajudicial activity. The provisions of the Code of Judicial Conduct vary from state to state and it is necessary to consult local sources of ethical guidance such as state judicial advisory opinions, state ethics codes and canons. The American Judicature Society (AJS, www.ajs.org) is a good independent resource. AJS provides linked access to the Judicial Ethics Advisory Committee opinions of 39 states. Independent research should always be done to determine applicability for the reader.

ADDRESSING JUDICIAL ETHICS CONCERNS: A MULTI-DISCIPLINARY CASE STUDY

“Hardcore drunk driving is not just a criminal issue. It is a public health issue second to none. We must change the role of the judge in order to be effective. We need to educate judges about the fact that it is ethical to treat a crime as an illness, too. Judges should be willing to make an investment in offenders’ lives if offenders will make the same investment in themselves.” — Judge Robert Pirraglia

Judicial leadership is crucial to deter drunk driving. Not only is it well within the ethical bounds of a judge to do more than adjudicate the facts and apply the law, but our system relies on courts to help identify an offender’s problems and promote the offender’s healing and rehabilitation. In addressing the problem of hardcore drunk driving, to what extent, if any, can judges work with other criminal justice stakeholders?

In Florida, the major concern regarding the concept of stakeholder meetings came from the judges. Would meeting with law enforcement, prosecutors, and defense attorneys compromise their independence and give the appearance of impropriety as they discussed issues in cases they swore to judge fairly and impartially?

When judges are concerned about the ethical propriety of contemplated conduct, they can seek ethical guidance from a number of sources. These sources include the Code and Canons of Judicial Conduct, commentary to the Canons, treatises on ethics, reports of disciplinary committees and the opinions of ethics advisory committees that have been created to provide guidance to judges concerning contemplated extra-judicial activities.

Judges in Florida requested a judicial ethics advisory opinion before gathering with criminal justice system stakeholders to discuss impaired driving issues. The request to the Florida Supreme Court Ethics Committee for an opinion posed the following question:

“May a judge implement a local Criminal Advisory Committee that would include representatives from the offices of the State Attorney and Public Defender, the criminal justice bar, the Sheriff’s department, local law enforcement, felony and misdemeanor probation departments, clerk of the court, court administrator’s office, the department of motor vehicles, and drug and alcohol treatment providers involved in the disposition of felony, misdemeanor, and traffic cases?”

The answer of the Florida Supreme Court ethics advisory committee was “yes.” In its Opinion 04-14, the committee pointed out that Canon 4B allows a judge to speak, write, lecture, teach, and participate in other quasi-judicial activities concerning the law, the legal system, and the administration of justice subject to the requirements of the Code. The commentary to Canon 4B recognizes that as a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, and to the extent that time permits, a judge is encouraged to do so, either independently, or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Opinion 04-14 came with a caveat. Discussing DWI issues and resolving matters such as scheduling and discovery is acceptable, but discussing pending or impending cases of individual defendants must be avoided.

While the Florida Supreme Court Ethics Committee’s opinion does not have precedential value in other states, it may be a valuable indication of how other ethics advisory committees would rule if presented with a similar inquiry. Other states that have already issued favorable judicial ethics opinions on stakeholder meeting issues include Illinois in Opinion 98-1 and South Carolina in Opinion 23-2006.

One Florida state court that relied on Opinion 04-14 was the Pinellas County Court, serving Clearwater and St. Petersburg, Florida. Under the leadership of County Judge William Overton, stakeholders in the DWI adjudication process joined together to discuss the impact of the state’s mandatory alcohol ignition interlock device (IID) law. In addition to a demonstration of the device, prosecutors, criminal defense lawyers, probation officers and judges discussed in what cases the device would be mandated, how compliance would be monitored, and how violations of court ordered compliance would be addressed and processed. The meeting also resulted in cooperative efforts to provide information to the practicing bar and the public concerning the operation of the new law.

A criminal justice advisory committee, such as the one implemented in Florida, is an effective means of bringing stakeholders together to listen to and learn from each other and to reason together and address common issues. It provides the opportunity to improve the delivery of justice in DWI and other criminal traffic cases.

IDENTIFYING AND ENGAGING MULTI-DISCIPLINARY STAKEHOLDERS

In 2002, NHTSA invited representatives from the judicial, executive and administrative branches of state government to discuss issues involved in impaired driving cases including enforcement, prosecution, adjudication, supervision, sentencing, and treatment. The goal was exploration of effective practices and approaches that would improve the delivery of justice in impaired driving cases without compromising the independence of various criminal justice stakeholders.

It is essential for the court to reach out to justice and community stakeholders for support to ensure the successful disposition of the hardcore drunk driving defendant is not done in a vacuum. Reliable communication, rapport and collaboration among criminal justice professionals are also imperative to fair and just dispositions of these cases. Together with judges, prosecutors, defense counsel, probation officers and treatment professionals, critical information and options can be explored which may otherwise have been overlooked or never properly addressed. The development and facilitation of these relationships will be discussed in the following section, which provides a list of potential agency partners and suggestions on ways judges may collaborate with them.

