



A Guide to DUI Pretrial Services

KEY COMPONENTS & BEST PRACTICE RECOMMENDATIONS

Prepared for Foundation for Advancing Alcohol Responsibility
by Tara Casanova Powell, Principal, Casanova Powell Consulting



RESPONSIBILITY.ORG

Executive Summary: A Guide to DUI Pretrial Services	i
Glossary of Terms	1
Introduction	2
1 Overview and Methods	4
A Development of the Guide	4
1. Guide Components	5
B The DUI System	5
C Arrest and Sanctions	5
D Bail/Bond	6
E Risk Assessment Tools	6
1. Risk and Need Assessments (RNA)	8
F Monitoring Technologies for Impaired Drivers	10
1. Ignition Interlock Devices (IID)	10
2. Transdermal/Continuous Alcohol Monitoring (CAM) Devices	10
3. Home Monitoring Devices	11
4. Oral Fluid Testing Devices	11
G Pretrial Detention	12
H DUI Diversion Programs	13
I 24/7 Sobriety Program	16
J Pretrial Release Programs	17
K DWI Courts	19
L Other Pretrial Programs	21
1. Smart Pretrial Demonstration Initiative	21
2. Milwaukee County Intensive Supervision Program (ISP)	22
2 Case Studies	23
A Oregon’s Driving Under the Influence of Intoxicants (DUII) Diversion Program	23
1. Oregon Driving under the Influence of Intoxicants (DUII) Law	23
2. Program Overview	27
3. Participant Eligibility	27
4. DUII Diversion Program Requirements	28
5. Program Process	28
6. Current Challenges	30
7. Key Program Components for Success	30
B Pretrial Release Program in Isanti County, MN	31
1. Minnesota Driving While Intoxicated Law	31
2. Administrative Sanctions	32
3. Court Process	36
4. Program Overview	38
5. Participant Eligibility	38

6. Current Program Requirements	38
7. Program Process	38
8. Funding	38
9. Intensive In-Jail Treatment Program	38
10. Minnesota Statewide Pretrial Services - Recent Initiatives	39
11. Current Challenges	40
12. Key Program Components for Success	40
C <i>Target 25 Initiative in York County, Pennsylvania</i>	41
1. Pennsylvania Impaired Driving Law	41
2. Administrative and Court Sanctions	41
3. Participant Eligibility	43
4. Funding	43
5. Program Process	43
6. Current Program Requirements	44
7. Current Challenges	44
8. Key Program Components for Success	46
D <i>San Joaquin County, CA Pretrial Program</i>	46
1. California Impaired Driving Law	47
2. Administrative Sanctions	47
3. Court Process	48
4. Program Overview	48
5. Participant Eligibility	48
6. Current Program Requirements	49
7. Program Process	49
8. Funding	49
9. Current Challenges	50
10. Key Program Components for Success	50
E <i>South St. Louis County (SSLC), DWI Court, Duluth, MN</i>	50
1. Minnesota Impaired Driving Law, Administrative Sanctions, and Court Process	50
2. Program Overview	50
3. Participant Eligibility	52
4. Current Program Requirements	52
5. Program Process	52
6. Funding	56
7. Current Challenges	57
8. Key Program Components for Success	57
9. Outcomes	58

3	Recommendations	59
4	Conclusions	62
	References	63
	APPENDIX A	
	<i>Comparison of Pretrial Diversion Programs in Pennsylvania, Kansas, Florida, and Oregon</i>	69
	APPENDIX B	
	<i>Risk Assessment and Screening Tools</i>	73
	APPENDIX C	
	<i>Oregon DUII Diversion Program Declaration of Eligibility</i>	77
	APPENDIX D	
	<i>Oregon DUII Participant Diversion Petition</i>	80
	APPENDIX E	
	<i>Minnesota Pretrial Assessment Tool (MNPAT)</i>	85
	APPENDIX F	
	<i>South St. Louis County DWI Court Phases</i>	88
	APPENDIX G	
	<i>South St. Louis County DWI Court Phases Cheat Sheet</i>	91
	APPENDIX H	
	<i>South St. Louis County DWI Court Phase 2 Application</i>	93
	APPENDIX I	
	<i>South St. Louis County DWI Court Phase 3 Application</i>	95
	APPENDIX J	
	<i>South St. Louis County DWI Court Phase 4 Application</i>	97
	APPENDIX K	
	<i>South St. Louis County DWI Court Phase 5 Application</i>	99
	APPENDIX L	
	<i>South St. Louis County Court Graduation Application</i>	101
	APPENDIX M	
	<i>California SB 10 Prearrest Process Flow Chart</i>	108
	APPENDIX N	
	<i>California SB 10 Prearrest Process without Court Review Flow Chart</i>	110
	APPENDIX O	
	<i>California SB 10 Arraignment to Trial Process Flow Chart</i>	113
	APPENDIX P	
	<i>California SB 104/611 Restriction Requirements</i>	117
	APPENDIX Q	
	<i>El Paso Pretrial SMART PRAXIS</i>	123

EXECUTIVE SUMMARY

A Guide to DUI Pretrial Services

IMPAIRED DRIVING AND PRETRIAL SERVICES

In 2018, alcohol-impaired driving fatalities accounted for 29 percent of all motor vehicle fatalities in the United States (NHTSA, 2019). While this represents progress over previous years, there is still significant work to be done as more than 10,000 lives per year continue to be lost to this preventable crime. A disproportionate number of fatalities are caused by high-risk impaired drivers, namely individuals who drive at high blood alcohol concentrations (BAC) of .15 or higher, multi-substance abusers with co-occurring mental health disorders, and repeat offenders who continually engage in this dangerous behavior. While alcohol-impaired driving has remained a primary traffic safety concern for decades, recent increases in both drug and polysubstance-impaired driving are also cause for concern. With the prevalence of prescription medications as well as increased access to both medicinal and recreational cannabis, there is legitimate concern that more individuals will drive under the influence of drugs or a combination of substances. Based on recent data from states like Washington and Colorado, it is becoming apparent that many impaired drivers are on the roadways under the influence of multiple substances which dramatically increases crash risk.

In order to reduce recidivism and save lives, it is imperative that every intercept of the criminal justice system is strengthened, and limitations are addressed. Impaired drivers are a unique offender population that often have substantial substance use and mental health needs that must be identified and treated in order to facilitate long-term behavior change. It is not surprising that a large percentage of impaired drivers have issues with alcohol and/or drug dependence, but these offenders also have high rates of co-occurring mental health disorders. In fact, approximately 45% of repeat DUI offenders have a major mental health disorder in addition to a substance use disorder. Failure to identify all underlying causes associated with DUI behavior misses an opportunity to intervene in a meaningful way and unfortunately, the end result is often a return to the system on future DUI charges.

National leaders in the criminal justice system advocate early intervention. The sooner that impaired drivers can be assessed and connected with services, the better-informed decision-making will be throughout the justice process. As such, the system intercept where more work can be done is the pretrial stage. Practitioners routinely identify the lengthy period of time between DUI arrest and the adjudication of the case as problematic. Once an individual is convicted, he/she is subject to sentencing conditions which commonly includes mandatory participation in treatment. At the pretrial stage, a judge decides regarding whether an individual should be detained pending trial or released back into the community. In the vast majority of DUI cases, the defendant returns to the community hopefully with some supervision conditions. As Judge James Dehn (Ret). from Isanti County, MN, notes,

“High-risk DUI offenders pose an immediate threat to public safety.

We know according to recidivism data these offenders continue to drink and drive and commit more DWI offenses while awaiting trial. States that do not take advantage of that critical pretrial time period, really miss the boat. If you have good probation services use them pretrial, do not wait until sentencing. Tools are available and they should be used as early as possible.”

Historically, the pretrial phase has been an area of the system that has limited resources and programming. Current criminal justice reform discussions are examining fairness and equity as it relates to decisions of pretrial detention and release and whether individuals of lower socioeconomic or minority status are disproportionately detained. While this guide does not explore these issues in-depth, the spotlight that has been placed on the pretrial intercept has led jurisdictions to identify ways to expand the services that are provided to individuals who are released back into the community. Agencies that are responsible for overseeing the supervision of defendants released at the pretrial stage are looking to balance protecting public safety, preserve individual rights, and make decisions based on accurate information about risk level and treatment needs.

With regard to impaired drivers, there is great potential for the expansion of pretrial services and programming offered to these individuals, particularly those who are identified as high-risk and high needs. Interventions attached to pretrial release conditions and programs provide measures to prevent subsequent DUI offenses during a period when the potential for continued impaired driving behavior is likely. Utilizing validated screening and assessment tools that are specific to the impaired driving population is critical at this stage as it facilitates connections to services and allows judges to impose appropriate supervision conditions.

PRETRIAL SERVICES GUIDE

The following guide focuses on how pretrial services fit within the larger DUI system and highlights the various pretrial programs currently implemented across the United States. The impetus for the development of this resource was recognition that there is interest in strengthening pretrial services and relying more on the use of assessments early within the justice process as a means to achieve better overall outcomes. Moreover, there has been limited guidance available to practitioners regarding how impaired drivers, particularly high-risk and repeat offenders, should be handled during this critical phase. The reality is that most DUI defendants are not detained following their arrest which means that they return to the community and without adequate safeguards, could continue to pose a critical threat to every innocent person on the nation's roadways.

In order to fill this gap in knowledge, Responsibility.org partnered with Casanova Powell Consulting (CPC) to create a best practice guide for the implementation and strengthening of pretrial services and pretrial programming for impaired drivers. **This two-phase study led to the creation of this practical guide which outlines the following:**

- How pretrial services fit within the larger DUI system;
- Common challenges and barriers that jurisdictions face at the pretrial phase;
- Key outcome measures;
- How jurisdictions can efficiently collect program data to evaluate and improve programs and monitor offenders during the pretrial process;
- Characteristics of robust pretrial programs/processes;
- Implementation considerations; and,
- Recommendations for success.

Common approaches to supervising impaired drivers at this early juncture in the system are discussed and five case studies are presented that offer in-depth details about robust programs from across the country. Agencies are likely to encounter challenges that are specific to their jurisdiction's impaired driving laws, availability of funding for programs, and data collection/analysis protocols. Therefore, it is recommended that the information contained within this guide be used to improve existing pretrial practices as

appropriate and feasible to do so. The ultimate goal of this project is to assist jurisdictions in striking the right balance between protecting public safety and facilitating behavior change as early as possible within the system. By preventing individuals from continuing to drive impaired, lives will undoubtedly be saved.

PRETRIAL OVERVIEW

Involvement in the DUI system begins with the point of arrest. Ideally, once an individual is arrested for DUI, he/she is booked into a county jail and will appear before a judge within 24-48 hours for an initial appearance. At this hearing, the judge decides regarding whether the defendant will remain in custody pending the next hearing or if it is safe to release the person back into the community. The law generally requires release based on the least restrictive conditions necessary to secure a defendant's appearance in court, however a judge's decision is informed by a variety of factors. For low level/non-violent offenses (i.e., misdemeanors), individuals may receive a citation release or summons to appear if their identity is confirmed and there is no reasonable cause to believe that they are a risk to the community or are likely to abscond. In many instances, the judge will set bail which is the amount of money that a defendant must pay to secure his/her release from detention. Bail amounts are influenced by the severity of the offense and the individual's past criminal conduct and record. Judges also consider recommendations from prosecutors and defense counsel when making bail or bond determinations.

In DUI cases, judges focus on the defendant's DUI and criminal traffic violation history, the seriousness of the DUI offense that was allegedly committed, and the likelihood that the individual will appear in court for hearings and trial when making release decisions. Unless deemed to be a significant threat to public safety or accused of a violent crime (e.g., DUI resulting in serious bodily injury or death), most impaired drivers are released on bail. Results of a risk assessment might also inform this decision, although this is not a uniform practice. If the accused can afford the amount or a bond is secured, he/she is released back into the community with a set of conditions to abide by which might include screening and assessment for alcohol and/or drug use disorders, contacts with a supervision authority (often a pretrial services agency staffed by probation officers), alcohol monitoring and drug testing, etc. Violations of the conditions of bond can result in the defendant returning to custody.

The two most important aspects of pretrial supervision for impaired drivers is the completion of assessment and monitoring for substance use. Jurisdictions should endeavor to strengthen these practices as this will help protect the public and provide practitioners with important information about each individual defendant. The value of assessment cannot be stressed enough as the use of DUI-specific instruments can provide all parties involved with guidance on how best to supervise, treat, and ultimately, assist these individuals.

Assessment. Quality risk assessments are validated among justice-involved populations however, very few tools have been validated specifically among DUI offenders. This is significant because DUI offenders are a unique subset of criminal offenders. While they pose a significant threat to public safety and have high rates of substance use and mental health disorders, they also tend to have more mitigating or pro-social factors than other types of offenders. As a result of these characteristics, DUI offenders tend to be classified as low-risk when relying on generic assessment tools. Accurate identification of the risk impaired drivers poses as well as the need factors that are related to offending behaviors, is critical to inform the management of these cases and to determine which strategies should be employed to address their criminality.

While there are many assessment instruments available that examine risk, criminogenic needs, alcohol and/or drug use, mental health issues, trauma, etc., it is important that practitioners have access to and rely upon the right tools for the population. Historically, there have not been any instruments that are specific to impaired drivers. Fortunately, this has changed in recent years as three tools are now available. These include the DUI-Risk and Needs Triage (DUI-RANT), the [Impaired Driving Assessment \(IDA\)](#), and the [Computerized Assessment and Referral System \(CARS\)](#). While the primary purpose of each of these instruments differs, they are currently the only three tools available that are validated to accurately measure risk among impaired drivers. Therefore, jurisdictions using assessment instruments other than these three tools may be improperly assessing DUI offenders. A potential unintended consequence is failing to supervise these offenders at the appropriate intensity or missing placement opportunities in programs designed for high-risk offenders (e.g., treatment courts). In addition, many assessment tools that are commonly used to evaluate impaired drivers do not have the ability to identify the presence of co-occurring mental health disorders. CARS is uniquely positioned to provide practitioners, including those who work at the pretrial level, with accurate information about DUI offender risk level, substance use disorders, and mental health conditions. The outcomes of this assessment are invaluable as it indicates what interventions are needed to comprehensively address all underlying issues associated with offending.

When used at the pretrial phase, instruments such as these, particularly CARS and IDA, can offer judges information in addition to a defendant's risk level. The needs information obtained from these tools can help judges as they formulate conditions and can provide guidance to supervision authorities as to whether defendants have substance abuse and or mental health problems that require further intervention. The earlier in the process that offenders can be connected with treatment services, even if participation is purely voluntary, the better. CARS can be downloaded for free at www.carstrainingcenter.org.

Monitoring. Accountability is a necessary component of behavior change and the best way to hold impaired drivers accountable is to actively supervise them while they are awaiting the resolution of their case. The pretrial phase can be a lengthy period during which defendants are liable to continue to abuse substances and drive under the influence of alcohol, drugs, or a combination.

While supervision most commonly occurs at the post-conviction phase when offenders are subject to terms of probation or parole upon re-entry, defendants on pretrial release should also be subject to some level of monitoring. Given that community corrections resources are already stretched and that DUI defendants have yet to be convicted, their supervision may not be prioritized. The advent of alcohol and drug testing technology has improved the ability of community corrections officers to effectively supervise offenders who are subject to abstinence conditions or whose offending is tied to substance use. In some jurisdictions, individuals who voluntarily submit to pretrial monitoring can sometimes receive "credit" towards any mandatory requirements should they be convicted (e.g., many states have amended interlock laws to incentivize the installation of the devices at the pretrial phase by offering day-for-day credit).

The monitoring technologies most commonly utilized with impaired drivers include:

- **Ignition interlock devices (IID)** – this is the only technology available that separates drinking from driving and research shows that these devices are highly effective at reducing recidivism while installed. An interlock is a breath-test device connected to a vehicle's ignition. The vehicle will not start unless the driver blows into the interlock and has a breath alcohol concentration below a pre-set limit (typically 0.02). The device also requires repeated breath tests (running re-tests) while the vehicle is in use to ensure the driver continues to remain sober while the vehicle is in operation. Interlock compliance can be monitored by courts, probation, licensing authorities, or a combination of these entities. Ideally, violations and attempts at circumvention are detected quickly and sanctions are applied to create accountability. Most interlock programs operate on offender pay schemes but there is often consideration given to indigency. Typically, the cost of an interlock averages about \$3-4 day which makes it one of the cheapest alcohol monitoring technologies available. As of 2019, approximately 34 states have all offender interlock programs.