The first step in developing prevention strategies is to identify and engage major stakeholders. These stakeholders typically include judges, prosecutors, defense attorneys, law enforcement, probation/parole officers, treatment providers, community-based service programs, mental health services, and community leaders. A description of key stakeholders follows.

JUDICIAL COLLEAGUES

Judges often have concerns about the ethics of consulting with others. They do not commonly invite colleagues to join in outreach activities because of a fear of criticism or a reluctance to give input into other judge's dockets. However, once a multi-disciplinary approach has been successfully implemented, sharing the success with other judges and including them is vital and ethical. The judge can serve as a convenor when the ultimate goal is to develop a collaborative approach where each stakeholder's mission is respected.

PROSECUTORS

Development of effective sentences, timely responses to probation violations, and successful compliance requires an ethically appropriate relationship with prosecutors featuring openness and balance. Issues related to hardcore drunk driving must be discussed in open forums in which the adversarial process is respected and ex parte discussions are avoided. The goal is balanced participation that addresses the administration of justice.

Examples of ethics advisory opinions that set forth ethical parameters for multi-disciplinary group discussion of hardcore drunk driving issues include: Illinois 98-1, South Carolina 23-2006, and Florida Judicial Ethics Opinion—2004-14. This is to be contrasted with ethical limitations when a judge seeks to speak with prosecutors in a closed meeting or training in which only prosecutors are present. In those situations, the judge must be willing and available to train attorneys representing the other defense bar as well.¹

DEFENSE COUNSEL

To ensure an open and balanced approach, care must be taken to include representatives of the defense bar, particularly those who specialize in the defense of impaired drivers. Care must also be taken to avoid discussion of the cases of individual hardcore drunk driving defendants who may have cases pending before the judge.

The justification for including defense counsel in the multi-disciplinary approach extends beyond the obvious ethical need for openness and balance. Many issues that relate to the efficient disposition of hardcore drunk driving cases are those that relate to the discovery process. Removing impediments that delay or complicate the discovery process assists the defense bar in assessing and discussing the prosecution's case with their clients, resulting in earlier plea changes or speedier trials. Defense buy-in is essential to the implementation of DWI/Drug Courts.

LAW ENFORCEMENT

Law enforcement is the first responder to community crime and serves as the “on the street” eyes and ears of the justice system. They are the professionals that probation, parole, judges, and other justice professionals often rely on for updates regarding individuals who are under probation supervision.

The inclusion of law enforcement in a multi-disciplinary stakeholder approach is important to promote understanding of the enforcement process for hardcore drunk drivers. Law enforcement stakeholders appreciate the opportunity to understand the process by which courts, prosecutors, and the defense bar arrive at the disposition of these cases. They will highlight issues such as the high rate of hardcore drunk driver breath and field sobriety test refusals, more effective and efficient high visibility enforcement programs, how to speed up the discovery process and how to minimize law enforcement wait time in court.

¹ See: Colorado Advisory Opinion 2008-3; Connecticut Informal Advisory Opinion 2008-23 Illinois Advisory Opinion 08-1; Utah Informal Advisory Opinion 99-6; U.S. Advisory Opinion 108 (2008).

These subjects can ethically be discussed when judges meet with law enforcement in the company of multi-disciplinary stakeholders.²

LEGISLATORS AND POLICYMAKERS

A multi-disciplinary approach to hardcore drunk driving can ethically include lawmakers. Legislation governing the enforcement, prosecution, adjudication and treatment of hardcore drunk drivers is important to judges as well as other criminal justice system stakeholders. Proposed legislation addressing recidivism, implied consent refusals, and the establishment and funding of DWI/drug courts are but a few of the legislative subjects that can benefit from multi-discipline stakeholder input.³

SUBSTANCE ABUSE ASSESSORS AND TREATMENT PROVIDERS

Substance abuse assessors and treatment providers play a crucial role in planning for, intervention and supervision of hardcore drunk driving offenders. Ideally, these offenders should be screened and, when indicated, receive a comprehensive alcohol/substance abuse assessment by a licensed or certified assessor. It is essential that the results of these assessments be shared with the court and probation officers for inclusion in the development of pre-sentence reports as well as supervision and treatment plans. Additionally, many hardcore drunk driving offenders will require treatment interventions (e.g. detoxification; individual, group, or family alcohol or drug counseling).

The formation of working relationships with treatment providers will allow substance abuse assessors to contribute to the development of measurable treatment goals. Including assessment and treatment providers with other stakeholders at regular meetings promotes the open and balanced multi-disciplinary approach.

² See: Illinois Advisory Opinion 98-1, South Carolina Opinion 23-2006, and Florida Judicial Ethics Opinion 2004-14. This is to be contrasted with the ethical restrictions that apply in “one-on-one” interaction between judges and law enforcement. In those situations, judges should not suggest how officers should do their jobs, how to succeed in the judge’s court, how to obtain convictions, or how to conduct various law enforcement functions. See; Arizona Advisory Opinion 03-8; Virginia Advisory Opinion 01-4); and New York Advisory Opinion 06-15. South Carolina Advisory Opinion 22-2006 does approve of a judge teaching a class to police officers on driving under the influence, driving with unlawful alcohol concentration, and criminal domestic violence as long as the judge does not offer any personal opinions.

³ Judicial Canon 3 Rule 3.2 Commentary provides: [1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials. In some states it is ethically permissible for judges to draft or originate legislation dealing with substantive law (See Texas Judicial Ethics Opinion 76). Judges are reminded however that dealing with legislators is generally ethically permissible so long as the judge’s activities do not (1) cast reasonable doubt on the judge’s capacity to act impartially as a judge; (2) demean the judicial office; or (3) interfere with the proper performance of judicial duties.) (See Florida Opinion 98-13)

One state's ethics advisory committee has even approved of a judge accepting a position as an unpaid board member for the local DWI countermeasure school that provides substance abuse assessments and education courses for hardcore drunk driving offenders.⁴

SUPERVISING AUTHORITIES

Supervising authorities (pretrial, probation, parole and community supervision) use a combined approach involving surveillance, treatment, and accountability to enforce court orders and ensure sentence compliance among offenders. Recognizing these individuals as stakeholders in the development of a multi-disciplinary approach to hardcore drunk driving is essential.

Actions to consider for opening the lines of communication with supervision authorities:

- Contact the probation and parole offices in the jurisdiction.
- Request a meeting with the local supervisors to better understand the criteria involved in developing terms and conditions for the hardcore drunk driver.
- Obtain sample terms from other surrounding jurisdictions.
- Advise post-release supervisors about what other systems do to minimize recidivism.

TECHNOLOGY AND TECHNOLOGY PROVIDERS

It is important for court administrators and officers to develop relationships with agencies providing their chosen technologies (e.g., remote alcohol monitoring devices, ignition interlock, electronic monitoring or reporting equipment, and alcohol or drug testing mechanisms). They need to be aware of what supervision technologies are available, the benefits/barriers to their use in the particular jurisdiction, and training required to use the technology and analyze the reports.

⁴ See Florida Opinion 93-23. For an opinion to the contrary see New Mexico Opinion 02-05. New Mexico, however did approve of a full-time judge facilitating, for profit, drug, alcohol, treatment, and truancy classes at a local high school after business hours. (See New Mexico Opinion 10-08) A number of states have followed Illinois' lead in approving a judge's service on the board of a non-profit "drug court professionals" association. The association includes prosecutors, defense lawyers, rehabilitation counselors, educators, law enforcement personnel, probation officers and others interested in the operation of Drug Court. (See Illinois opinion 1-10)

When a judge considers the use of technology as a means of linking stakeholders and facilitating open and balanced communications, there are ethical considerations. It is important to remember that communication by e-mail provided through court or government agencies is considered to be public record in many jurisdictions.

A judge who considers using electronic social and professional media should also be aware that at least one state has ruled that communication by a judge of the list of the judge's connections to others, who the judge has approved, violates Canon 2B of the Code of Judicial Conduct (see Florida Opinion 2012-12). Participating in e-forms may also involve ethical issues concerning the appearance of giving legal advice and/or engaging in ex parte communications (see Florida Opinion 2001-02).

CLERKS OF COURT/COURT ADMINISTRATION

A successful multi-disciplinary approach to hardcore drunk driving should include the involvement of representatives from the office of the clerk of courts. Courts in supervisory positions in those divisions where hardcore drunk driving cases are frequently adjudicated are of particular importance. One effective approach is early identification of hardcore drunk drivers at their first appearance where conditions of release can aid in obtaining early offender assessment and public safeguards with appropriate conditions of release. These include ignition interlock devices, abstinence, and restricted driving privileges, etc. Clerks of court are able to draft orders and provide procedures to expedite application of these conditions.

CONCLUSION

CONCLUSION:

Judicial leadership, persistence and creativity can lead to significant reductions in hardcore drunk driving. More lives will be saved — and changed — as more judges become aware of the idiosyncrasies of hardcore drunk driving cases and implement the strategies, tactics and programs needed to combat them.

To keep these drivers in check and increase the chances that they don't drive drunk again, judges need to find ways of efficiently but thoroughly think through a driver's sentence. By means of comprehensive sentencing, judges can design a sentencing roadmap for the hardcore drunk driver that not only protects the public but demands that the offender make behavioral changes. The strategies and sanctions that form this roadmap protect the public by effectively quarantining the offender, either physically or by restricting access to an automobile. The roadmap demands behavior change, which is the offender's only means to getting to his destination: a normal, unrestricted life.

Every hardcore drunk driving case presents a vexing challenge as well as a tremendous opportunity to change and save lives. Not every element works for every defendant just as not every program works for every judge. But the strategies, tactics and programs described here provide a resource for judges and judicial educators as they address the complexities of reducing hardcore drunk driving.

GLOSSARY OF TERMS

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ALCOHOL-IMPAIRED DRIVING FATALITY: Drivers in all 50 states and D.C. are considered to be alcohol-impaired if their blood alcohol concentration (BAC) is .08 grams per deciliter (g/dL) or higher. Any fatality occurring in a crash that involves at least one driver or motorcycle operator with a BAC of .08 percent or higher is considered to be an alcohol-impaired fatality.