- **Transdermal/continuous alcohol monitoring (CAM)** – this device usually consists of an ankle bracelet that detects alcohol consumption by sensing alcohol that passes through the skin as it is eliminated from the body. The device tests samples of sweat collected from the air above the skin at regular intervals and reports this data to a base station. The information is then transmitted to a secure central website where monitoring authorities can review it and take action when there are drinking episodes. CAM technology is often used with high-risk offenders who have abstinence orders and probation is the most common monitoring authority. Transdermal monitoring is utilized as part of the 24/7 Sobriety Program and is also frequently utilized as part of other intensive supervision programs. CAM devices are a more expensive monitoring option with daily fees ranging from \$10-15 per day.
- **Home/remote monitoring devices** – this technology works in the same manner as a breathalyzer as the user blows into the device and the results are either uploaded by a service provider or transmitted to a monitoring agency instantly using cellular service. Similar to interlocks, many of these devices come equipped with a camera feature to prevent circumvention. Another benefit of this technology is that if it is a mobile device, an individual could keep it on his/her person and provide a sample whenever prompted to do so. Mobile testing devices are a viable option for lower risk offenders and can be used as a step down from other types of technology like CAM to reward offenders who demonstrate compliance. Costs vary depending on the type of mobile device, but these options are not as expensive as CAM.
- **Oral fluid testing devices** – for drug testing, the most common testing options are urinalysis and drug/sweat patches, but these are older methods that have both advantages and disadvantages. Newer technology presents a viable alternative to these methods. Oral fluid testing devices sample oral fluid (primarily saliva) from glands on the cheek and under the tongue with an absorptive device placed in the mouth. Used in a screening capacity, these devices provide rapid results for the most commonly abused drugs (e.g., cannabis, cocaine, methamphetamine, opioids, etc.). Evidential samples can also be collected and sent to forensic laboratories for confirmatory analyses. Oral fluid testing is a preferred drug testing method because it is easy to collect, does not require same sex observation of sample collection, is much more difficult to “cheat” or alter results compared to urinalysis. While this testing method can be costly, it is reliable and greater market expansion in the coming years is likely to reduce costs over time.

PRETRIAL OPTIONS

There are several different pretrial options that impaired drivers might be subject to if released from custody. While many jurisdictions have a pretrial services agency that oversees the monitoring of defendants, it is common to utilize the same approach with many different types of offenders. **Several pretrial options commonly used among impaired drivers include:**

- Pretrial detention
- DUI diversion programs
- 24/7 Sobriety Programs
- Pretrial release programs
- DWI courts

Pretrial detention. In most jurisdictions, defendants charged with DUIs must appear before a bond court judge to determine the conditions of their release prior to the disposition of the criminal case. Judges typically base these decisions on public safety considerations and the individual’s likelihood of appearing for subsequent court hearings. Pretrial detention is usually ordered only if an arrested person presents an unmanageable risk to public safety or is unlikely to appear in court (PJI, 2018). Most defendants in DUI cases are not considered to present this significant of a risk; moreover, most DUI cases involve misdemeanor offenses. Only in instances where an impaired driver is unable to secure bond, has a very extensive criminal history, or is charged with a serious felony (e.g., DUI causing serious injury or death) is pretrial detention likely to be imposed.

DUI diversion programs. The use of pretrial diversion is becoming a popular option as reform efforts view this approach as another way to reduce mass incarceration and target behavioral health needs among low-risk and/or non-violent offenders. Diversion models vary but they typically involve a combination of monitoring and rehabilitation and reward participant compliance by dismissing or disposing of the charges, and in some states, expunging the charge from the offender’s record after successful completion of the program. Pretrial diversion is an alternative to prosecution; this process seeks to divert certain offenders from traditional criminal justice processing into a program of supervision and services usually administered by probation. In most cases, offenders are diverted at the pre-charge stage.

DUI pretrial diversion programs lack uniformity across states. In some states, pretrial diversion for DUIs is available statewide whereas in other jurisdictions, it is only available at the county level. Also, some diversion programs are formalized through statute while others are more informal in nature. States that offer pretrial diversion either statewide or at county or jurisdiction levels include Florida, Georgia, Indiana, Kansas, Louisiana, Oregon, Pennsylvania, and Texas.

Upon successful completion of pretrial diversion programs, DUI charges are usually dropped and potentially expunged from an offender's record. In some states, there will be no record of any charges, dismissal, or completion of the diversion program. Other jurisdictions are more stringent and if the individual fails to adhere to conditions or fails to complete the program, the case will be reopened, and the offender will be subject to traditional adjudication processes. In some states the record will reflect the charge and successful completion of the diversion program, but the conviction will not appear on the person's criminal record; this is the preferred approach as it allows the system to address offending more effectively should the offender recidivate in the future.

DUI diversion has been and remains a controversial issue. Some states that utilize diversion exclude impaired driving as an eligible offense. While there are benefits from a system perspective (e.g., greater efficiency, triaging based on risk, reduced caseloads, etc.), there are perhaps more significant concerns regarding offender accountability. These programs have often been met with criticism, particularly from judges, who believe that there is potential for harm and weakening of the overall DUI system. Perhaps the biggest concern is that a successfully diverted first-time offender who has his/her record expunged could commit a second impaired driving offense and be treated as a first offender for the second time. In doing so, that offender avoids the enhanced penalties that he/she would incur as a repeat offender. While a strong diversion statute could address this problem there are also concerns regarding the ability to adequately track offenders to ensure that they do not qualify for diversion multiple times and do not enter the program with multiple pending DUI charges.

24/7 Sobriety Programs. 24/7 is an accountability-based program which imposes immediate, yet modest sanctions to deter problem drinking and change behavior through maintaining sobriety. The program focuses on the principles of deterrence, primarily swift, certain, and proportionate sanctions, to change behavior. These programs tend to be implemented in states with large rural populations and the agency responsible for administering the program is often the local Sheriff's office. The benefit of having law enforcement oversee the program is that when participants fail tests, they can be immediately taken into custody ensuring that the sanction for non-compliance is swift and certain.

Participants are subject to either twice-daily breath testing or the use of continuous alcohol monitoring. In addition to twice-daily breath tests and transdermal alcohol monitoring, drug patches and random urinalyses (UAs) are also utilized to monitor drug use and ensure participants are compliant with program conditions. All 24/7 programs rely on an offender pay model to cover fees associated with monitoring and testing. In South Dakota, fees are prescribed by the legislature (in 2006) and the state budget.

Following the success of the model in South Dakota, the 24/7 Sobriety Program has now been implemented in several other states including Alaska, North Dakota, Montana, Utah, Washington, and Wyoming. An incentive grant program was established in the Fixing America's Surface Transportation (FAST) Act that allows states that establish 24/7 programs that meet certain criteria (e.g., establishing a statewide program) to qualify for funds.

Pretrial release programs. Individuals deemed eligible for release are required to report to the pretrial services agency which monitors compliance and has the ability to make referrals to services and interventions within the community. Traditional pretrial release programs may not be ideal for DUI defendants if there is limited monitoring on account of the likelihood that these individuals will continue to drive under suspension/revocation and/or impaired.

DWI Courts. This treatment court model follows the well-established and evidence-based drug court model which addresses substance dependence and mental health issues while simultaneously promoting offender accountability. For courts to achieve maximum benefits and successful outcomes, it is imperative that they adhere to the [10 Guiding Principles](#) set forth by the National Center for DWI Courts (NCDC). By maintaining fidelity to these principles, courts ensure that they are targeting the right population, using best practices, and ensuring that common challenges can be adequately addressed.

The target population of DWI courts are high-risk/repeat DWI offenders, many of whom have extensive histories of substance abuse, mental health disorders, and trauma. The reliance on assessment to inform decisions, intensive supervision, accountability, and integration of treatment which are all components of the model, make this one of the best programs for addressing the risk and needs of repeat impaired drivers (both alcohol and drug-impaired). The vast majority of DWI courts are post-conviction programs that are voluntary in nature. It is far less common for this iteration of the treatment court model to be used pretrial, however, there are some examples of courts that enroll high-risk impaired drivers into the program immediately, including one of the four designated DWI Academy Courts.

DWI courts are one of the most consistently evaluated countermeasures targeted towards repeat impaired drivers. Studies consistently reveal that courts that maintain fidelity to the Principles can achieve significant reductions in recidivism and accrue cost-savings. For example, a multisite evaluation of Minnesota DWI courts determined that the program produced a 200 percent return on investment (NPC Research, 2014).

Other pretrial initiatives and service models are available, but these tend to focus simply on monitoring. The services offered at the pretrial stage are often dependent on the level of resources and staffing in the agency that is tasked with supervision defendants who are released pending the resolution of their cases. Several of these programs are expanded upon in the full report.

CASE STUDIES

To identify key components of successful pretrial programs it is important to learn from the experience of practitioners that have already navigated this process. While there are a limited number of pretrial programs that are specific to DUI offenders, a number were selected for case studies in this guide. The purpose of this examination is to provide a range of options on how pretrial programs can be structured and operate. Every jurisdiction is different on account of variance in statutory requirements, availability of resources, existing protocols and practices, level of support, etc. While different, these programs do have commonalities which are discussed in the following recommendations section. Readers are encouraged to identify options that are best suited to their jurisdiction and determine what aspects of these models or approaches could be utilized to improve pretrial services.

The five jurisdictions selected for the case studies include:

- Driving Under the Influence of Intoxicants (DUII) Diversion Program in Oregon
- Pretrial Release Program in Isanti County, Minnesota
- Target 25 Pretrial Release Program in York County, Pennsylvania
- DWI Court, San Joaquin County, California
- DWI Court in Duluth, Minnesota

RECOMMENDATIONS FOR SUCCESS

Based on the review of existing program models, practices, and the in-depth case studies, there are many ways that agencies and motivated stakeholders can either establish DUI pretrial services or strengthen existing practices. **To establish new agencies or services, the following steps should be considered:**

- In order to create change, there must be a champion for the program/initiative who is not only a leader within the judicial district but is also a prominent figure within the community. Strong leadership is a vital component for success.
- A diverse range of stakeholders should be involved in any initiative to strengthen pretrial services. Representatives from each facet of the criminal justice system as well as licensing and community groups should have a voice and an opportunity to offer suggestions. This can help elicit buy-in and support and motivate partners to advocate for change.
 - o With coordination of multiple stakeholders there must also be consistent and effective communication between all participating agencies. All parties involved should be kept abreast of developments and plans.
 - o Community support is also a key element in establishing and sustaining a successful program, especially in particularly political climates. Community members should be educated about how a pretrial program will enhance public safety and have far-reaching benefits.
- The presence of a dedicated pretrial services agency can facilitate the implementation of programs and services for impaired drivers. If there is a single entity responsible for managing pretrial functions, there is less potential for confusion. This also helps streamline communication and coordination efforts.
- Pretrial services agencies should be a separate, independent entity although jurisdictions may incorporate pretrial services agencies within a larger parent organization if that component has a clearly defined pretrial service-related function as its purpose.

Once the pretrial agency is designated and its functions are defined, key elements for facilitating monitoring, accountability, and behavior change should be integrated. These components and practices should include the following:

- Pretrial release and detention decisions based on risk as determined by the use of a validated assessment instrument that is specific to the offender population combined with an evaluation of the facts of the case and the defendant's criminal history.

- Use of risk and needs assessments that are specific to impaired drivers such as the Computerized Assessment Referral System (CARS), Impaired Driving Assessment (IDA) and the Driving Under the Influence - Risk and Needs Triage (DUI-RANT) should be conducted as early in the process as possible to inform decisions.
- Jurisdictions should endeavor to maximize release opportunities, increase court appearances, reduce jail overcrowding, and enhance public safety. Whenever possible, pretrial agencies should also connect defendants with appropriate services and interventions.
- Utilize the period between arrest and arraignment as an opportunity to promote behavior change by identifying substance use issues, monitoring compliance, and facilitating referrals. Pretrial practitioners should encourage participants to consider voluntary entry into treatment if assessment indicates that it is necessary.
- Utilize a range of alcohol monitoring and drug testing technologies to supervise DUI defendants on pretrial release such as IIDs, CAM, remote/mobile devices, oral fluid testing, urinalysis, drug patches, etc.
- Establish mechanisms for accountability; ensure that violations are immediately reported to the supervising authority so that action can be taken as quickly as possible to maximize deterrence.
- Plan to evaluate the program and/or process to measure outcomes and identify areas for improvement. Similarly, have a plan to collect and analyze data on an ongoing basis. This can be used to demonstrate that the program is effective and justify resource allocation, funding, and/or expansion.

For jurisdictions that have established pretrial services, there are opportunities to enhance the delivery of services and closely target the needs of the impaired driver population. Action can be taken on multiple fronts to address various aspects of the pretrial process including legislation, enforcement, screening/assessment, supervision and monitoring, program evaluation, etc. The following table contains comprehensive recommendations that all pretrial agencies and stakeholders interested in building a more effective criminal justice continuum should consider implementing as appropriate.

TABLE 1

Recommendations to Enhance Pretrial Services for Impaired Drivers

LEGISLATIVE RECOMMENDATIONS	<ul style="list-style-type: none"> • Reduce jailable offenses; • Revise state bail laws to eliminate indigency as a requirement for detention; • Implement statewide diversion programs governed by state statute: <ul style="list-style-type: none"> o Statute should include that the alcohol offense remains on the record and is not expunged once the offender has completed the program; o Statute should require that a subsequent offense be treated as a second offense, not a first; o Statute should require assessment and treatment guidelines for diversion. • Retain DMV records to identify prior alcohol-related offenses on the driver record: <ul style="list-style-type: none"> o Unlimited or lifetime “lookback” period; o Ensure the state does not “purge” historical records prior to a certain date.
LAW ENFORCEMENT RECOMMENDATIONS	<ul style="list-style-type: none"> • Train and educate law enforcement officers regarding substance abuse and mental health issues; • Require all DUI arrests to be fingerprinted and submitted to state and federal criminal history databases; • Require background checks for offenders at time of arrest to quickly identify prior alcohol-related offenses (i.e., repeat/high-risk offenders).
SCREENING AND ASSESSMENT RECOMMENDATIONS	<ul style="list-style-type: none"> • Conduct universal screening of all defendants eligible by statute and use a validated pretrial risk assessment to inform release decisions; • Conduct a risk and needs assessment as a condition of pretrial release; • Utilize assessment instruments validated among the impaired driver population to ensure accurate identification of risk level; • Utilize assessment instruments that identify a range of behavioral health needs; ensure that tools look beyond alcohol consumption; • Assume that many impaired drivers are actually polysubstance users who have not been identified as such; • Facilitate connections to treatment interventions that match needs (based on assessment outcomes).
AGENCY AND STAFFING RECOMMENDATIONS	<ul style="list-style-type: none"> • Establish a single dedicated pretrial services agency; • Encourage inter-agency coordination and collaboration among stakeholders and promote strong communication; • Facilitate the allocation of resources efficiently; • Identify opportunities to collaborate with other agencies to achieve mutual goals/desired outcomes.

SUPERVISION RECOMMENDATIONS	<ul style="list-style-type: none"> • Use dedicated pretrial supervision agents (could be probation officers that are assigned to pretrial units); • Use alcohol monitoring technology including ignition interlock devices, transdermal/continuous alcohol monitoring, and electronic home monitoring devices: <ul style="list-style-type: none"> ◦ Require immediate notification to supervising agent by device vendor for violations. • Create accountability and deterrence by imposing swift, certain, and proportionate sanctions in response to non-compliance; • Notify the court of defendant violations and the possible need for supervision adjustment; • Require regular and random drug testing to confirm sobriety: <ul style="list-style-type: none"> ◦ Rapid testing outcomes; ◦ Effective and constant communication between testing lab and supervising agency; ◦ Utilize various methods including urinalysis, oral fluid testing, drug patches, etc. • Notify defendants of upcoming court dates; • Always rely on risk-based supervision and performance measurement/feedback.
EVALUATION RECOMMENDATIONS	<ul style="list-style-type: none"> • Create an evaluation plan and consistently collect data: <ul style="list-style-type: none"> ◦ Consider performing both process and outcome evaluations. • Identify target performance and outcome measures; consistent monitoring of program effectiveness and identifying best practices to implement within the program; • Obtain feedback from staff, partners, and clients; • Identify shortcomings and limitations in existing processes and device strategies to address these problems.
EDUCATION AND AWARENESS RECOMMENDATIONS	<ul style="list-style-type: none"> • Increase education and awareness of pretrial programs to bolster public confidence in and support for criminal justice processes, enhancing system performance, and upholding the integrity of the law: <ul style="list-style-type: none"> ◦ These efforts should focus on criminal justice practitioners, agency administrators/decision-makers, policymakers, and the general public.

The pretrial intercept of the criminal justice system remains one phase where there is potential for dramatic change that could greatly improve assessment, monitoring, and intervention among impaired drivers, particularly individuals who are a threat to public safety. Each of the approaches and models included in this guide have advantages and disadvantages, strengths, and shortcomings. While it may not be feasible to replicate practices and programs from other jurisdictions, it is important to learn from their experiences and adapt key components, best practices, and elements directly tied to successful outcomes to fit within the realities of your system and community. We strongly encourage stakeholders to initiate dialogue, collaborate, and develop a plan to improve the administration of justice. By enhancing pretrial services, the system as a whole is strengthened and there are more opportunities to promote accountability and behavior change which should always remain the ultimate goal. Behavior change translates into reduced recidivism, fewer impaired driving episodes, and lives saved.

Glossary of Terms

Administrative license revocation (ALR): administrative license revocation (ALR), sometimes also known as administrative license suspension (ALS), is the confiscation of a DUI/DWI offender's driver's license at the time of an arrest when failing or refusing to submit to a chemical test (including blood, breath and/or urine testing).