ALCOHOL-INVOLVED TRAFFIC FATALITY: A traffic fatality is considered alcohol-related if either the driver or anyone else involved in the police reported crash other than a passenger (e.g., a pedestrian or bicyclist) has alcohol in their blood stream (a BAC level of .01 percent or more). For example, if a pedestrian with a BAC of .01 percent steps off the curb in front of a sober driver and is killed by that driver, the fatality is included in alcohol-related traffic statistics. If a driver who has been drinking hits a car with two sober people in it and kills both, those two fatalities are considered alcohol-involved. In producing national and state statistics, NHTSA estimates the extent of alcohol involvement when alcohol test results are unknown.

ASSESSMENT: Depending on the discipline, the term “assessment” can refer to a variety of methods used to determine the nature of a problem and course of action needed to correct the problem. In general, criminal justice assessment tools fall into three basic categories: screening instruments, comprehensive risk/needs assessments, and specialized tools.

SCREENING INSTRUMENTS: Are generally quick and easy to use and focus more on static risk factors, such as a person’s criminal history or potential substance use concerns. Screening tools can be useful in making quick determinations about in-or-out decisions (e.g., who should be detained, who should be released on their own recognizance), in helping to classify offenders into low, moderate or high risk categories or whether a more thorough substance abuse or mental health assessment should be conducted. However, their usefulness is somewhat limited since they do not help the practitioner identify an offender’s criminogenic factors or the unique issues they have related to substance abuse or mental health.

COMPREHENSIVE RISK/NEEDS ASSESSMENT: Cover all major risk and needs factors (both static and dynamic) and help ascertain levels of risk and/or need that are correlated with outcome measures like recidivism. These assessments can also be useful in re-assessment to determine if needs changed after interventions have been introduced. The results from these assessments should be used to facilitate the development of case plans that can be aimed at addressing a full range of factors.

SPECIALIZED TOOLS: Specialized tools include things like alcohol and drug assessments. Typically, these types of assessments are ones that judges refer offenders to other professionals for. The key is that when referrals are made and these types of assessments are done that the results be provided to and considered by judges so they can be used in the formulation of a supervision plan.

BINGE DRINKING: According to the National Institute on Alcohol Abuse and Alcoholism (NIAAA), binge drinking is defined as occasions of heavy drinking measured by the consumption of five or more (for males) and four or more (for females) drinks in a row at least once in the past two weeks.

BLOOD ALCOHOL CONCENTRATION: BAC is measured in grams of alcohol per 100 milliliters of blood. A BAC of .01 percent indicates .01 grams of alcohol per 100 milliliters of blood. By July 2004, all 50 states and the District of Columbia have passed legislation establishing that a driver with a BAC of .08 percent is considered legally intoxicated. Additionally, 42 states and the District of Columbia have laws and penalties for those who drive with elevated or “high” BAC levels.

COMMUNITY CORRECTIONS: A component of the criminal justice system which offers programs and services in the community and/or viable alternatives to incarceration for individuals at various stages of the criminal justice process. Community corrections may include bail/bond programs; behavior change strategies; restitution, fines and fees collection; probation and parole supervision; electronic monitoring; community service; and day reporting centers.

COMMUNITY SUPERVISION: Refers to the conditional release and supervision of defendants/offenders in a community setting. A conditional release of a defendant/offender to community supervision can occur at varying times in the criminal justice process, including pretrial, pre-sentence, and post-sentence. Additionally, the availability of various community corrections supervision strategies vary by jurisdiction as resources vary.

DIVERSION PROGRAMS: A criminal justice program run by either a police department, court, a district attorney’s office, probation department or outside agency designed to afford offenders the opportunity to avoid criminal charges and a criminal record by completing various requirements dictated by the program (e.g. drug treatment, counseling, community service). Successful completion of all requirements could result in dismissal or reduction of charges; whereas, non-completion of requirements could result in more serious action being taken by the court.

HARDCORE DRUNK DRIVERS: Hardcore drunk drivers are those who drive with a high BAC of .15 percent or above, or who drive repeatedly with a .08 percent or greater BAC, as demonstrated by having more than one impaired driving arrest, and are highly resistant to changing their behavior despite previous sanctions, treatment, or education.

HEAVY ALCOHOL USE: Five or more drinks on the same occasion on five or more days in the past 30 days.

INTENSIVE SUPERVISION PROGRAMS (ISP): These programs are often viewed as an alternative to incarceration. Persons sentenced to ISP are typically those who, in the absence of intensive supervision, would have been sentenced to imprisonment. No two jurisdictions operate intensive supervision in exactly the same way. However, one characteristic of all ISPs is that they provide for very strict terms of probation or parole. This increased level of control is usually achieved through reduced case loads, increased number of contacts, and a range of required activities that can include treatment services, victim restitution, community service, employment, random urine and alcohol testing, electronic monitoring, and payment of a supervision fee.

PAROLE: Any form of release of an offender from an institution (jail, prison) to the community by a releasing authority (parole board) prior to the expiration of an imposed sentence. Upon release, the offender may be subject to an array of supervision terms and conditions.