Alcohol-impaired: according to the National Highway Traffic Safety Administration (NHTSA), drivers are considered to be alcohol-impaired when their blood alcohol concentrations (BACs) are .08 grams per deciliter (g/dL) or higher.

Alcohol use disorder: as defined by the National Institute on Alcohol Abuse and Alcoholism (NIAAA), this is problem drinking that becomes severe is given the medical diagnosis of "alcohol use disorder" or AUD. AUD is a chronic relapsing brain disease characterized by compulsive alcohol use, loss of control over alcohol intake, and a negative emotional state when not using.

BAC/BrAC: blood alcohol content/breath alcohol content.

Bail/Bond: the temporary release of an accused person awaiting trial, usually with conditions including payment of a monetary fee to guarantee their appearance in court.

Binge drinking: NIAAA defines binge drinking as a pattern of drinking that brings blood alcohol concentration (BAC) levels to 0.08 g/dL (approximately four drinks for women and five drinks for men—in about two hours).

Blood alcohol test: a blood test used to measure the amount of alcohol that is in a person's system.

Breath alcohol test: a test given by a breathalyzer used to measure the percentage of alcohol that is in a person's breath.

Breathalyzer: device used to measure the percentage of alcohol that is in a person's breath; these devices can be used for both screening and evidential purposes.

DUI/DWI/OWI: the abbreviation DUI (driving under the influence) is used throughout this guide as a way to create consistency, even though some states use other terms such as OWI (operating while impaired or intoxicated), DWI (driving while intoxicated) and BUI (boating under the influence). In some states, these terms refer to different levels of severity of the offense.

Ethyl glucuronide (EtG) test: the EtG test is widely used to detect the presence in urine of ethyl glucuronide, a breakdown product of ethanol, the intoxicating agent in alcohol. It can also screen for EtG in your blood, hair, and nails, but the urine test is the most widely used.

High-BAC: blood alcohol content usually set at .15 or higher (this may vary among states).

Promise to appear (PTA): is a promise by the offender to appear in court.

Recidivism: re-arrest for another criminal offense; in some contexts, this may refer to an arrest for a subsequent impaired driving offense.

Repeat DUI offender: a DUI offender who has one or more prior offenses on their record; classification as a repeat offender for sentencing purposes is often determined by a lookback period which differs from one state to another.

Risk assessment: an objective researched-based measurement to identify an offender's level of risk to engage in certain risky behaviors or recidivate.

Screening, brief intervention, and referral to treatment (SBIRT): is an evidence-based practice used to identify, reduce, and prevent problematic use, abuse, and dependence on alcohol and illicit drugs. The SBIRT model was developed based on an Institute of Medicine recommendation that called for community-based screening for health risk behaviors, including substance use.

Standardized field sobriety test (SFST): a battery of 3 tests performed during a traffic stop in order to determine if a driver is impaired. The 3 tests that make up the SFST battery are the horizontal gaze nystagmus (HGN), the walk-and-turn, and the one-leg stand tests.

Urinalysis (UA): analysis of the urine to detect a specific substance, such as alcohol.

Introduction

In 2018, the National Highway Traffic Safety Administration (NHTSA) reported that alcohol-impaired driving fatalities accounted for 29 percent of the total motor vehicle fatalities on U.S. roadways. While fatalities declined slightly from previous years, 10,511 individuals were killed in alcohol-impaired driving crashes – each one of these fatalities was preventable. The reality is that DUI

offenders engage in behavior that is dangerous and frequently leads to serious injury or fatal crashes, as is reflected by the data. A disproportionate number of these fatalities can be attributed to high-risk individuals who consistently engage in DUI behavior and are resistant to behavior change.

Figure 1: Alcohol-impaired driving fatalities 1982-2018



First-time DUI offenders make up approximately two-thirds of all DUI arrests. The remaining one-third are offenders with two or more prior DUI convictions. Of those repeat offenders, 42 percent have a Blood Alcohol Content (BAC) of .15 or higher which is considered a “high-BAC” in most states. Drivers with BACs of .15 are more than 20 times more likely to be in a fatal crash than a sober driver (Compton et al., 2015). High-BAC drivers are classified as high-risk because they account for a disproportionate number of alcohol-impaired driving fatalities each year.

Repeat drunk drivers are also high-risk on account of their multiple DUI convictions. More than one-third of first-time offenders are re-arrested (Voas, 2001). This has led to concerns about drinking drivers who are so frequently impaired when operating a vehicle that they have a record of multiple convictions despite generally low apprehension rates. Research has shown that drivers with prior DUIs are more likely to be involved in severe traffic crashes, creating a significant risk to public safety (Simpson et al. 1996, Jones and Lacey 2000). In addition to the substantial public safety risk impaired drivers pose to our communities, the economic cost

of alcohol-impaired driving in 2010 (the most recent year for which data is available) has been estimated at \$44 billion dollars a year. When considering the societal harm from alcohol-impaired crashes, the cost increases to an estimated \$201 billion dollars annually (Blincoe et al., 2010).

Repeat DUI offenders are distinct from first-time DUI offenders in terms of their demographic characteristics as well as their criminal histories, substance use, and mental health histories (Hunter et al., 2006; Nochajski & Stasiewicz, 2006; Wiczorek & Nochajski, 2005). Repeat offenders are more criminally-involved (Royal, 2000; Webster et al., 2009a), report heavier alcohol and drug use (Hedlund & McCartt, 2002), and are more likely to report psychological problems such as depression (Freeman, Maxwell, & Davey, 2011; McMillen et al., 1992; Royal, 2000; Shaffer et al., 2007). A study conducted by the Cambridge Health Alliance’s Division on Addiction found that repeat DUI offenders have significantly elevated rates of alcohol and drug use disorders as well as co-occurring mental health disorders including conduct disorder, bipolar disorder, generalized anxiety, and post-traumatic stress disorder (PTSD). Shaffer

et al. (2007) found that approximately 45 percent of repeat DUI offenders were found to have a lifetime major mental health disorder other than alcohol or drug abuse or dependency. In another study, Nelson et al. (2015), found that offenders with severe mental disorders have a 72 percent rate of co-occurring substance abuse disorders that is often undiagnosed. This research also found that as the number of disorders increase, the rate of re-offense increases, whereby DUI offenders that have a longer history of mental health issues are more likely to offend and that mental health disorders are highly prevalent in DUI offender populations. Mental health issues need to be identified and addressed in addition to any substance abuse issues when referring DUI offenders to treatment.

While alcohol-impaired driving has remained a primary traffic safety concern for decades, recent increases in both drug and polysubstance-impaired driving are also cause for concern. In 2018, 20.5 million people aged 16 or older drove under the influence of alcohol in the past year and 12.6 million drove under the influence of illicit drugs (NSDUH, 2019) (Center for Behavioral Health Statistics and Quality. Results from the 2018 National Survey on Drug Use and Health: Detailed Tables. Rockville (MD): SAMHSA; 2019) <https://www.samhsa.gov/data/report/2018-nsduh-detailed-tables>.

With the prevalence of prescription medications as well as increased access to both medicinal and recreational cannabis, there is legitimate concern that more individuals will drive under the influence of drugs or a combination of substances. While the true magnitude and characteristics of the drug-impaired driving problem are not known due to several data limitations (Berning & Smither, 2014), the statistics that are available reveal that this issue requires further attention. In 2016, the most recent year for which data are available, drugs were found to be present in the systems of 43.6% of fatally-injured drivers with a known drug test result (FARS data as reported in Hedlund, 2017). Furthermore, in 2016, 50.5% of fatally-injured drug-positive drivers (with known drug test results) were positive for two or more drugs and 40.7% were found to have alcohol in their system (FARS as cited in Hedlund, 2018). Based on recent data from states like Washington and Colorado, it is becoming apparent that many impaired drivers are on the roadways under the influence of multiple substances which dramatically increases crash risk. For example, an analysis of Washington State data revealed that poly-drug impairment was the most common type of impairment found among drivers involved in fatal crashes between 2008 and 2016 (Grondel et al., 2018). Among drivers involved in fatal crashes during this timeframe, 44% tested positive for two or more substances (Grondel et al., 2018).

Therefore, when dealing with the impaired driver population, it is possible that multiple issues are present beyond alcohol consumption. In addition to alcohol use disorders, it is important to identify the presence of drug use disorders and any co-occurring mental health disorders (including trauma). Too often, these behavioral health needs are overlooked which may explain why many of these individuals continue to be arrested for DUI despite previous sanctions.

In several jurisdictions, repeat offenders are only required to post a set bail amount and are released back into the community without any restrictions or supervision while awaiting their scheduled court date. Due to the backlog of cases in misdemeanor courts, court dates can be scheduled several months to a year post bail. Judge John Kennedy (Ret.) of York County, Pennsylvania notes that this gap from the time that an individual is arrested to when he/she is charged is a “*significant obstacle*” in the processing of DUI cases. The concern is that many of these individuals will continue to engage in impaired driving behavior. Repeat offenders, in particular, continue to drink and drive and commit additional impaired driving offenses during this period.

“High-risk DUI offenders pose an immediate threat to public safety.”

We know according to recidivism data these offenders continue to drink and drive and commit more DWI offenses while awaiting trial. States that do not take advantage of that critical pretrial time period, really miss the boat. If you have good probation services use them pretrial, do not wait until sentencing. Tools are available and they should be used as early as possible.”

~ JUDGE JAMES DEHN (RET.)

Implementing evidence-based early interventions during the pre-trial period is imperative when dealing with this population of high-risk offenders and reducing the public safety risk to the community. Interventions attached to pretrial release conditions, detention, and other pretrial programs provide measures to prevent subsequent DUI offenses during the pretrial period and often allow for quick responses to aid in substance abuse rehabilitation and recovery when needed. Interventions include community supervision, use of alcohol monitoring devices, and in some cases, alcohol education and treatment. Utilizing validated screening and assessment tools that are specific to the impaired driving population is critical to ensure that risk level and needs are accurately identified, and judges are able to appropriately assign pretrial interventions. In addition, utilizing tools that incorporate the identification of mental health and criminogenic factors that influence these criminal behaviors have been shown to reduce recidivism and affect behavior change.

1 Overview and Methods

This guide focuses on how pretrial services fit within the larger DUI system and defines the various pretrial programs currently implemented across the United States. This guide also identifies common challenges and barriers jurisdictions face and illustrates key outcome measures when monitoring impaired driving offenders during the pretrial process. Best practices implemented in specific jurisdictions are highlighted in the **Case Studies** portion of this document. The guide also illustrates best practices to improve the efficiency and effectiveness of monitoring participants during the pretrial period and identifies where improvement is necessary. In addition, characteristics of robust programs, key components of pretrial services, implementation considerations to strengthen current programs, and recommendations for success are provided.

A. DEVELOPMENT OF THE GUIDE

In 2018, the Foundation for Advancing Alcohol Responsibility (Responsibility.org) contracted with Casanova Powell Consulting LLC. (CPC) to create a best practice guide for the implementation and strengthening of pretrial services and pretrial programming for impaired drivers. CPC conducted a two-phase study to document effective pretrial programs and offer recommendations to improve practice.

PHASE ONE

CPC focused on identifying current pretrial services implemented across the country. An environmental scan was performed to identify existing pretrial services and best practices to inform and guide jurisdictions in implementing these types of programs. The scan involved both a systematic internet search designed to identify existing guidelines and an email-based request sent to key CPC contacts. A list of contacts was generated from CPC's extensive network of knowledge-matter experts and practitioners in the field. The list of contacts was expanded by referrals from initial contacts to other experts in this field and/or those who could provide additional detailed information. Experts in the field were contacted via email explaining the purpose of the scan and requesting any policy papers, research reports, or guidelines that were relevant to the topic. The information received included reports, descriptions of individual pretrial programs, links to websites with relevant information, and referrals to other contacts and organizations. Documents within the scope of this project are included in the references section of this report. Utilizing the information received from contacts, a systematic internet search was simultaneously conducted to identify other information regarding pretrial services that is publicly available.

A literature review was also performed which was subdivided in three subtasks. First, an exhaustive list of keywords (see **Glossary of Terms**) was developed that were used to identify relevant studies. Databases mined to identify and acquire relevant studies included the following U.S. and international databases: Google; PsycINFO; Pubmed; and Science Direct. The following U.S. and

international journals were also searched: Accident Analysis and Prevention; American Journal of Public Health; Cochrane Database for Systematic Reviews; Human Factors; Injury Prevention; Journal of Safety Research; Transportation Research; Transportation Research Record.

The scan and literature review identified significant variations of multiple programs across several jurisdictions. The review resulted in the identification of common themes and key elements related to the following:

- How pretrial services fit within the larger DUI system;
- Common challenges and barriers that jurisdictions face at the pretrial phase;
- Key outcome measures;
- How jurisdictions can efficiently collect program data to evaluate and improve programs and monitor offenders during the pretrial process;
- Characteristics of robust pretrial programs/processes;
- Implementation considerations; and,
- Recommendations for success.

The findings from the review informed the second phase of the study, which focused on gathering information from various jurisdictions that have been found to have robust pretrial services that also implement key elements within their programs to yield positive outcomes (e.g., reductions in offender recidivism).

PHASE TWO

CPC conducted a series of telephone interviews to discuss critical issues related to pretrial services. One-on-one interviews were conducted with pretrial supervision managers, state treatment court coordinators, national judicial fellows, judicial outreach liaisons, industry monitoring device representatives, National Center for DWI Courts (NCDC) staff, and judges. Interview participants were asked to discuss the key elements of pretrial services in their jurisdiction including the process for offender entry into the program, barriers and obstacles to program entry, program requirements, funding, program data collection, attrition and retention rates, and rates of recidivism. Participants were also asked to identify criteria for what constitutes best practices and knowledge of other model programs, or those programs that represent best practices.

These phases resulted in the development of this implementation guide for practitioners. Those who participated in the interviews and members/representatives from the case study jurisdictions reviewed the final guide and offered their own testimonials about their experiences with pretrial programs.

1. Guide Components

The guide is designed to provide baseline information for practitioners and policymakers on the fundamental issues regarding the pretrial program process; successful elements of pretrial programs; common challenges and barriers that jurisdictions encounter in implementing and administering pretrial services; key elements to effectively and efficiently monitor pretrial program participants; characteristics of robust pretrial programs; implementation considerations; and, recommendations for successful pretrial programs.

The guidance provided is based on best practices from around the country and should be viewed as recommendations of key elements to strengthen pretrial services. Agencies are likely to encounter challenges that are specific to their jurisdiction's impaired driving laws, availability of funding for programs, and data collection/analysis protocols. Therefore, it is recommended that the information contained within this guide be used to improve existing pretrial practices as appropriate and feasible to do so.

The guide contains the following components:

- **Pretrial process overview:** provides a summary of current pretrial program practices and key components regarding participant entry into various programs.
- **Measures of success:** identifies how various pretrial programs define "success" including those elements necessary to effectively monitor alcohol-impaired driving offenders, including data collection, program evaluation, completion/attrition rates, and offender recidivism rates.
- **Obstacles/barriers:** discusses obstacles and barriers that are commonly encountered in the implementation and administration of pretrial programs including issues regarding program entry, cost, program requirements, funding, and barriers to completion.
- **Case studies:** describes current model pretrial programs across the U.S.
- **Recommendations:** provides various research-based components, and promising practices that may be implemented across the country including key components shown to improve outcomes, while outlining a roadmap for jurisdictions to implement more effective and efficient pretrial programs.
- **Conclusions:** summarizes the key findings regarding current pretrial programs across the U.S., elements/features used in robust programs, obstacles and barriers encountered by these programs, key factors to improve outcomes, and recommendations to implement promising practices for successful pretrial programs.

B. THE DUI SYSTEM

Impaired driving is a crime under state laws that seek to regulate the operation of a vehicle after a driver has consumed alcohol, drugs, or a combination of both. In the U.S., a confirmed per se limit BAC of .08 mg/dL will result in an arrest for a DUI, except in Utah where the limit has been lowered to .05 mg/dL. Some states have also established per se limits for certain drugs although the majority rely on impairment-based statutes that require officers to build a case of impairment and confirm observations with a positive chemical sample. A DUI is typically classified as a criminal offense which carries both criminal and civil penalties that vary depending on the severity of the offense and prior criminal history of the offender.

C. ARREST AND SANCTIONS

Involvement in the DUI system begins with the point of arrest. A law enforcement officer will first pull over an individual as a result of a driving infraction or other behavior that endangers public safety. Individuals may also be required to enter a sobriety checkpoint. Upon developing suspicion of impairment, law enforcement will begin an investigation that includes conducting standardized field sobriety tests (SFSTs), requesting that an individual submit to a breathalyzer test (to determine their BAC level), and/or submit to a urine or blood test¹ (to determine BAC level as well as identify the presence of drugs within the body). The refusal to perform any of these tests may result in additional sanctions for the driver depending on individual state laws.

Upon arrest, consequences for driving impaired vary greatly by state and can involve both criminal and civil punishments. DUI arrests and/or convictions, depending upon the state and level of offense, may result in the following:

- administrative license suspension or revocation (ALS/ALR) for a specified period;
- fines and other fees;
- mandatory screening and/or assessment;
- education and/or treatment for alcohol abuse, and in some cases-abstinence (dependent upon screening and assessment outcomes);
- jail time or house arrest;
- community service;
- probation for a specified period; and,
- required use of various technology used to monitor impaired driving offenders including ignition interlocks, transdermal alcohol monitoring devices, or home/remote monitoring device.

¹ While blood is deemed to be the 'gold standard' in chemical testing, a handful of states still have urine testing provisions within their implied consent laws.

In almost all states, a first-time DUI charge is a misdemeanor, punishable by fines and potential time in jail. While many states will allow a driver to avoid jail for a first-time offense, some states impose a minimum jail sentence of a few days or weeks in order to discourage impaired driving including Alaska, Arizona, and Virginia. If a DUI results in serious injury or the death of another person, this offense is typically classified as a felony and subsequently, results in lengthier periods of incarceration. Another type of DUI offense that is often classified as a felony is DUI child endangerment (i.e., driving while impaired with a child, often defined as someone under the age of 15 or 16); this trend has grown since the adoption of *Leandra's Law*² in New York in 2009. For drivers with prior or subsequent DUI charges, the punishments typically increase and can result in multiple years in jail. In addition to jail time, drivers typically have their licenses suspended or revoked for a certain period pending the completion of various requirements previously mentioned. License suspensions can range from a certain number of days to several years for a repeat offender depending upon the number of prior DUIs and their BAC level at the time of arrest (IIHS, 2018).

D. BAIL/BOND

Typically, once an offender is arrested for a DUI, he/she is booked into a county jail (for lesser charges, officers may release the individual on a promise to appear in court) and appear before a judge within 24-48 hours for an initial appearance or arraignment. At this hearing, the judge decides whether there is probable cause to maintain the charges and whether the offender can be released on his/her own recognizance.

The law generally requires release based on the least restrictive conditions necessary to secure an offender's appearance in court, however a judge's decision is informed by a variety of factors. Jurisdictions generally maintain a standard release or bail schedule. For low level/non-violent offenses, offenders may receive a citation release or summons to appear if their identity is confirmed and there is no reasonable cause to believe that they are a risk to the community or to miss their upcoming court date. For others, the judge may set bail. Bail is the amount of money that a defendant must pay to secure his/her release from detention. Bail amounts are influenced by the severity of the offender's offense and the offender's past criminal conduct and history of appearing (or failing to appear) in court. A bond can be posted by another person, often a bail bondsman or family member, on the offender's behalf to secure his/her release. If the defendant fails to appear at the next hearing or violates the conditions of release, the amount paid to the court can be forfeited and the individual taken into custody.

Judges also consider recommendations from prosecutors and defense counsel when making bail or bond determinations. Experienced prosecutors routinely screen arrest filings before the initial court appearance to determine the most appropriate charge and action to be taken with each offender. This process can be beneficial in reducing unnecessary pretrial detention (which is costly), identifying the most appropriate recommendations for either ongoing detention or pretrial release, targeting resources to higher level/serious criminal cases, and identifying offenders who are good candidates for diversion programs or other alternatives to the formal adjudication process.

In DUI cases, judges focus on the defendant's DUI and criminal traffic history, the seriousness of the DUI offense that that was allegedly committed, and the likelihood that the individual will appear in court for hearings and trial when making release decisions. Unless deemed to be a significant threat to public safety or accused of a violent crime (e.g., DUI resulting in serious bodily injury or death), most DUI offenders are released on bail. If the accused can afford the amount or a bond is secured on their behalf, they are released back into the community with a set of conditions that they must abide by. In some jurisdictions, judges may require defendants to undergo screening and assessment for alcohol and/or drug misuse issues and/or require them to be monitored for alcohol and/or drug use. If a defendant violates any conditions of the bond, he/she may be taken back into custody and held pending trial, although judges typically release them with a warning unless the charges involve felony offenses like DUI serious bodily injury or death. In an effort to address unaffordability issues and eliminate the decision whether or not someone is incarcerated based on their ability to afford monetary bail, there is a current trend as part of the broader criminal justice reform movement to eliminate monetary bail (commonly referred to as 'cash bail') requirements (e.g., California).

E. RISK ASSESSMENT TOOLS

Validated risk assessment tools provide valuable information to judges and can assist them in making decisions regarding whether an offender should be released from detention and, if so, what pretrial release conditions should be imposed. The use of screening and/or assessment instruments provide the court with an objective, research-based measurement of defendants' potential for failure to abide by the conditions set forth for pretrial release (Wagner and Rabuy, 2017). Some of these instruments also identify criminogenic needs including the Correctional Offender Management Profile for Alternative Sanctions (COMPAS), Level of Service Inventory-Revised (LSI-R) and Level of Service/Case Management Inventory (LS/CMI), and the Adult Substance Use Survey (ASUS).

Quality risk assessments are validated among justice-involved populations however, very few tools have been validated specifically among DUI offenders. This is significant since, as mentioned

² For more information on Leandra's Law, please refer to https://www.criminaljustice.ny.gov/pio/press_releases/2010-7-20_pressrelease.html

in the introduction, DUI offenders are a unique subset of criminal offenders. While they pose a significant threat to public safety and have high rates of substance use and mental health disorders, they also tend to have more mitigating or pro-social factors than other types of offenders. For example, studies have shown that DUI and drug court participants (which are usually classified as high-risk offenders with multiple convictions) differ on several factors tied to risk of recidivism including level of education obtained, employment, and socio-economic status (Tauber and Huddleston, 1999). DUI court participants tend to be more highly educated, employed at higher rates, and as a result, achieve higher socio-economic status when compared to drug court participants. DUI offenders also tend to have more pro-social ties within the community (i.e., they do not have an extensive network of anti-social peers) and lack an extensive criminal record (while they may have multiple DUI convictions and other traffic infractions, they tend to have fewer offenses in their history than other types of offenders). As a result of these characteristics, DUI offenders tend to be classified as low-risk when using traditional risk assessments that have not been validated specifically for them.

The realization that this risk misclassification commonly occurs among repeat DUI offenders led to the development of several new screening instruments that are validated for use with impaired driving offenders. These include the DUI-Risk and Needs Triage (DUI-RANT), the Impaired Driving Assessment (IDA), and the Computerized Assessment and Referral System (CARS). While the primary purpose of each of these instruments differs, they are currently the only three tools available that are validated to accurately measure risk among impaired drivers. Therefore, jurisdictions using assessment instruments other than these three tools, may be improperly assessing DUI offenders. A potential unintended consequence is failing to supervise these offenders at the appropriate intensity or missing placement opportunities in programs designed for high-risk offenders (e.g., treatment courts).

Research has found there are strong links between public health concerns such as substance use, DUI, criminal behavior, and underlying mental health issues (Packard and Fazel, 2013; Sacks and Pearson, 2003). As noted previously, 45 percent of repeat DUI offenders were found to have a lifetime major mental health disorder other than alcohol/drug abuse or dependency and nearly 30 percent qualified for a past-year disorder (Shaffer et al., 2007). Unfortunately, co-occurring disorders are often overlooked among this offender population because the focus of most instruments is on identifying alcohol misuse issues. In other words, when dealing with impaired drivers, the criminal justice system assumes that the etiology of DUI offending is substance abuse when in reality, the consumption of alcohol or drug use may be used in a self-medicating capacity to address an undiagnosed mental health disorder. The failure to identify mental illness misses an opportunity to treat another root cause of impaired driving. Assessment and screening tools that address all of these concerns are critical in properly identifying an offender's risk level and specific needs when referring to treatment and other supportive services.

Several risk assessment tools are commonly used to assess the DUI population (see Robertson, Wood, & Holmes, 2014 for more examples). For details about each of the following risk assessment and screening tools, refer to [Appendix B: Risk Assessment and Screening Tools](#).

- Alcohol Dependence Scale (ADS)
- Addiction Severity Index (ASI)
- Adult Substance Use Survey (ASUS)/Adult Substance Use Survey-Revised (ASUS-R)
- Adult Substance Use and Driving Survey (ASUDS)/Adult Substance Use and Driving Survey-Revised (ASUDS-R)
- Alcohol Use Disorders Identification Test (AUDIT)
- Computerized Assessment and Referral System (CARS)*
- DUI-RANT (Risk and Needs Triage)*
- Impaired Driving Assessment (IDA)*
- Inventory of Drug-Taking Situations (IDTS)
- Level of Service Inventory-Revised (LSI-R)
- Michigan Alcoholism Screening Test (MAST)
- Public Safety Assessment (PSA)
- Substance Abuse Subtle Screening Inventory (SASSI)
- Research Institute on Addiction Self Inventory (RIASI)

Some agencies utilize risk assessments that are specific to their jurisdiction or state. For example, the Ohio Department of Rehabilitation and Correction (DRC) worked with the Center for Criminal Justice Research at the University of Cincinnati to develop a universal assessment system to be utilized at multiple intercepts of the criminal justice system including pretrial, pre-conviction, re-entry, and during community supervision. The Ohio Risk Assessment System (ORAS) is currently used statewide on account of state legislation that passed in 2011 requiring that the DRC adopt a single validated risk assessment tool to be used to assess the likelihood of recidivism among all adult offenders. Within the ORAS system there are ten separate tools including a Pretrial Assessment Tool (PAT).

The state of Texas opted to replicate what was done in Ohio and create a similar system that is specific to their jurisdiction. By January 2015, the Texas Department of Criminal Justice completed an agency-wide implementation of the Texas Risk Assessment System (TRAS). This instrument is designed to help community supervision, prison, re-entry, and aftercare professionals create custom case management programs for individual offenders (TDCJ, 2015). TRAS interprets an offender's criminal history along with their criminogenic needs, allowing criminal justice professionals to devise the most efficient case plans possible, enabling the agency to carefully allocate supervision resources and reduce offender recidivism rates and increase public safety. The TRAS interview indicates whether an offender is at low, moderate, or high risk to recidi-

vate and identifies the offender's ability to be successful (TDCJ, 2015). Unfortunately, the TRAS has not been validated among DUI offenders and anecdotal information from judges and other criminal justice practitioners regarding the classification of repeat DUI offenders as low risk is concerning, especially because the use of the instrument is statutorily required. The misclassification of DUI offenders can impact whether these offenders are eligible for placement in treatment courts.

Some state-specific tools might also be mandated for use at the local or county level. For example, the City and County of Denver uses the Colorado Pretrial Assessment Tool (CPAT). This instrument was created by nine jurisdictions within the state in 2012 in response to the need for an actuarial tool to assess pretrial program participants. This is a general pretrial risk assessment tool and is not specific to DUI offenders. Bond conditions are then set based on the outcome of the CPAT (Cote, 2018).

1. Risk and Need Assessments (RNA)

Identifying the risk DUI offenders pose to the community and the appropriate need factors that are related to these offending behaviors, in addition to utilizing appropriate strategies to address these issues is critical in changing behavior. The risk-need-responsivity (RNR) model is based on this premise. Tailoring treatment and controls for offenders should be based on criminal justice risk and criminogenic need factors that are related to offending behaviors. Assigning the variables regarding individual's need factors including appropriate dosage, type of controls, and correctional programming has been proven to facilitate reductions in criminal offending. Research has shown that the offense is a result of the history of criminal justice involvement and specific criminogenic needs. Identifying and addressing dynamic criminogenic needs through proper treatment and control programming, can reduce offending behavior (Wooditch et al. 2013).

Risk and need assessments are actuarial-based tools used to classify offenders into levels of risk (e.g., low, medium, and high) and to identify and target interventions to address offender needs (e.g., antisocial attitudes, antisocial peer groups) generally related to recidivism. Some examples include both CARS and IDA. A RNA does not indicate whether an offender will actually recidivate; rather it identifies the "risk" or probability that the offender will recidivate. The probability is based on the extent to which an offender has characteristics like those of other offenders who have recidivated

Several RNA instruments are based on the risk-need-responsivity (RNR) model. This model identifies three principles for addressing offender recidivism:

- **Risk principle** – holds that supervision and treatment levels should match the offender's level of risk. That is, to reduce recidivism, low risk offenders should receive less supervision and services, and higher risk offenders should receive more intensive supervision and services. Furthermore, low risk offenders should not be placed in the same interventions as high-risk offenders as this typically leads to poor outcomes.
- **Need principle** – maintains that treatment services should target an offender's dynamic risk factors or criminogenic needs to reduce an offender's probability of recidivism. These factors include history of anti-social behavior (i.e., criminal record); anti-social cognitions; anti-social personality pattern; anti-social associates; family/marital discord; leisure/recreation; substance abuse; and, school/work.
- **Responsivity principle** – contends that treatment interventions for offenders should use cognitive social learning strategies and be tailored to an individual offender's specific characteristics (e.g., cognitive abilities, gender) that affect successful program outcomes.

All three of the instruments that are validated among DUI offenders examine both risk and needs. The **DUI-RANT**, as its name suggests, is a triage tool. The purpose of the instrument is to identify which quadrant of the risk-needs matrix (see below figure) an offender occupies. This information assists practitioners in identifying which offenders require intensive supervision as well as treatment

interventions. It is not uncommon for repeat DUI offenders to be high-risk and have low treatment needs (in other words, they may have anti-social characteristics that need to be addressed but they do not necessarily require intensive treatment for substance use and/or mental health disorders). The DUI-RANT is proprietary and there are licensing fees associated with its use.

		RISK	
		HIGH	LOW
NEED	HIGH	High Risk/High Need	Low Risk/High Need
	LOW	High Risk/Low Need	Low Risk/Low Need

The goals of the Impaired Driver Assessment (IDA) are to provide guidelines for identifying effective interventions and supervision approaches that reduce the risk of negative outcomes in treatment and community supervision; provide preliminary guidelines for service needs for DUI clients; estimate the level of responsibility of clients to supervision and to DUI/substance education and treatment services; and identify the degree to which the client's DUI has jeopardized traffic safety. All of these issues should inform and be addressed within the supervision plan. The IDA was designed for community corrections officers and, as such, it is primarily a risk assessment although it does examine criminogenic needs as well as identifying whether there are substance use and mental health issues present that require further assessment. It is available free of cost and training is available online.

Responsibility.org collaborated with Cambridge Health Alliance to develop, validate, and implement CARS. The instrument is available in three formats: full assessment, interviewer-administered screener, and self-administered screener. Both the screener and assessment cover 13 different domains including DUI offending, alcohol use disorder, drug use disorder, and major mental health disorders (e.g., depression, mania/bipolar disorder, anxiety disorder, PTSD, etc.). The tool is operated on open source software that generates immediate personalized diagnostic reports that contain information about a client's mental health profile, a summary of risk factors, and targeted referrals to treatment services within their geographic area that match their individual needs. Like the IDA, CARS is free to practitioners and can be downloaded at www.carstrainingcenter.org.

The **Computerized Assessment and Referral System (CARS)** is the inverse of the IDA as it is primarily a needs assessment with a risk component. Therefore, these instruments are highly complementary tools. CARS was developed to fill an existing void in the DUI system by providing practitioners with detailed information about offenders' treatment needs. In recognition of the prevalence of co-occurring disorders among DUI populations and the limitations of existing assessment instruments,

When used at the pretrial phase, instruments such as these can offer judges information in addition to a defendant's risk level. The needs information obtained from these tools can help judges as they formulate conditions and can provide guidance as to whether defendants have substance abuse or mental health problems that require further intervention. The earlier in the process that offenders can be connected with treatment services (even if participation is purely voluntary) the better.

F. MONITORING TECHNOLOGIES FOR IMPAIRED DRIVERS

Offender monitoring is critical in ensuring accountability, particularly among repeat DUI offenders who are more likely to be non-compliant with conditions. Supervision of offenders most commonly occurs at the post-conviction phase when offenders are subject to terms of probation or parole upon re-entry. Technology has evolved to become extremely sophisticated to aid in monitoring and supervising the impaired driving population and enhancing public safety. These devices, when used as intended, can effectively monitor offenders, help facilitate behavior change, and reduce recidivism rates among this population. The advent of alcohol and drug testing technology has improved the ability of community corrections officers to effectively supervise offenders who are subject to abstinence conditions or whose offending is tied to substance use. While the use of these devices is frequently relegated to convicted offenders, judges may require that offenders adhere to alcohol or drug monitoring as a condition of pretrial release. There are also opportunities in some jurisdictions for offenders to voluntarily submit to this type of monitoring as a means of getting “credit” towards mandatory device use post-conviction.

The following devices are commonly used by various criminal justice agencies and DUI programs across the country:

- Ignition interlock devices (IID)
- Transdermal/continuous alcohol monitoring (CAM)
- Home/remote monitoring devices
- Oral fluid testing devices

1. Ignition Interlock Devices (IID)

Ignition interlocks are the only technology available that separates drinking from driving. An interlock is a breath-test device connected to a vehicle’s ignition. The vehicle will not start unless the driver blows into the interlock and has a breath alcohol concentration (BrAC) below a pre-set limit, typically 0.02. The device also requires repeated breath tests (running re-tests) while the vehicle is in use to ensure the driver continues to remain sober throughout the duration of their trip. Information is stored in the device, downloaded by the service provider during a monthly or bi-monthly servicing appointment, and sent to the monitoring agency who ideally has the authority to act on any violations or circumvention attempts. Monitoring agencies vary by state and can include licensing authorities (e.g., Department of Motor Vehicles [DMV] or its equivalent), appointed court monitors, probation departments, etc.