PROBATION: A sentencing option whereby an offender who has been found guilty of a crime is permitted to remain in the community under court supervision. Typically, the court will impose conditions of supervision, such as paying a fine, completing community service activities, participating in drug and/mental health treatment, and education/employment requirements, which will be monitored by a probation officer. Failure to comply with the imposed terms could result in the offender being incarcerated to finish out the imposed sentence.

RATE PER 100,000 POPULATION: The rate of alcohol-impaired traffic fatalities per 100,000 population is the number of alcohol-impaired traffic fatalities for every 100,000 persons in the population being measured. For example, an alcohol-impaired traffic fatality rate of 4.3 per 100,000 population nationally means that for every 100,000 people in the nation, there were nearly four alcohol-impaired traffic fatalities.

REPEAT OFFENDERS: The NHTSA/FARS data records prior driving records (convictions only, not violations) for driving while intoxicated events occurring within three years of the date of the crash. The same driver can have one or more of these convictions during this three

year period. Drivers who have a prior conviction in this three year period are reported as repeat offenders.

RESPONSIVITY: Refers to the practice of considering individual characteristics (such as learning style, culture, gender, motivation level) when assigning individuals to community supervision and treatment programs.

STANDARD DRINK OF ALCOHOL: According to the Dietary Guidelines for Americans, the federal government's official nutrition policy defines a standard drink of alcohol as 1.5 ounces of 80-proof distilled spirits, 12 ounces of regular beer or 5 ounces of wine.

STAGGERED SENTENCING: A court-ordered sentence, most notably used with DWI offenders, which mixes periods of incarceration with periods of community supervision. The court places an offender on probation for a specified time period, and orders a period of incarceration to be served in two or more installments occurring during the probation period. These installments are spaced several months to one year apart. The offender must serve the first incarceration segment immediately or soon after the sentencing date, and is advised by the court of the dates on which the offender must begin serving subsequent incarceration segments. If the offender attains goals during the periods of community supervision (such as treatment goals, sobriety goals, compliance goals) then the offender can submit a motion to the sentencing judge to waive the next installment of incarceration. This sentencing model allows the offender to influence their sentencing outcomes. (NHTSA, 2004).

UNDERAGE DRINKING: Since 1988, all 50 states and the District of Columbia have laws that make it illegal for anyone under the age of 21 to purchase or publicly possess alcoholic beverages. While each state's law varies and may contain exceptions (e.g., religious ceremonies) it is generally considered illegal for anyone under 21 to consume alcohol. Underage drinking refers to the consumption of beverage alcohol, defined as defined as a can or bottle of beer, a glass of wine or a wine cooler, a shot of liquor, or a mixed drink with distilled spirits in it, by persons 20 years of age and younger.

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RESOURCES

RESOURCES:

AAA Foundation for Traffic Safety	www.aaafoundation.org
American Association of Motor Vehicle Administrators	www.aamva.org
American Bar Association Journal	www.abajournal.com
American Bar Association	www.americanbar.org
American Board of Forensic Toxicology	www.abft.org
American Judges Association	www.aja.ncsc.dni.us
American Probation and Parole Association	www.appa-net.org
Centers for Disease Control and Prevention	www.cdc.gov
The Century Council	www.centurycouncil.org
International Association of Chiefs of Police	www.theiacp.org
International Association for Chemical Testing	www.iactonline.org
International Council on Alcohol, Drugs and Traffic Safety	www.icadts.org
Institute for Police Technology and Management	www.iptm.org
National Association of Attorneys General	www.naag.org
National Association of Alcohol and Drug Abuse Counselors	www.naadac.org
National Association of Drug Court Professionals	www.nadcp.org
National Association of Prosecutor Coordinators	www.napc.us
National Association of State Judicial Educators	www.nasje.org
National Center for State Courts	www.ncsc.org
National Criminal Justice Association	www.ncja.org
National District Attorneys Association	www.ndaa.org
National Highway Traffic Safety Administration	www.nhtsa.gov
National Judicial College	www.judges.org
National Partnership on Alcohol Misuse and Crime	www.alcoholandcrime.org
National Sheriffs' Association	www.sheriffs.org
National Transportation Safety Board	www.nts.gov
The National Trial Lawyers Association	www.thenationaltriallawyers.org
Traffic Injury Research Foundation	www.tirf.ca

APPENDIXES

APPENDIX A—CREATE YOUR WORK PLAN

Every judge may have his or her own methods for modeling and constructing a sentencing roadmap, but the important thing is that the strategies and sanctions work together. Judges can build an effective sentencing roadmap if they:

- **Recognize high BAC as an indicator of HCDD**
 - Indicates a higher likelihood of alcohol abuse
 - A higher likelihood of repeat behavior, and
 - Accounts for 58 percent of drinking drivers involved in fatal crashes
- **Monitor plea agreements and sentencing**
 - Plea agreements limit the criminal justice system's ability to identify hardcore drunk drivers and recidivists.
 - May allow offender to avoid alcohol education, screening for alcohol dependence, referral for treatment.
 - Ensure appropriate sanctions.
 - Alcohol-related charge must be retained.
- **Restrict diversion programs**
 - Diversion programs limit the criminal justice system's ability to identify hardcore drunk drivers and recidivists.
 - May allow repeat offenders to be classified as a first offender many times.
 - Programs allowing a dismissal of charges after completion of treatment programs not shown to reduce recidivism.
 - Dilutes deterrent value of the arrest.
- **Consider pretrial intensive supervision programs**
 - Protects public during lengthy delays between arrest and trial.
 - Voluntary program allows for pretrial treatment with early intervention.
 - Offers reduced jail time for successful completion.
 - More intensive supervision of probationers.
 - Smaller caseload per probation officer.
 - Is effective and may reduce jail overcrowding.