The costs associated with the installation, servicing, and removal of interlocks varies depending on the jurisdiction and level of market competition. Prices to have an ignition interlock installed may range from \$100-150. Monthly fees for the servicing of the device range from \$50-80. The monthly fees are usually paid when the client returns to the service center to have the device calibrated and/or data downloaded. Typically, the cost of an interlock averages about \$3-4 day which makes it one of the cheapest alcohol monitoring technologies available.

Ignition interlocks are highly effective for both repeat and first-time DUI offenders, while the devices are installed. More than 10 evaluations of interlock programs have reported an average reduction in recidivism of 64 percent (Willis et al., 2004). A study commissioned by the Centers for Disease Control and Prevention (CDC) that involved a systematic review of 15 peer-reviewed studies on interlocks revealed that, while the devices were installed, the re-arrest rate of offenders decreased by a median of 67 percent compared to groups who never had an interlock installed (Elder et al., 2011). As of June 2019, approximately 33 states have all offender interlock programs (i.e., both first and repeat offenders are eligible to install the device although it may not be mandatory as a condition of license reinstatement).

In recent years, several states have modified their ignition interlock laws to allow DUI defendants to install the devices post-arrest/pre-conviction (CA, IN, MD, MN, MS, NE, NV, NY, PA, VA, WA, and WV). The installation is voluntary, but defendants are incentivized because the number of days the device is installed during this pretrial phase are ultimately credited towards their full interlock requirement should they plead to the charges or be convicted of DUI.

2. Transdermal/Continuous Alcohol Monitoring (CAM) Devices

A transdermal or continuous alcohol monitoring device typically consists of an ankle bracelet that detects drinking by sensing alcohol that passes through the skin as it is eliminated from the body. The device tests samples of vaporous perspiration (sweat) collected from the air above the skin at regular intervals. Data regarding transdermal alcohol concentrations (TAC) are stored in the device and transmitted to a base station which then relays the readings to a secure central website where the data can be accessed and reviewed by a monitoring authority. The monitoring authority is usually the probation or community corrections agency for the jurisdiction. For those states that utilize CAM devices as part of the 24/7 Sobriety Program, the Sheriff is frequently the monitoring authority. Upon violation, the monitoring authority notifies the judge and actions can then be taken in response in a timely manner, ensuring that there is swift accountability. The judge imposes sanctions based on the severity of the offense. The costs associated with the technology are borne by the offender. There is a one-time installation fee and a daily monitoring fee that typically ranges between \$10-15.

Unlike an interlock, transdermal technology does not prevent an offender from driving after consuming alcohol. The transdermal alcohol readings accurately reflect blood alcohol concentrations, but there is a delay due to the process of absorption and elimination of alcohol from the body. As a result, this technology is commonly utilized to monitor drinking behavior and/or enforce abstinence orders. Transdermal devices are often used in conjunction with or as a supplement to the ignition interlock. This technology is frequently used as part of 24/7 Sobriety Programs, as well.

A study by McKnight et al., 2011 found that transdermal alcohol devices are generally required in the following circumstances: high-BAC or repeat DUI offenses; alcohol-related serious or felony arrests or convictions; crashes resulting in death or injury; arrests as a result of an assault, domestic violence, etc. where alcohol was a factor in the offense or where abstinence is required. This study found that CAM devices improved public safety, are user-friendly, are very low maintenance, and are cost-effective. Another study by Tison et al. in 2015 found that compared to DUI offenders who did not wear a CAM device, those offenders wearing a CAM device took significantly longer to recidivate. In addition, less than 2 percent of SCRAM users (14 out of 837) recidivated while wearing the devices.

3. Home Monitoring Devices

Home monitoring devices are alcohol monitoring devices located in the residence of the user. These devices can be stationary or portable devices. Home monitoring devices are commonly court-ordered as an alternative to ignition interlocks for offenders who do not drive or own vehicles. These devices are also used as monitoring devices as a condition of pretrial release, bond, or probation. Users blow into the device to obtain a measurement of breath alcohol (BrAC). Results are collected and are either uploaded manually by the service provider or delivered over cell service to the monitoring authority. For these devices, the monitoring authority is usually the probation or community corrections agency.

Home monitoring devices may be mobile using cellular phone service whereby the offender is not limited to providing samples solely within their residence. This allows offenders to commute to work, school, and conduct other daily activities while complying with home monitoring requirements. As an anti-circumvention feature, many of these devices also include a camera component that takes a photo when a breath sample is provided. The photo is used by the monitoring authority to verify that the offender providing the sample is the offender who is under the supervision order. The device costs around the same as an ignition interlock system and functions in a similar fashion.

4. Oral Fluid Testing Devices

Oral fluid testing devices sample oral fluid (primarily saliva) from glands on the cheek and under the tongue with an absorptive device placed in the mouth. The device is then sent to a laboratory for testing to obtain results that are sent to the monitoring agency. These devices are usually used by probation, DUI courts, and treatment facilities to randomly test for drugs other than alcohol.

Products such as synthetic urine, adulterants, and devices designed to fool urine collectors and confound specimen analysis are readily accessible and commonly used. Oral fluid testing overcomes many of the problems related to urine testing. Oral fluid testing represents a new tool that is as accurate as urine tests and overcomes the problems associated with “cheaters”. Oral fluid testing when administered by a monitoring agency and not as a detection unit in the field, has been identified by the scientific community as a valid and reliable method of drug testing. Oral fluid tests offer an effective solution to challenges incurred by the monitoring or supervising agency when dilution and adulteration tactics are commonly attempted. This sophisticated technology overcomes past methods of detection with validated accuracy and reliability. Verstraete (2004) found that drugs can be detected for 5 to 48 hours in oral fluid compared to 1.5 to 4 days in urine following a single drug dose, a week or longer following chronic drug use.

Oral fluid testing, in general, is very cost-effective when compared to all other drug testing methods. Because oral fluid collections are easily administered on-site, downtime is minimized because employees are only away from their duties for 10-15 minutes rather than an hour or longer.

Pretrial Processes Overview

The purpose of pretrial practices is to increase public safety and ensure court appearances while protecting individual rights. According to the U.S. Constitution, pretrial services must respect the presumption of innocence and not unfairly interfere with the freedom of those who have not been found guilty (PJI, 2018). Pretrial practices encompass several services including: bail and bond decisions; pretrial detention in jail; pretrial diversion; varying conditions of pretrial release; and other local pretrial services. These services may include the use of risk assessments (see [Appendix A: Comparison of Pretrial Diversion Programs](#)) to inform decisions regarding the pretrial services needed for individual offenders to achieve the correct balance between preserving public safety and providing the proper services available to defendants. For details pertaining to pretrial policy and laws for each state, refer to the National Conference of State Legislatures (NCSL) for a comprehensive resource (last updated in 2018): <http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-policy-state-laws.aspx>. This online resource provides statutes, details about pretrial release eligibility, release conditions, violations and bail forfeiture, diversion, and more.

Several different forms of pretrial programming exist for DUI offenders, many of which are explored in greater detail in the **Case Studies** portion of the report. **The following section provides an overview of some of the more common pretrial models with a discussion of the program components, population, and entry process as well as a summary of obstacles/barriers that are commonly encountered, effectiveness, and measures of success. These models include:**

- Pretrial detention
- Diversion programs
- 24/7 Sobriety Programs
- Pretrial release programs
- DUI courts
- Other pretrial initiatives

G. PRETRIAL DETENTION

In most jurisdictions, defendants charged with DUIs must appear before a bond court judge to determine the conditions of their release prior to the disposition of their criminal case. Judges typically base these decisions on public safety considerations and the individual's likelihood of appearing for subsequent court hearings. Pretrial detention is usually ordered only if an arrested person presents an unmanageable risk to public safety or is unlikely to appear in court (PJI, 2018). Offenders may also be held in pretrial detention for the inability to pay their monetary bail requirement. It is estimated that of 100 individuals who have bail bond hearings, 34 are detained pretrial due to inability to pay cash

bail (PJI, 2018). Most pretrial services have implemented strategies to reduce pretrial detention. Some jurisdictions provide services to support those defendants who are identified as having substance abuse issues. Offering treatment to individuals at the pretrial phase is usually in response to the outcome of a screening or risk assessment in an effort to affect behavior change and reduce the risk of recidivism among these defendants (see York County Case Study in the **Case Studies** section).

Unless deemed to be a significant threat to public safety, most DUI offenders are released on bail and will not be detained for a lengthy period of time. If DUI defendants violate any bond conditions, they may be taken back into custody and held pending trial, although judges typically release them with a warning unless the charges involve felony offenses.

Obstacles/barriers. Many jurisdictions across the country are evaluating the use of jail and bail, the monetary condition of release, due to its overuse, inequities, and negative consequences on defendants and public safety. Many people who are detained pretrial are accused of low-level, non-violent offenses. Three out of four criminal cases in state trial courts are for misdemeanors that, if proven, would result in fines and/or less than a year in jail (Schauffler et. al, 2016). In many cases, incarceration serves no legitimate purpose and its overuse diminishes the presumption of innocence (PJI, 2018). A person's ability to pay often determines who stays in jail before trial and who returns home. Bond schedules frequently set arbitrary bail amounts that are unaffordable to many (PJI, 2018). Six out of 10 people in U.S. jail, nearly a half million individuals on any given day, are awaiting trial. People who have not been found guilty of the charges against them account for 95 percent of all jail population growth between 2000 and 2014 (Zeng, 2018). In addition, pretrial detention can be extremely costly. A study conducted in 2017 by the Prison Policy Initiative reported that pretrial detention costs the U.S. \$13.6 billion each year (Wagner & Rabuy, 2017).

Many people in jail have behavioral health needs that would be better met outside of the criminal justice system. It should come as no surprise that there is an overrepresentation of individuals who have substance use, mental health, and co-occurring disorders among those who are incarcerated. For example, 68 percent of individuals in jail met the criteria for SUDs in the year prior to their incarceration (Karberg & James, 2005). A study by James and Glaze (2006) also revealed that the percentage of jail inmates with mental health disorders is extremely high – 75 percent of female and 63 percent of male prisoners have a mental health problem. A substantial majority of these offenders also suffer from substance use disorders. Furthermore, only 11 percent of people with substance use disorders in the justice system receive any type of treatment (PJI, 2018).

Effectiveness. A study released in 2013 found that offenders detained for entire pretrial periods are more likely to be sentenced to jail or prison and for longer periods of time than those released at some point pending trial (Lowenkamp et al., 2013). Recent research shows the use of pretrial detention does not decrease the likelihood of recidivism in certain populations, and in some instances, may increase their potential for future offending (Reichert & Gatens, 2018). Dobbie and colleagues (2018) found “pretrial detention has no detectable effect on future crime.” An additional study released in May 2018 conducted by Levin and Haugen found that the nation’s jail populations have steadily increased, especially the number of pretrial detainees, despite the reduction of prison populations. In addition, there is a disproportional growth in this regard in rural jurisdictions. Potential causes for increasing rural pretrial jail populations include a lack of presumption of pretrial release, economic incentives to build jail capacity, and rising rates of drug abuse (i.e., opioid and heroin epidemic) (Levin & Haugen, 2018).

H. DUI DIVERSION PROGRAMS

Several states offer certain DUI offenders an alternative to prosecution called pretrial diversion. The primary goal of these programs is rehabilitation for low-risk offenders. Pretrial diversion programs encourage offenders to make a fresh start and help in doing so by disposing of the charges and in some states, expunging the charge from the offender’s record after successful completion of the program. Pretrial diversion is an alternative to prosecution; this process seeks to divert certain offenders from traditional criminal justice processing into a program of supervision and services usually administered by probation. In most cases, offenders are diverted at the pre-charge stage. Participants who are unsuccessful in the program are returned to prosecution and face the traditional DUI adjudication process (Buner, 2015).

The major objectives of pretrial diversion are (DOJ, 2018):

- To prevent future criminal activity among certain offenders by diverting them from traditional processing into community supervision and services.
- To save prosecution and judicial resources for concentration on major cases.
- To provide, where appropriate, an avenue for restitution to communities and victims of crime.

DUI pretrial diversion programs lack uniformity across states. In some states, pretrial diversion for DUIs is available statewide whereas in other jurisdictions, it is only available at the county level. Also, some diversion programs are formalized through statute while others are more informal in nature. States that offer pretrial diversion either statewide or at county or jurisdiction levels include Florida, Georgia, Indiana, Kansas, Louisiana, Oregon, Pennsylvania, and Texas. Though they may offer pretrial diversion programs for other offenses, the states of Kentucky, Ohio, and Tennessee do not permit DUI offenders to participate in their existing diversion programs (Buner, 2015).

Upon successful completion of pretrial diversion programs, DUI charges are usually dropped and potentially expunged from an offender’s record. In some states, there will be no record of any charges, dismissal, or completion of the diversion program. If the individual fails to adhere to conditions or fails to complete the program, the case will be re-opened, and the offender will be subject to traditional adjudication processes. In some states (see Oregon in the *Case Studies* section), the record will reflect the charge and successful completion of the diversion program, but the conviction will not appear on the person’s criminal record; this is the preferred approach as it allows the system to address offending more effectively should the offender recidivate in the future.

In addition to the above objectives, DUI diversion programs can offer several potential advantages for the criminal justice system.

According to Grube (2019), these programs can:

- Reduce the amount of time between case intake and disposition;
- Reduce the amount of effort that prosecutors have to put into preparing cases for trial;
- Allow defendants to be triaged and prequalified if a formal/standard application process is utilized;
- Allow both prosecution and defense to concentrate on more serious DUI offenses that are likely to proceed to trial;
- Spare low-risk offenders from a DUI conviction and license revocation; and,
- Decrease pending caseloads as these cases are diverted from court dockets.

However, the creation of diversion programs for the offense of DUI has not been without significant controversy. These programs have often been met with criticism, particularly from judges, who believe that there is potential for harm and weakening of the overall DUI system. While there are advantages, there are also very valid concerns about these programs (Grube, 2019). Perhaps the biggest concern is that a successfully diverted first-time offender who has his/her record expunged could commit a second impaired driving offense and be treated as a first offender for the second time. In doing so, that offender avoids the enhanced penalties that he/she would incur as a repeat offender. While a strong diversion statute could address this problem by stating that a second offense must be treated as such even if the individual successfully completed diversion (i.e., a second DUI offense would result in the first offense coming back into play), there remain additional concerns. To have diversion programs function properly, there must be rigid tracking of offenders to ensure that they are only permitted to enter into diversion once within the state's lookback period (ideally, diversion would only be available once per lifetime but that is not the way that many laws are structured) and that they do not enter diversion if they have multiple pending DUI charges in various jurisdictions.

In an effort to strengthen diversion programs, states/jurisdictions should consider the following while debating this policy option:

- Should the program be available to high-BAC offenders or individuals who violate implied consent laws by refusing to submit to a chemical test?
- How often can an individual participate in DUI diversion (e.g., once during the lookback period or once per lifetime)?
- Will an individual who successfully completes diversion and commits another DUI offense be treated as a repeat offender and be subject to harsher sanctions?
- If a first-time DUI conviction is expunged or dismissed, can this record still be accessed by law enforcement, prosecutors, and the court?
- Are all diversion participants screened/assessed for substance use and mental health disorders? If the assessment indicates that treatment is necessary, does completion of an appropriate intervention become a condition of diversion?

According to the National Conference of State Legislatures (NCSL), thirty-nine states have diversion alternatives that address substance abuse. These programs are available to people charged with drug or alcohol-related offenses as well as defendants identified as having substance use disorders or dependency problems. While DUI offenders may not always be eligible to participate in these programs, there is growing acceptance for the diversion of non-violent offenders who suffer from addiction. There is recognition that criminal behavior is often tied to substance abuse and that connecting individuals with treatment can be more effective in reducing recidivism than incarceration.

Two of the states that have established diversion programs for DUI offenders are Florida and Texas and each utilizes a different approach. In Florida, de facto DUI diversion (i.e., diversion programs without statutory backing) has been established at the local level with seven judicial circuits choosing to implement these programs in various counties (Grube, 2019). These programs all vary in their conditions as well as eligibility, length of participation, completion requirements, etc. Many of the above concerns have been expressed by judges and practitioners in Florida and legislation has previously been introduced in an effort to establish statutory parameters for these programs, although it has yet to pass.

Texas recently enacted a "*Second Chance Law*" (HB 3016) that established diversion for first-time DUI offenders. HB 3016 allows DUI offenders to petition for a court order of nondisclosure so long as their blood alcohol concentration (BAC) was .14 or less at the time of their infraction and no injuries or serious collisions were involved. In some cases, agreeing to have an ignition interlock device installed can expedite the petitioning process. DUI offenders with prior violent offenses, prior misdemeanors, or felonies are excluded from the program. The law is also retroactive which means that while it did not go into effect until September 2017, those who have been convicted of DUIs in the past may also be eligible to request that their criminal records be withheld from employers. The "*Second Chance Law*" allows the DUI offense to be sealed from public view – including employers – upon completion of a pretrial diversion program but does not expunge the DUI from the offender's driving record so it remains visible to law enforcement, prosecutors, and the courts (Rodriguez, 2018).

For a side-by-side comparison of four state pretrial diversion programs (Pennsylvania, Kansas, Florida, and Oregon) refer to [Appendix A](#).

Eligibility criteria. Eligibility for pretrial diversion programs varies significantly not only by state; there may also be variance within a state from one jurisdiction or county to another. Common eligibility criteria include: the individual is a first-time DUI offender; no one was injured as a result of the DUI; and the driver had a BAC below a certain threshold (Buner, 2015). Acceptance into a pretrial program and conditions of the program are most often determined by the district/state's attorney. A judge can always approve or deny entry into a diversion program; however, most diversion programs do not involve judges. Pretrial diversion programs are usually voluntary in nature and individuals are incentivized to participate and comply with conditions because of the potential to have their record expunged and/or to avoid sanctions that could be imposed upon conviction.

Program requirements. Typically, if an individual meets the criteria for eligibility and diversion is granted, the offender enters a court-mandated program in exchange for suspension of charges. Pretrial diversion programs usually require probation supervision for at least a one-year term and operate on an offender pay model (although some consideration may be given to indigency). The terms and conditions of the program vary by jurisdiction, but often include court supervision, community service, substance abuse evaluation, alcohol education and/or treatment, drug and alcohol testing, and various fees.

Obstacles/barriers. Unfortunately, many pretrial diversion programs do not follow best practices for reducing recidivism among DUI offenders. Not all pretrial diversion programs require participation in treatment, or if they do, that treatment may not be tailored to each individual participant (i.e., it is generic in nature). In addition, several programs do not use validated risk assessments to identify accurate risk level and criminogenic needs of participants which can result in the provision of inadequate or inappropriate interventions and services.

For most diversion programs, the DUI charge is either dismissed, disposed, or expunged from the offender's driving record upon the successful completion of the program. Diversion programs that expunge the DUI arrest from the record have been opposed by both public health and traffic safety communities. The dismissal of charges and lack of a permanent record creates a scenario that allows repeat DUI offenders to be tried or dealt with as first-time offenders more than once because the record does not reflect the previous arrests (Voas, 2001). As a result, some offenders in several states can be apprehended multiple times without ever receiving a formal DUI conviction (Voas, 2001). Fingerprinting a DUI suspect and uploading the prints to the Federal Interstate Identification System (Triple I) will record all DUI arrests regardless of state.

For several jurisdictions, record-keeping and data collection are an issue. Researchers have been unable to assess the effectiveness of diversion programs primarily due to the lack of records or the unavailability of data. For this reason, it is difficult to determine the effect of these measures.

Additional concerns around diversion include the potential effect that these programs might have on deterrence. If people know that they can avoid harsh criminal penalties for DUI on account of the availability of diversion, then they may decide to drive impaired. In other words, individuals might make poor decisions because diversion essentially gives them a 'pass' for their first DUI. Further, dismissing impaired driving charges or reducing them to other charges, such as reckless driving, could diminish DUI fines and fees that the state collects and relies on to fund other programs.

Although most diversion programs are limited to first-time offenders, some diversion programs are open to repeat offenders. Salzberg and Klingberg (1983) evaluated one such program in the State of Washington and found that these participants had higher,

rather than lower, recidivism rates compared to offenders who did not participate in diversion. One possible explanation for the higher recidivism rates was that the participants were free to drive, whereas non-participants were subject to administrative license suspension and lacked driving privileges.

Effectiveness. In reviewing the literature on DUI diversion programs, NHTSA states that the evidence has been mixed with several studies showing reductions in recidivism and others revealing no benefit (Richard et al., 2018). Other studies have found that there is "substantial anecdotal evidence that diversion programs, by eliminating the offense from the offender's record, allow repeat offenders to avoid being identified" (Hedlund & McCartt, 2002). As noted, data limitations prevent evaluation. For programs where data is available, studies have demonstrated that diversion programs, particularly those with short sentences, do not reduce recidivism, yet pretrial diversion programs continue to be favored in some jurisdictions for their efficiency in dealing with first-time offenders (Wiliszowski et al., 2011).

Measures of success. Diversion programs reduce the time to punishment and, perhaps most importantly, reduce the burden of cost and available resources on state and local court systems. If structured in a way that includes key components (such as active supervision, testing, assessment, and treatment) and strong provisions regarding eligibility and record retention, these programs can be beneficial. For example, the State of Oregon has a diversion program that results in a permanent DUI record that prevents offenders from receiving diversion a second time; participants are also required to undergo screening and/or risk assessment and depending on the outcomes of these evaluations, are referred to either alcohol education or treatment (refer to the **Case Studies** section).

The measures of success for diversion programs are ultimately affected by the structure of the program. **If the program in question has a strong framework (i.e., one that adequately addresses the aforementioned policy concerns), then the following could be general measures of success:**

- Number of low-risk DUI offenders (e.g., first-time offenders who do not have a high-BAC or refuse to provide a chemical sample) diverted from the system who successfully complete all diversion conditions;
- Percentage of DUI offenders who successfully complete diversion and do not recidivate (could include future DUIs as well as other non-DUI criminal charges);
- Reductions in DUI cases on motion calendars and court dockets;
- Reductions in incarceration costs and costs associated with adjudicating DUI cases;
- Increases in the amount of staff time available for handling other DUI cases including high-BAC/refusals, bodily injury/fatalities, and repeat offenses;

- Number of first-time DUI offenders screened/assessed and referred to treatment interventions;
- Number of DUI offenders deemed ineligible for participation on account of identifying other pending DUI charges on their record or other disqualifying criteria; and,
- Number of second-time DUI offenders who previously completed diversion that are accurately identified and processed/sentenced as repeat offenders.

I. 24/7 SOBRIETY PROGRAM

The first 24/7 Sobriety Program was established in South Dakota in 2004 by then Attorney General Larry Long. After an initial pilot, the program was eventually expanded statewide in 2007. The 24/7 Sobriety Program was the first statewide program in the country to require offenders who were arrested or convicted of alcohol-involved offenses to submit to twice-daily breathalyzer tests or continuous alcohol monitoring. This program requires that participants remain abstinent for the duration of the program, hence the term “24/7”. The 24/7 Sobriety Program started integrating transdermal or continuous alcohol monitoring (CAM) technology during a pilot test in 2005. The impetus for adding this option was a recognition that several program participants who lived in rural or isolated areas had to drive lengthy distances to report for testing which was onerous. CAM allows participants to be continuously monitored without requiring those participants to report for twice daily breath testing. However, a reported contributing factor to success for this program is the face-to-face accountability of the offender to the monitoring agent which is why most 24/7 models continue to rely on in-person testing. Participants may receive a restricted driver’s license which allows them to drive to their required testing and treatment appointments and maintain employment.

Secure Continuous Remote Alcohol Monitoring (SCRAM) developed by Alcohol Monitoring Systems (AMS) was authorized to be used to monitor participants of the South Dakota 24/7 Sobriety Program statewide in 2006. This came as a result of a 2005 pilot test funded by a NHTSA highway safety grant that purchased 100 SCRAM devices to be used for the program (Casanova Powell, 2013).

24/7 is an accountability-based program which imposes immediate, yet modest sanctions to deter problem drinking and change behavior through maintaining sobriety. For those offenders using SCRAM devices, AMS monitors SCRAM electronic reports and sends an action report to participating sheriff’s offices each day. Sheriff’s offices across jurisdictions decide which offenders will be sanctioned for verified positive BAC readings or tampering incidents. In addition to twice-daily breath tests and transdermal alcohol monitoring, drug patches and random urinalyses (UAs) are also utilized to monitor substance use and ensure participants are compliant with program conditions. All 24/7 programs rely on an offender pay model to cover fees associated with monitoring and testing. In South Dakota, fees are prescribed by the legislature (in 2006) and the state budget. **Examples of these fees include:**

- Twice-daily breath testing - \$1 per test and a maximum participation fee of \$30.
- Continuous alcohol monitoring (via SCRAM) - \$6 per day (\$5 for testing and \$1 participation fee). Offenders are also required to pay installation and deactivation fees in the amount of \$40.
- Mobile breath testing devices - \$5 per day (\$4 for testing and \$1 participation fee). Offenders are also required to pay installation and deactivation fees in the amount of \$40.
- Urinalysis - \$10 per test; if further analysis of the sample is required or requested, the participant is responsible for payment of the costs incurred by the participating agency for the analysis of the sample.
- Drug patches - \$50 per drug patch.
- Ignition interlock – offenders are responsible for paying installation and servicing fees for the device. Other fees include a one-time enrollment fee of \$40, a \$20 inspection fee every 60 days, and a \$1 daily program participation fee (Casanova Powell, 2013).

Following the success of the model in South Dakota, the 24/7 Sobriety Program has now been implemented in several other states including Alaska, North Dakota, Montana, Utah, Washington, and Wyoming. An incentive grant program was established in the Fixing America’s Surface Transportation (FAST) Act that allows states that establish 24/7 programs that meet certain criteria (e.g., establishing a statewide program) to qualify for funds.

Eligibility criteria. In jurisdictions where the program is available, placement on the 24/7 Sobriety Program has been a prerequisite for: condition of bond; post-sentence probation; driver’s license reinstatement; state corrections and parole services; and family court. For most states where the program is available, only repeat DUI offenders are sentenced to 24/7. However, in some jurisdictions the program was expanded to include some first-time DUI offenders (these individuals typically opt into the program) as well as offenders whose crimes were tied to substance abuse (e.g., domestic violence, assault, etc.). Offenders that refuse to participate in the program serve a period of incarceration instead. Some programs will also allow offenders to be approved to participate in order to obtain a temporary restricted driver license (e.g., North Dakota).

Program requirements. Sobriety is required for the duration of program participation. Twice-daily breath testing is required for each participant, but SCRAM monitoring as well as mobile breath testing are often available as alternative options, particularly in rural areas. The use of an ignition interlock device may also be required for participants in some 24/7 Sobriety Programs although this varies according to state statute. The sentencing period is determined by a judge but, on average, offenders are on the SCRAM device for approximately 140 days.

Obstacles/barriers. For most 24/7 Sobriety Programs, the costs are largely paid by offenders (see above). A study conducted in 2012 found that programs that utilize transdermal alcohol monitoring may prove to be too costly for some program participants (McKnight, 2012) compared to significantly lower costs for other technologies like the twice-daily testing. In these instances, the cost of CAM can be a barrier to entry. In addition, this study showed that there is some concern over low-level drinking events that may be occurring but cannot be confirmed by vendors, which may warrant further investigation (McKnight, 2012).

A 2017 study released by the Upper Great Plains Transportation Institute found that participants who entered the 24/7 Sobriety Program in North Dakota as a repeat DUI offender were most likely to recidivate and have a DUI citation following program enrollment and recommended that these individuals should be targeted with additional treatment and intervention (Kubas et al., 2017). This study also suggested that multi-time entrants and repeat DUI offenders would most benefit from enhanced interventions. Given that North Dakota's Impaired Driving Strategic Plan advocates for the use of ignition interlock devices, this study suggested that a pilot be conducted to assess the viability of interlocks to be used as an additional intervention for certain participants (Kubas et al., 2017).

Effectiveness. 24/7 Sobriety programs have been found to reduce recidivism among participants. A recent study conducted by the RAND Corporation found that the South Dakota program reduced repeat DUI offenses and domestic violence arrests. In fact, participation in 24/7 was associated with a 12% reduction in repeat DUI arrests and a 9% reduction in domestic violence arrests at the county level (Kilmer, 2013). Researchers were unable to establish a direct correlation between program participation and reduction in traffic crashes although there is suggestive evidence that crashes among males age 18-40 fell as a result of the program (Kilmer, 2013). A more recent study has shown that 24/7 program participation had a large effect on criminal behavior. Kilmer and Midgett (2018) estimated that the probability of a 24/7 participant being re-arrested or having his/her probation revoked 12 months after being arrested for DUI was 49% lower than that of non-participants.

A study conducted in 2017 by the Upper Great Plains Transportation Institute found that the 24/7 Sobriety Program in North Dakota has positive deterrent effects on participants and reduced non-DUI-related citations upon entering the program (Kubas et al., 2017).

Measures of success. Compared to non-24/7 participants, arrest to arrest (next DUI offense) recidivism is substantially lower for 24/7 participants at 1, 2, and 3-year intervals. Even lower rates are documented for individuals that have 30 and 90 days of consecutive twice-daily testing on the program. According to Art Mabry, 24/7 Sobriety Program Coordinator, these measures show that the 24/7 Sobriety Program enhances public safety, reduces offender jail time, improves treatment prospects, and promotes continued employment. In addition, there is no cost to the taxpayer at the county level since the program is offender funded.

J. PRETRIAL RELEASE PROGRAMS

Pretrial release programs are present in all states in the country. Most pretrial release programs use this service to alleviate jail overcrowding and system costs. In traditional pretrial release programs, financial bail and/or bond conditions are typically set by the judge. If an offender is unable to meet these conditions, he/she remains in jail (see **Pretrial Detention** section). If the offender can meet these conditions, he/she is released on a promise to appear (PTA) in court. Depending upon state law, state licensing authorities (e.g., department of motor vehicles (DMV) or its equivalent) may revoke the license of the DUI offender as part of an administrative license revocation (ALR) process. In these states, there are varying requirements for license reinstatement which may require the use of an ignition interlock, fines, and other conditions. However, these conditions may be suspended until the defendant is adjudicated and has been found guilty. Although ALR is not part of the criminal court proceedings, if imposed, this may create complications for defendants during the pretrial process as it limits their mobility.

Eligibility criteria. As previously mentioned, a judge decides whether an individual should be released or detained at the pretrial phase and this decision is based on several factors (refer to the **bail/bond** and **pretrial detention** sections of this report). These include the severity of the offense, the defendant's criminal history, and possibly the results of a risk assessment. If the defendant is deemed to not pose a significant threat to public safety (and, in some instances, can afford bail) he/she is released with specific conditions to abide by which may include monitoring.

Program requirements. Several states have identified traditional pretrial release programs as a serious public safety hazard since the likelihood of offenders driving while their license is suspended/revoked is high; moreover, there are minimal protections that safeguard against further DUI incidents/behavior. In an effort to address these concerns, these states have adopted pretrial release monitoring programs that frequently require repeat offenders to participate in some form of monitoring or supervision and possibly treatment while awaiting their court date (e.g., Isanti County, MN; Joaquin County, CA; and York County, PA). These programs often incorporate the use of screening and assessment to identify appropriate pretrial measures for offenders. While it is difficult to compel defendants to enter into treatment, identifying substance use disorders and mental health issues at the pretrial stage is important. At a minimum, defendants can be given the option to enter into treatment if assessment indicates that it is necessary. In this case, pretrial agencies refer defendants to treatment providers and participants can engage in treatment during the pretrial process. Often this treatment is acknowledged by the court and may count towards any mandatory treatment requirement in the post-adjudication phases of the system (i.e., offenders may be given credit for the time spent in treatment prior to their conviction).

Monitoring is usually conducted through the use of various technologies including ignition interlocks, continuous alcohol monitoring, and remote testing (i.e., at-home devices which can be mobile or stationary) with oversight by a designated monitoring authority. Probation departments are commonly tasked with supervising defendants who are released pretrial with abstinence conditions. Some programs have dedicated pretrial officers that oversee participant compliance (e.g., City and County of Denver). These programs typically include random ethyl glucuronide (EtG) and urinalysis (UA) testing and range from offender-pay to state or jurisdiction-funded models. Examples of best practices in pretrial release programs can be found in York County, Pennsylvania; San Joaquin County, California; Isanti County, Minnesota; and the City and County of Denver (more details about some of these programs can be found in the **Case Studies** section of this guide).

Obstacles/barriers. Significant costs related to some pretrial release programs including the use of monitoring technologies and alcohol/drug testing as well as other associated fees can create barriers for entry into programs for indigent defendants. In programs where costs are absorbed by the jurisdiction, there is greater financial burden placed on the city or county. However, it has been reported that for these jurisdictions, it is far costlier to hold defendants in pretrial detention than to absorb the costs associated with supervision upon release (Cote, 2018). Some programs require screening or risk assessment to inform the conditions of pretrial release however, few use instruments that are validated specifically for the impaired driving population. Research has shown that this could result in inaccurate identification of risk level and failure to identify certain needs. One unintended consequence of using inadequate assessment tools is that it may result in high-risk individuals being classified as low-risk which could result in limited monitoring requirements for defendants who should be subject to intensive supervision.

Data collection and the availability of data is frequently cited as a significant issue for traditional pretrial release programs. Unfortunately, these programs often fail to track offenders and may not even investigate whether there are priors on each individual's criminal record. This can lead to an offender receiving multiple subsequent DUI charges before the current charge is adjudicated.