- **Utilize offender evaluation**
 - Reduces recidivism 7-9 percent, research shows.
 - Critical—determines timing and type of sanctions and treatment needed to reduce recidivism.
 - Screening and assessment effectiveness is maximized when done as soon as possible after arrest so sanctions and recovery can begin.
 - Include mental health evaluation whenever possible to address co-occurring disorders.
- **Conduct pre-sentence evaluations**
 - A criminogenic risk/needs assessment should be conducted to determine risk of re-offending.
 - Enables judge to review the offender's record, the previous sanctions imposed and the offender's compliance history.
 - Enables judge to choose the correct sanctions to reduce recidivism and protect the public while imposing rehabilitation requirements to treat the offender for alcohol problems.
- **Recognize the impact of fines**
 - Minimal deterrent value, no behavioral change.
 - Use as incentive to change offender behavior.
 - Excessive fines often do not get assessed.
- **Introduce measures to reduce failure-to-appear**
 - Reduces the court's ability to determine guilt and impose sanctions for DWI offenders
 - 22 percent of DWI defendants fail to appear during some point in their case.
 - 65 percent of prosecutors and a majority of judges believe failure to appear is more common among hardcore repeat offenders.
- **Employ the use of vehicle sanctions**
 - Separates the offending drivers from their vehicles.
 - Principal methods are vehicle impoundment, vehicle immobilization (reduce recidivism by 40-70 percent), license plate confiscation and vehicle forfeiture.
- **Order the installation of offender-funded ignition interlock**
 - 75% to 88% offenders drive while suspended for DWI convictions.
 - Interlocks reduce offender recidivism by up to 90% while the device is on the offender's vehicle.

- A popular, effective and relatively inexpensive mechanism for allowing the hardcore offender to drive with restrictions.
- Should be coupled with other individualized sanctions such as treatment to achieve long-term reductions in recidivism.
- **Order intensive monitoring, supervision and probation for hardcore offenders**
 - Reduces recidivism by 50%.
 - Key to post-conviction management of drunk driving offenders.
 - Long-term probation is one of the most effective ways to manage hardcore drunk drivers following a conviction.
 - Intensive supervised probation holds the offender accountable for sentence completion and responsible, law abiding behavior.
 - Reduces likelihood of offenders meeting other criminals in jail and offers an incentive to work or attend educational or treatment programs.
- **Consider staggered sentencing with intensive probation**
 - Staggered sentencing splits an offender's jail sentence in three segments.
 - After the first segment of incarceration is completed, the offender is on intensive supervision probation for a year.
 - If completed successfully, the offender serves the second segment on intensive supervision probation.
 - If completed successfully, the last portion is also served on intensive supervision probation.
 - Success in certain areas of supervision can make an offender eligible to apply to reduce or forego parts of the next period of incarceration.
- **Consider home confinement with electronic and alcohol monitoring**
 - Reduces recidivism by 33 percent.
 - Exerts more control on the offender's behavior and freedom than regular probation.
 - Not a sentence in and of itself, but may be a condition of probation, parole or supervised release, as well as a condition of pretrial release.
- **Utilize dedicated detention facilities**
 - Reduces recidivism by 75 percent.
 - Offers a sentencing alternative for multiple DWI offenders and helps ease overcrowding at traditional correctional facilities.
 - Offers potential for behavioral change.
 - Provides confinement in conjunction with supervised alcohol treatment services that can include DWI driver education and individual counseling.

- **Supplement incarceration with treatment and aftercare**
 - Studies suggest that as a specific deterrent, jail terms are no more effective than other sanctions in reducing DWI recidivism among either first-time or repeat offenders.
 - Lengthy sentences are not associated with lower recidivism among repeat offenders.
- **Avoid substituting community service for harsher sanctions**
 - Has little beneficial effect on hardcore offenders.
 - Does not address underlying patterns responsible for alcohol abuse.
 - Does not create behavioral change.
- **Judges should also support:**
 - State laws setting look-back periods a minimum of 10 years.
 - Statewide tracking and recordkeeping.
 - Effective case flow management.

APPENDIX B—THE NATIONAL AGENDA: A SYSTEM TO FIGHT hardcore DRUNK DRIVING

THE NATIONAL hardcore DRUNK DRIVER PROJECT

THE GOAL: To protect the public by reducing the recidivism of hardcore drunk drivers.

THE STRATEGY: Mobilize an effective campaign to curtail hardcore drunk driving based on a coordinated system of mutually reinforcing components. Special criminal charges of Aggravated DWI and Hardcore DWI, with associated sanctions and remedial treatment, can provide the focus for such a system.