It is common for DUI offenders to have significant substance abuse issues regardless of whether they have previous offenses. To identify the presence of substance use disorders, all defendants should be subject to mandatory screening and assessment at the pretrial phase. While it is common for jurisdictions to rely on validated risk assessments to inform pretrial release decisions, the use of risk and need assessments to identify criminogenic and treatment needs is less common. As previously noted, treatment participation cannot be ordered in most cases until a conviction is secured but it is beneficial to obtain information about a defendant's behavioral health needs as early in the criminal justice process as possible. This can help guide decision-making and inform release conditions. Furthermore, individuals with identified substance use or mental health disorders can, at minimum, be connected to interventions and treatment programs in the community while they await the resolution of their cases.

Effectiveness. Several pretrial release programs that incorporate best practices have shown significant reductions in recidivism and impaired driving crashes (Vlavianos, 2018). As previously mentioned, this includes the pretrial release monitoring programs that often require repeat offenders to participate in some form of monitoring or supervision and facilitate connections to treatment during the time of their release while awaiting upcoming court dates. These practices can lead to cost-savings as community supervision is a more cost-effective option than incarceration. For a discussion of pretrial release best practices and further details about key elements to success, refer to the *Case Studies* section.

Measures of success. The main measures of success for any pretrial release program are as follows:

- Percentage of defendants who are released who comply with conditions.
- Percentage of defendants who are released and are not re-arrested for another offense while awaiting the resolution of their case.
- Percentage of defendants who appear for their next court date.
- Average number of days spent in pretrial detention before a decision is made regarding release.
- Number of defendants who are successfully released on personal recognizance as opposed to cash bail/bond.
- Average reduction in pretrial incarceration costs; potential cost-savings associated with pretrial release per defendant.
- Percentage of individuals screened/assessed who are referred to treatment interventions (if results indicate treatment needs).

K. DWI COURTS³

DWI courts were created to improve repeat DUI offenders' compliance with substance abuse treatment and other supervisory conditions (Freeman-Wilson & Huddleston, 1999). DWI courts follow the well-established and evidence-based drug court model which addresses substance dependence and mental health issues. There are currently over 700 DWI courts in the United States (including standalone courts and hybrid courts that have separate drug and DWI dockets/tracks). The vast majority of DWI courts are post-adjudication programs, however some courts accept offenders at the pretrial phase. One example of this pretrial approach is the DWI Academy Court that operates in Duluth, Minnesota (to learn more about this program, refer to the *Case Studies* section).

Treatment courts are usually funded through federal grants which come from several different agencies, but the majority of funds are allocated by the Bureau of Justice Assistance (BJA). Grant funding for the establishment and ongoing administration of DWI courts

often comes from state highway safety office grants and federal highway safety dollars. The National Highway Traffic Safety Administration (NHTSA) also provides funding to the National Center for DWI Courts (NCDC) to conduct foundational trainings for new court teams and operational tune-up trainings for existing courts to assist them in implementing best practices and maintaining fidelity to the [10 Guiding Principles of DWI Courts](#). Additional funding may be provided through the individual judicial districts. DWI courts may also apply for 501 (c)3 or nonprofit status and raise funds through various channels.

When new DWI courts are established, gaining support for the program within the community is highly encouraged. It is recommended that DWI courts form advisory committees that include stakeholders and community representatives not only to educate the community regarding DWI court practices but also to solicit their support in the rehabilitative process.

For courts to achieve maximum benefits and successful outcomes, it is imperative that they adhere to the *10 Guiding Principles*. These principles were established by NCDC and are meant to guide court teams as they implement their programs and oversee participants. By maintaining fidelity to these principles, courts ensure that they are targeting the right population, using best practices, and ensuring that common challenges can be adequately addressed. **These principles include:**

1. Target the population
2. Provide a clinical assessment
3. Develop the treatment model
4. Supervise and detect behavior
5. Develop community partnerships
6. Take an active judicial role
7. Provide case management
8. Solve transportation barriers
9. Evaluate the program
10. Ensure sustainability

More details regarding the 10 Guiding Principles for DWI Courts are available on the NCDC website: https://www.dwicourts.org/wp-content/uploads/Guiding_Principles_of_DWI_Court_0.pdf

³ The term DWI court is used to align with the National Center for DWI Courts as the preferred term; these programs may also be referred to as DUI courts, sober courts, hybrid courts, treatment courts, etc.

DWI courts that follow best practices are structured in phases. The number of phases and phase requirements are determined by individual DWI courts although there are frequently five phases including acute stabilization, clinical stabilization, pro-social habilitation, adaptive habilitation, and continuing care. Participants may advance to the next phase based on their performance and whether they meet the phase requirements. Upon completion of the final phase a participant “graduates” from the program. To apply to graduate, NCDC recommends a minimum of 90 days in Phase 5 as well as 90 days sobriety, successful completion of all treatment conditions, compliance with supervision, maintenance of pro-social activities and a recovery network, adherence to all other requirements, and the completion of a continuing care plan. Best practices include a post-graduation program that involves peer-to-peer support from prior graduates.

Decisions regarding participants are agreed upon by the DWI court team. This team consists of a number of stakeholders including the presiding judge, treatment providers, probation officers, prosecutor, defense attorney, program coordinator, and law enforcement. DWI courts place emphasis on an individualized approach for each participant. The team meets regularly prior to participants’ court appearances to discuss the individuals on the docket that day. These discussions include updates on performance regarding phase requirements, progress in treatment, any violations, or instances of noncompliance in addition to positive performances and actions of the participants. Violations and non-compliance are met with sanctions deemed appropriate for the violation. Positive performance may result in a modest “incentive” (e.g., gift card of a nominal amount, verbal praise from the judge, etc.) to encourage continued progress and reinforce pro-social behaviors. DWI court best practices include regular face-to-face meetings between the judge and each participant; research indicates that these interactions should last a minimum of three minutes. This practice promotes offender accountability and builds judge-participant relationships which can help motivate individuals to succeed.

Eligibility criteria. DWI courts are specialized treatment courts that are designed to target high-risk/high need (refer to the **Risk and Needs Assessment** portion of this report for an explanation of these terms) offenders. DWI court participants are usually repeat impaired drivers with moderate to severe substance use and/or mental health disorders. Often offenders who have committed violent offenses (including vehicular manslaughter/homicide) are excluded from the program, however eligibility criteria varies by court and jurisdiction. Some states may have statutory provisions that indicate which offenders are eligible to participate in treatment court programs. Although the DWI court model is typically structured for high-risk and high need clients, the model can be modified to focus on other populations. For example, the DWI court in San Joaquin County has two separate tracks - one track focuses on the traditional target population of high-risk/high need whereas the other track emphasizes monitoring for high-risk offenders who do not require significant treatment interventions.

Program requirements. DWI court participants are required to attend ongoing status hearings in court, complete an intensive regimen of substance abuse treatment along with indicated adjunctive services (including mental health and other counseling as needed), and undergo random or continuous testing for substances including random urinalyses (UAs), ETG testing, and drug testing (NDCI, 2006). Participants are also commonly required to use alcohol monitoring technologies including ignition interlocks, CAM, and mobile/remote breath testing devices. Participants receive negative sanctions for program infractions and positive reinforcement/incentives for achievements that steadily increase in magnitude over successive instances. Failure to successfully graduate from DWI court typically results in a return to custody for traditional adjudication. The minimum length of participation according to the *Guiding Principles* is 12 months, however programs that follow best practices typically supervise offenders for 18-24 months. In addition, to follow the best practice recommendation of three minutes of judge-client contact for each participant it is recommended that court participation be limited to 100 offenders at any given time. Programs can be taken to scale using a track/tiered approach. The number of participants may also be dictated by risk assessment outcomes and the level of resources available.

Obstacles/barriers. The main barriers for implementing the DWI court model is lack of education about the program’s structure and effectiveness; political issues (e.g., apathy, perceptions); and, competing interests. Funding can often be a barrier to entry as most programs are offender pay, although some programs do provide grant funds to offset costs. In addition, DWI court entry is often voluntary. Therefore, those who do not agree to participate in these programs will not receive these services.

Effectiveness. DWI courts that follow the *10 Guiding Principles* and evidence-based practices see a reduction of recidivism (overall general crime) of 60 percent or more and a savings of \$3.19 for every dollar invested (Cary et al., 2014). Many studies have demonstrated significant cost-savings, return on investments, decreases in crashes, and long-term reductions in recidivism. Studies of Maryland DWI courts found that the programs produce average net cost-savings of \$1,505 per participant and \$5,436 per graduate (Mackin et al., 2009a; 2009b). A multisite evaluation of Minnesota DWI courts determined that the program produced a 200 percent return on investment (NPC Research, 2014). The combined savings of seven DWI courts exceeded \$1.4 million over a two-year period. The important thing to remember is that fidelity to the model (i.e., *10 Guiding Principles*) is imperative if significant reductions in recidivism are to be achieved.

DWI courts that follow best practices have systems in place to collect data necessary to monitor their program (see Duluth, Minnesota DWI Court in the **Case Studies** section). As a result, research has shown that DWI court participants are 19 times less likely to offend (Carey, et al., 2008). An evaluation of DWI courts conducted in Michigan by NPC Research found that

court participants were re-arrested significantly less often than comparison group offenders who were sentenced to traditional probation (Carey, et al., 2008). Regarding percent of re-arrests, significantly more comparison offenders were re-arrested than DWI court participants. In this example, in a two-year period, traditional probation offenders in the comparison group were three times more likely to be re-arrested for any charge and were nineteen times more likely to be re-arrested for a DWI charge than the DWI court participants. Outcome findings also showed that the rates for DWI court graduation and retention ranged from 54-84% and graduates completed the program within or sooner than the intended timeframe for their programs.

DWI court retention and completion rates are comparable or higher than the rates for programs following the drug court model. For example, a study of nine drug courts in California showed an average retention rate of 56 percent (Carey et al., 2005). In addition, this study found that the longer time spent in DWI court programs predicts success both in completing the program and in reducing recidivism. Overall, these results demonstrated that the DWI court is effective in reducing recidivism and reducing substance use while needing fewer criminal justice system resources to accomplish these goals (Carey et al., 2008).

Other evaluations of DWI court programs in Arizona (Maricopa County), California (Los Angeles County), and Georgia (Athens), found that graduates had lower recidivism rates than offenders processed through traditional courts (Marlowe et al., 2009). An evaluation of three Georgia DWI courts funded by NHTSA reported that DWI court outcomes yielded a 15 percent recidivism rate compared to a recidivism rate of 35 percent among DWI offenders who were processed through a traditional court (Fell et al., 2011). It is estimated that DWI courts prevented between 47 and 122 repeat DWI arrests over a four-year period.

A more recent study (Mitchell et al., 2012) found significantly better outcomes for DWI court participants compared to offenders subject to traditional probation. The most conservative estimates show that DWI courts reduce drunk driving and general criminal recidivism by 12 percent among this high-risk population. The strongest DWI courts reduce recidivism by as much as 60 percent. The reason for this disparity is explained by the degree to which the programs implement best practices and maintain fidelity to the guiding principles.

Measures of success. The DWI court model has been extensively evaluated. **Common measures of success in these courts include:**

- Cost-savings (e.g., for every dollar spent on the program, the amount that the system ultimately saves as a result of reductions in recidivism, days incarcerated, court costs, etc.)
- Percentage of DWI court participants who are not re-arrested for a new impaired driving offense.
- Percentage of DWI court participants who are not re-arrested for any new criminal offense.
- Percentage of DWI court participants who successfully complete program requirements.
- Percentage of DWI court participants who graduate the program.

L. OTHER PRETRIAL PROGRAMS

1. Smart Pretrial Demonstration Initiative

The Smart Pretrial Demonstration Initiative was developed by the Pretrial Justice Institute (PJI) and was a project funded by the Bureau of Justice Assistance that was active from 2014-2017. This initiative evaluated the impact of moving to a system that relies on risk assessment to inform pretrial release decision-making and demonstrated that risk management strategies can improve pretrial outcomes. Smart Pretrial Initiative is an effort designed to use data-driven, evidence-based approaches to achieve cost-savings and public safety at all phases of the criminal justice system. **The initiative includes three goals known as the “3 M’s of Smart Pretrial” which include:**

- Maximize court appearance
- Maximize public safety
- Maximize liberty

Three sites were chosen as case study sites to pilot this initiative including the City and County of Denver, Colorado; Yakima County, Washington; and the State of Delaware (PJI, 2018). Key stakeholders were convened in each jurisdiction to ensure that improvements would be made to the pretrial systems in a collaborative manner. These stakeholders included (but were not limited to): chief judges, district attorneys/elected prosecutors, public defenders, leadership from the defense bar, jail administrators, county sheriffs, police chiefs, other law enforcement executives, directors of pretrial services, chief probation officers, community corrections officials, elected county officials/county executives, etc. Various best practices were implemented across each pilot site; the findings from Denver’s pilot are detailed below as an example of the success of this initiative.

CITY AND COUNTY OF DENVER

Stakeholders in Denver sought to eliminate gaps in their pretrial system, increase release rates, and maintain public safety. Denver was also one of the first Colorado jurisdictions to implement Colorado's statewide actuarial pretrial assessment tool in 2012. **Best practices that were implemented include (PJI, 2017):**

- Use of a Pretrial Cost-Benefit Analysis Tool – Denver was the first Smart Pretrial jurisdiction to utilize a free, comprehensive web-based tool to inform policy and practice and to collect the information necessary to determine the most advantageous policy decisions. Use of this tool increased the number of defendants released by 10 percent in 2016 (PJI, 2017).
- Retire the bond schedule – the felony money bond schedule was eliminated which allowed individuals to be assessed and have conditions set by a judge prior to their release.
- Ensure a prosecutor is present at the first hearing – an experienced prosecutor began to participate in these hearings and joined the public defender in providing the judge with information to help with decision-making regarding pretrial detention and release decisions; now 100 percent of first appearance hearings are staffed by prosecutors and defense counsel.
- Prioritize release on personal recognizance – the number of individuals charged with felonies who were released on personal recognizance increased from 5 percent to 47 percent between 2012 and 2017; despite these increases, public safety was maintained.
- Calibrate community supervision according to perceived need – the intensity of supervision was adjusted based on the individual's likelihood of pretrial success (i.e., those who were deemed more likely to succeed had their level of supervision adjusted and those who were less likely to succeed had more resources dedicated to their supervision).
- Improve system-wide communication and training – there was increased effort to supply practitioners involved with the case with reports detailing the individual's behavior while under pretrial release; new training materials were also produced to orient new staff members.
- Take steps to institutionalize new practices/policies – administrative orders were issued to assist in the adoption of these new practices and a statewide committee was established to develop future recommendations.

Effectiveness/measures of success. As a result of Denver's Smart Pretrial innovations, the percentage of defendants who were released pretrial rose from 54 percent in 2014 to 64 percent in 2016. The cost-benefit analysis of Denver's four new practices showed that, factoring in the costs of additional failures to appear and arrests for new criminal activity expected through the release of additional persons, Denver achieved a net savings of two million dollars a year (PJI, 2017).

Implementation of this program in Yakima County, WA reported that these strategies yielded a 38 percent increase in pretrial release with no changes to public safety rates, substantial reductions in racial disparities, and much shorter detention times (PJI, 2017). In Yakima County, the pretrial release rate increased 20 percent with court appearance and arrests rates remaining the same. Yakima County was also able to reduce racial and ethnic disparities without increasing public safety risk. The release rate for Latino/Hispanic offenders increased by 26 percent and for those identified as Other (Native American, Black, Asian and Pacific-Islander) releases increased by 24 percent. Delaware was able to strengthen legislative initiatives regarding pretrial programs and formed a legal review committee inclusive of key stakeholders to inform future legislative decisions.

Outcomes as a result of the Smart Pretrial Demonstration Initiative implementation included more knowledgeable decision-makers ranging from local police chiefs to the state supreme court chief justice. The initiative also led to proposed changes to the law and court practices, including the previously mentioned new legislative initiatives and newly adopted best practices for all three sites.

Since the demonstration initiative ended, a new generation of the project has emerged. PJI is now working on Smarter Pretrial for Local Reform which is described as a "pathway developed to support local stakeholders to change pretrial operations in counties, cities, towns, and parishes. It creates a learning environment that guides participants through a structured process that identifies areas for improvement, creates a plan of action, and helps jurisdictions to implement the plan, with an emphasis on creating lasting change" (PJI, 2019).

2. Milwaukee County Intensive Supervision Program (ISP)

A pretrial, intensive supervision program (ISP) implemented in Milwaukee County, Wisconsin, engages repeat impaired drivers in treatment shortly after arrest and provides ongoing monitoring supervision throughout the pretrial period. Participation in the program does not lead to the dismissal or expungement of the charges as a conviction will remain on the individual's record but it does lead to a reduction in sanctions. In a program evaluation report released in 1996 (Jones et al.), results showed that participants in the ISP had substantially lower one-year recidivism rates (5.9 percent) than the comparison group (12.5 percent) that received other sanctions, including jail sentences mandated for repeat offenders. In 2005, continuous alcohol monitoring was implemented as part of the Milwaukee County Intoxicated Driver Intervention Program (IDIP). This program reported that crashes declined by more than 20 percent and alcohol-related injuries and fatalities reduced by over 30 percent in the two years following the program's inception. These services have since been expanded to other counties, primarily in southeastern Wisconsin (Tison et al., 2015).