THE RATIONALE: A coordinated system is necessary to provide the framework needed to close loopholes in existing laws and programs, enact needed legislation, and ensure that the responsible agencies and organizations work together effectively to address the problem. For those states choosing to adopt them, special charges reinforce a coordinated system by requiring immediate identification and stipulating appropriate punishment and treatment that, combined, act to reduce recidivism. By calling attention to the serious nature of the crime, a higher level charge acts as a general deterrent.

OBJECTIVES AND TACTICS: Research shows that a system to deter, detect, punish and change the behavior of hardcore drunk drivers should be based on swift identification, certain punishment and effective treatment. An important factor for success is an accountable, statewide planning group or panel, with representatives from pertinent state agencies and interested organizations, to spearhead change and monitor effectiveness.

SWIFT IDENTIFICATION

- Focused Enforcement Strategies and Support Technologies
- Statewide DWI Reporting System
- More Severe Consequences for Refusal to Submit to Chemical Test

CERTAIN PUNISHMENT

- Administrative License Revocation (ALR)
- Administrative Vehicle Immobilization or Plate Seizure
- Mandatory Alcohol Ignition Interlock
- Home Confinement with Electronic Monitoring
- Judicial Education and DWI Courts

EFFECTIVE TREATMENT

- Early Intervention
- Assessment-Based Programs
- Mandatory Participation
- Intensive Monitoring/Supervision
- Dedicated Detention Facilities

APPENDIX C — BLOOD ALCOHOL EDUCATION

BLOOD ALCOHOL EDUCATION

Although every state has DWI laws that indicate what the illegal blood alcohol concentration (BAC) limit is, national surveys have indicated that over 70 percent of people polled do not know the BAC limit in their state. Additionally, there is an awareness gap relating to how alcohol affects an individual's BAC and how long of a time period is necessary for it to return to zero.

Not only is this information necessary for individuals to make responsible decisions relating to consumption of beverage alcohol and driving, but many times, this information could be helpful in the adjudication of DWI cases. As a result, judges, judicial educators and the general public need to have access to BAC education.

The Century Council, in cooperation with the University of Illinois at Urbana-Champaign, created the Blood Alcohol Educator (BAE) CD-ROM to address the need to educate adults about their state laws and how drinking affects an individual's BAC level. Endorsed by countless national organizations and companies, law enforcement and traffic safety organizations and campus administrators, the BAE is an interactive user-friendly program available in both English and Spanish.

Before entering the program's virtual bar, visitors must click on their home state to learn their state's legal limit. Upon entering, visitors learn about how alcohol influences their individual BAC level based on their gender, weight, type of drink, and their rate of consumption and learn how eating a full meal can affect their BAC. The program displays how the same amount of alcohol affects individuals of a different weight and gender and will clock the time until an individual's BAC level will return to zero.

The Century Council offers this educational program free of charge on-line www.B4UDrink.org. For information about the BAE program contact the Council at (202) 637-0077 or on-line at www.centurycouncil.org.

APPENDIX D — ADMINISTRATIVE LAW JUDGES: SPECIAL CHALLENGES AND SOLUTIONS

In addition to criminal charges, DWI offenders often face parallel prosecution in administrative proceedings which usually involve the license and sometimes the vehicle. Criminal procedures generally involve the driver.

Compared to judicial proceedings, administrative license suspensions are seen as a faster and more certain way to remove a dangerous driver from the roadways. Depending on state laws, there are a number of sanctions administrative law judges impose on DWI offenders, including:

- Revoke or suspend driver's licenses;
- Suspend or seize vehicle tags or registration;
- Order ignition interlocks;
- Order vehicle impoundment or forfeiture; or
- Fines.

These administrative procedures do not take the place of criminal proceedings against drunk drivers. Every state has laws authorizing — and in some cases mandating — incarceration, and all DWI cases covered by these laws are handled through the judicial system. Offenders who are subject to administrative sanctions usually remain subject to a separate criminal process, which could lead to additional penalties and sanctions. The two tracks — administrative and criminal — must both be effective for an offender to be appropriately sanctioned and treated.

Administrative license revocation or suspension (ALR or ALS) is recognized as having a strong, general deterrent effect on drunk drivers because the mandatory punishment is swift and sure, and it is by far the most frequently imposed administrative sanction on DWI offenders. There are no lengthy trial delays or plea bargains; drivers who fail or refuse to take a sobriety test lose their license on the spot. NHTSA recommends ALR laws impose at least a 90-day suspension or a 30-day suspension followed by 60 days of restricted driving.

Currently, 41 states, the District of Columbia and one territory have laws that allow states to administratively revoke the offender's driving privileges without waiting for a conviction on a DWI charge. An unfortunate side effect of the widespread use of ALR is an increase in the number of offenders driving while suspended (DWS). Only a small proportion of DWI offenders reinstate their licenses when eligible because the process is time-consuming and costly in terms of fees and other requirements. Notification of the driver's insurance company of his or her suspension, attendance at education or treatment programs, or use of an alcohol interlock are often required by states before a license is reissued. Researchers

also attribute the low incidence of re-licensure to a perception on the offender's part that the risk of apprehension for driving while suspended is not great enough to justify the hassle of reinstatement (Voas, 2001).

In addition to ALR, many jurisdictions also use other administrative actions aimed at drunk drivers. For example, the arresting police officer can suspend and seize vehicle tags or registration of repeat DWI offenders. In some states, such as Maryland, California and West Virginia, alcohol safety interlock programs are managed administratively by the motor vehicle department. Several vehicle impoundment and forfeiture programs also are handled administratively.

In Minnesota, people arrested for drunk driving who have a previous offense within 10 years or who have a BAC of .20 or higher will have their license plates impounded and destroyed by a police officer acting as an agent of the Department of Public Safety. A study found Minnesota's license plate impoundment law to be quite effective. Violators who received a police-issued impoundment order had one-half the recidivism rate as compared to similar offenders who did not receive this order (Rodgers, 1994).

CHALLENGES TO ADMINISTRATIVE PROCEEDINGS.

Administrative law judges say the challenges they face generally run parallel to those faced in criminal court, with two notable exceptions, both of which can have a direct, negative impact on the outcome of the criminal case:

■ AGGRESSIVE DEFENSE TACTICS.

Defense lawyers often use the administrative hearing to cross-examine state witnesses (primarily the arresting or testing officers), getting them to commit to versions of the circumstances of arrest. The defense then uses this testimony against the officer during the DWI trial, which might take place several months after the administrative hearing. Variances, discrepancies and inconsistencies are used by the defense lawyer to impeach the officer at the DWI trial.

Former Judicial Education Advisory Panel member Christopher McNeil said "Given that the stakes are much, much higher at the DWI trial than they are at the administrative hearing, it certainly makes good sense for the defense to take this approach, but it can lead to unwarranted outcomes in otherwise strong DWI cases."

The role of the administrative law judge is to control and direct the hearing, according to state law. When the judge doesn't control the proceedings, it can lead to the second problem of non-showing witnesses.

■ WITNESSES WHO DO NOT APPEAR.

Law enforcement officers frequently do not appear, according to McNeil, who has studied and written extensively on the role of administrative court judges and the problems they face. “If the officer doesn’t appear, the administrative law judge has to dismiss the charges. It’s not uncommon, and there is no contempt action that an administrative law judge can impose. The only way you can enforce the subpoena is through a court of general jurisdiction.”

Law enforcement officers don’t show, McNeil said, because there is no prosecutor at the administrative proceeding, which leaves the witness exposed to the defense lawyer. The witnesses look to the administrative law judge to reign in the defense lawyer, and if the judge doesn’t, the officer’s testimony is damaged. “In part,” McNeil said, “the law enforcement officers are offended by the defense tactics and the lack of the administrative law judge’s response, and they feel they are protecting the DWI proceeding. They don’t want to say or do anything that would jeopardize that outcome.”

A recent study of Utah’s law allowing telephonic testimony of ALR hearings noted other reasons officers don’t appear, including conflicting training and work schedules. The report also noted that some command officers don’t encourage the arresting officers to attend ALR hearings because it removes the officers from service, and their departments must pay most of the costs for the officers’ time (Wiliszowski, Jones, and Lacey 2003).

If a defendant fails to appear at an administrative hearing, McNeil said a judge can render a default order and impose the same sanction as could be imposed if the person appeared and wasn’t the prevailing party. This is particularly important for identifying hardcore drunk drivers because the administrative law judge can impose a full sanction (typically a 90-day suspension for a first-offense DWI or refusal) even against the absent respondent; and that suspension can then be regarded as a prior administrative suspension when the recidivist returns to his or her bad behavior on the road. As a result, when presented before an administrative adjudicator, the hardcore drunk driver faces the enhancements that go with second or subsequent offenders.

SOLUTIONS

While the majority of challenges faced by administrative court judges mirror those of the judicial branch, solutions available to administrative judges are severely restricted by the limited number of sanctions they can impose. To address the challenges particular to administrative DWI judges, McNeil suggests:

- Strengthened education for administrative law judges. The administrative law judge's role is to preserve due process rights, but sometimes administrative law judges are too lenient because they bend over backwards to make sure a defendant's rights are protected. Individual training in advanced evidence and trial procedure reduces this risk.
- Networking among administrative law judges, where peer-to-peer support exposes them to current trends in litigation tactics (both by the state and by the defense) that might have an impact on the process.
- Training opportunities with judicial branch judges — many administrative law judges are overly-permissive out of a fear of reversal in the judicial review process, a fear that diminishes with exposure to the “real world” of DWI prosecutions.
- Greater public awareness of the proper role of the judge in administrative DWI hearings.
- Clearly stated statutes that set forth exactly what is and isn't admissible in the administrative proceeding.
- Law enforcement training.

The 2003 Utah study by Wiliszowski, et al. found that allowing police officers to testify by telephone at DWI administrative hearings contributed to a 20 percent reduction in the return of driver licenses to defendants due to the absence of the arresting law enforcement officer. The authors recommended increased usage of telephonic testimony, but noted that training is important because almost half of the law enforcement officers who responded to their survey said they didn't feel adequately trained in the standard ALR hearing procedures, much less telephonic hearings.



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