2 Case Studies

Five jurisdictions were selected as case studies for the purposes of this guide. These jurisdictions were selected based on the identification of key components within their programs that adhere to best practices. **These programs include:**

- DUII Diversion Program in Oregon
- Pretrial Release Program in Isanti County, Minnesota
- Target 25 Pretrial Release Program in York County, Pennsylvania
- California DWI Court, San Joaquin County, California
- DWI Court in Duluth, Minnesota

A. OREGON'S DRIVING UNDER THE INFLUENCE OF INTOXICANTS (DUII) DIVERSION PROGRAM

The Oregon DUII Diversion Program allows eligible offenders the opportunity to participate in an alcohol and drug evaluation and education and rehabilitation program in lieu of being convicted of DUII. According to Troy Costales, Administrator of the Transportation and Employee Safety Division at the Oregon Department of Transportation (ODOT), *“over the last few years there have been significant updates to the process of the DUII Diversion Program. These additions have added teeth to the process and seriousness to the fact that offenders are going the diversion path.”* **Recent updates to the program have focused on interlock requirements that include:**

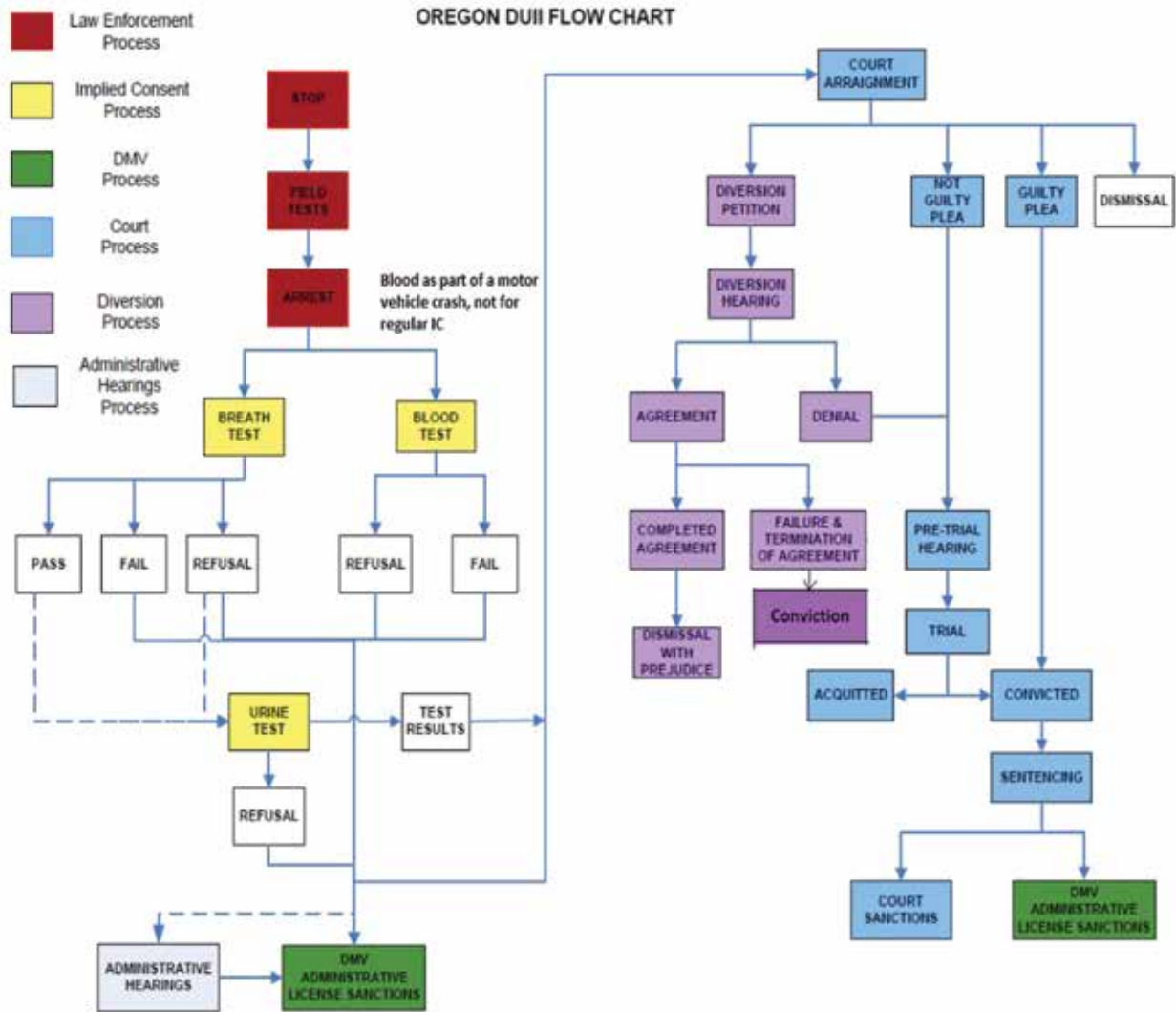
- Establishing a minimum number of months that participants must have an ignition interlock device installed;
- Requiring that removal of the interlock is based on offender compliance; and
- Establishing that ignition interlock circumvention codes to restart the vehicle are allowed on a one-time basis (previously these codes were provided more than once).

1. Oregon Driving under the Influence of Intoxicants (DUII) Law

In the state of Oregon, impaired driving laws or Driving Under the Influence of Intoxicants (DUII) is defined as (a) person who has 0.08 percent or more by weight of alcohol in the blood as shown by chemical analysis of the breath or blood; (b) is under the influence of intoxicating liquor, cannabis, a controlled substance, or an inhalant; or (c) is under the influence of any combination of intoxicating liquor, cannabis, a controlled substance, or an inhalant. Every year in Oregon, approximately 25,000 people are arrested for DUII. Forty percent of all traffic deaths are a direct result of people driving under the influence of alcohol or some other intoxicating substance. Approximately half of the individuals arrested for a DUII in Oregon enter the DUII Diversion Program. However, the number of diversion agreements has decreased from 10,993 in 1998 to 8,632 in 2013 (ODOT, 2016). The Oregon DUII process includes an administrative implied consent (IC) process as well as a court process. Each of these processes are outlined in the figure below.

The passage of recreational cannabis laws in recent years has led to concerns about the potential risk of a larger number of individuals operating motor vehicles while impaired by drugs and/or alcohol. Oregon Governor Kate Brown signed a bill declaring cannabis sales legal to recreational users from dispensaries starting on October 1, 2015. As a result, greater attention has been devoted to the issue of drug-impaired driving and modifications were made to the state's DUII statute.

Figure: Oregon DUII Flow Chart



ADMINISTRATIVE IMPLIED CONSENT PROCESS

Once an individual is arrested for a misdemeanor DUII charge, the implied consent (IC) process commences. Under Oregon’s Implied Consent Law, a driver’s license may be suspended if the individual refuses to submit to a breath, blood, or urine test or if a chemical test indicates that the individual had a BAC level of 0.08 or higher; any detectable amount of alcohol if the individual is under age 21; or 0.04 or greater if operating a commercial motor vehicle. The DUII arrest is recorded by the DMV within 10 days. The individual is then subject to an administrative suspension period dependent upon

the level of the offense and number of priors on his/her record (see **Table 1**). The suspension period begins 30 days after the date of arrest. For the purposes of determining suspension periods, impaired driving convictions in another state count as a previous offense. In addition, an Oregon resident convicted of DUII in another state is subject to the Driver’s License Sanctions in Oregon, even if the offense occurred elsewhere. There are approximately 3,500 breath or blood alcohol test refusals annually. Approximately 16,500 people fail breath or blood alcohol tests yearly.

In some instances, offenders may be eligible for a hardship permit which affords them driving privileges. If eligible at the time of arrest, an officer may issue the offender a 30-day temporary permit which is valid until the IC suspension begins. A hardship license allows the offender to drive during the implied consent suspension after the hard suspension period is over. The hard suspension period is determined by level of offense (**Table 1**). Approximately 1,500 hardship permits are issued annually for IC suspensions and 700 for DUII suspensions resulting from a conviction.

An offender may request a DMV hearing within 10 days of arrest to dispute the DUII charges. The Office of Administrative Hearings coordinates and schedules a hearing with the offender, an administrative law judge, and the arresting law enforcement officer. Hearing outcomes vary based on individual cases and circumstances.

COURT PROCESS

When an individual is arrested for impaired driving in Oregon, a DUII case is electronically filed in court. All state courts in 36 counties are equipped with electronic reporting. **There are four plea options available to DUII defendants:**

1. **Not Guilty** - the court sets an Early Resolution Conference (ERC), which is a settlement conference. If the case does not settle at the ERC, the court schedules the case for trial. At trial, the state must prove guilt beyond a reasonable doubt. A jury, or a judge if a jury is waived in writing, determines whether to convict or dismiss the charge.
2. **Guilty without entering diversion** – defendant enters a guilty plea which results in a DUII conviction. Sentencing includes the minimum penalties for DUII and license suspension.
3. **No Contest without entering diversion** – defendant pleads no contest to the charges which results in a DUII conviction if the district attorney can give the judge sufficient evidence to establish guilt. Sentencing includes the minimum penalties for DUII and license suspension.

4. **Guilty or No Contest and enter diversion** - an offender must be eligible (see DUII eligibility below) to participate in the program to gain entry. An offender must file a Defendant's Declaration of Eligibility (see **Appendix C Oregon DUII Diversion Program Declaration of Eligibility**) and a Petitioner's Diversion Agreement (see **Appendix D Oregon DUII Participant Diversion Petition**) and plead guilty or no contest to the DUII charge. The court holds the plea during the term of diversion. If an offender completes the diversion program within the time allowed, the offender must file a motion to dismiss the DUII charge. If the offender violates the agreement, the court may terminate diversion, enter the plea, and sentence the offender without a trial.

If a defendant is not eligible for DUII diversion, then he/she must enter either a guilty plea or a no contest plea which leads to a conviction and sentence imposed by a judge or proceed to trial to challenge the state's case. If the offender is found guilty then he/she is sentenced by the court and probation conditions are imposed (Table 1). Upon conviction, the DMV is notified, and the conviction is entered into the driver license record. The DUII conviction will remain on the record indefinitely but will only be used for purposes of conviction and sentencing for 15 years.

Once convicted, an offender receives an assessment by Alcohol and Drug Evaluation and Screening Specialists (ADES) and is referred to either alcohol education or treatment depending on the outcome of the assessment. ADES use the Texas Christian University screening tool in addition to documents from the court to make referrals to treatment or education. During this period, offenders are monitored by probation. Offenders are required to install an ignition interlock if they apply for a hardship license during their IC suspension period and at the end of the suspension period as a result of the conviction. If the offender is found not guilty then the charges are dropped.

TABLE 1

Oregon Penalties and Sanctions for DUI Offenses (2019)

INCIDENT <i>(WITHIN 15YRS)</i>	CRIMINAL PENALTIES	ADMINISTRATIVE SANCTIONS <i>(ALS/ALR)</i>	ADDITIONAL PENALTIES
1ST OFFENSE MISDEMEANOR	<ul style="list-style-type: none"> • \$386 filing fees • Min \$2000 fine BAC 0.15+ • 1 Year Agreement Term • Victim Impact Panel 0.15+ • Alcohol/drug education followed by education or treatment 	Failure-90 days (30-day hard suspension with hardship license) Refusal-1 year	<ul style="list-style-type: none"> • \$10,000 fine if minor present • \$650 fine for refusal • interlock required as condition of diversion
2ND OFFENSE 1ST CONVICTION MISDEMEANOR	<ul style="list-style-type: none"> • \$1000 fine • Min \$2000 fine BAC 0.15+ • 2 days jail or 80 hours community service • Probation • Victim Impact Panel • Alcohol/drug evaluation followed by education or treatment • Vehicle impounded up to 1 yr. 	Failure-1 year (90-day hard suspension with hardship) Refusal-3 years (if within 5 years of previous offense) Judicial-1 year	<ul style="list-style-type: none"> • \$10,000 fine if minor present • \$650 fine refusal • interlock for 1 year from end date of suspension • SR22 required for 3 years from end of suspension • Enhanced insurance coverage required
3RD OFFENSE 2ND CONVICTION MISDEMEANOR	<ul style="list-style-type: none"> • \$1500 fine • Min \$2000 fine BAC 0.15+ • 2 days jail or 80 hours community service • Probation • Victim Impact Panel • Alcohol/drug evaluation followed by education or treatment • Vehicle impounded up to 1 yr. 	Failure-1 year Refusal-3 years (if within 5 years of previous offense, no hardship if breath refusal) Judicial-3 years	<ul style="list-style-type: none"> • \$10,000 fine if minor present • \$650 fine refusal • interlock for 1 year from end date of suspension • SR22 required for 3 years from end date of suspension • Enhanced vehicle insurance required

<p>3RD CONVICTION WITHIN 10 YEARS MISDEMEANOR</p>	<ul style="list-style-type: none"> • \$2000 fine • 90 days in jail • Probation • Victim Impact Panel • Alcohol/drug evaluation followed by education or treatment • Vehicle impounded up to 1 yr. 	<p>Failure-1 year</p> <p>Refusal-3 years (if within 5 years of previous offense)</p> <p>Judicial-Permanent Revocation</p>	<ul style="list-style-type: none"> • \$10,000 fine if minor present • \$650 fine refusal
<p>4TH OR SUBSEQUENT CONVICTION (WITHIN 10 YEARS)</p>	<ul style="list-style-type: none"> • \$125,000 fine • Up to 5 years jail; 90 days mandatory minimum • Probation • Victim Impact Panel • Alcohol/drug evaluation followed by education or treatment • Vehicle impounded up to 1 yr. 	<p>Failure-1 year</p> <p>Refusal-3 years (if within 5 years of previous offense)</p> <p>Judicial-Permanent Revocation</p>	<ul style="list-style-type: none"> • \$10,000 fine if minor present • \$650 fine refusal

2. Program Overview

The DUII diversion program is governed by Oregon Revised Statute (ORS) and is uniform throughout the state. Individual county evaluators and treatment providers must follow State of Oregon guidelines. Although most diversion programs throughout the U.S. do not require an offender to plea prior to acceptance into the program, the Oregon DUII diversion program includes a county-based legal agreement with the court whereby the offender must enter a “guilty” or “no contest” plea prior to entry into the program. Most DUI diversion programs enable a DUI case to be expunged from the record if all the terms of the diversion agreement are satisfied. For the Oregon DUII Diversion Program, the arrest is “dismissed with prejudice” and a record of the diversion remains on the offender’s permanent record. This prevents offenders from being eligible for the program more than once.

3. Participant Eligibility

An offender is eligible for diversion under the following conditions:

- No prior diversion or DUII conviction within the past 15 years.
- DUII offense did not involve a crash where someone other than the driver was injured or killed.
- Meets all requirements described in the “Defendant’s Declaration of Eligibility” (see **Appendix C Oregon DUII Diversion Program Declaration of Eligibility**).
- Offender appears in court on the date scheduled for first appearance.

- Offender pleads guilty or no contest to DUII at arraignment.
- Offender files the diversion petition within 30 days of the first appearance date (see **Appendix D Oregon DUII Participant Diversion Petition**).

In addition to meeting the aforementioned eligibility criteria, to be able to participate in the DUII Diversion Program, an offender must waive certain rights including:

- Right to jury trial.
- Right to see, hear, and question all witnesses who testify against the defendant at trial.
- Right to remain silent.
- Right to subpoena witnesses and evidence in defendant’s favor.
- Right to have a lawyer’s assistance at trial.
- Right to testify at trial.
- If the defendant does not testify at trial, the right to have the jury told they cannot hold that decision against defendant.
- Right to require the state to prove guilt beyond a reasonable doubt.
- Right to appeal unless defendant can make a colorable claim of error.
- Right to raise defenses or challenge evidence.

4. DUII Diversion Program Requirements

DUII diversion participants are expected to comply with all program requirements. **While in diversion, participants must:**

- Make payments to the court, which includes a filing fee, surcharge, unitary assessment fee, and a Diversion Program Administration Assessment.
- Complete a screening interview and payment directly to the person that performs the diagnostic assessment. The court provides the name and address of a qualified evaluator in the county to the offender.
- Contact the evaluator within five days and complete the screening interview/diagnostic assessment. The evaluator refers the participant to a treatment or education program most appropriate for their identified needs.
- Complete treatment recommended by the evaluator. If the offender cannot afford to pay for treatment, the offender may be eligible for a waiver of some or all the treatment costs.
- Attend a victim-impact panel program or comparable program.
- Abstain from using alcohol or drugs with the exception of religious sacramental wine.
- Always keep the court advised of their mailing address.
- Sign releases of information which allow the court and the district attorney's office to access diagnostic assessment and treatment reports.
- Install an ignition interlock device on any vehicle driven during the diversion period (unless the participant qualifies for an exception for an employer-owned vehicle or due to a medical condition). This period may be shortened to as little as six months under some conditions.
- Obtain an SR-22 insurance certificate for three years in addition to the interlock requirement.

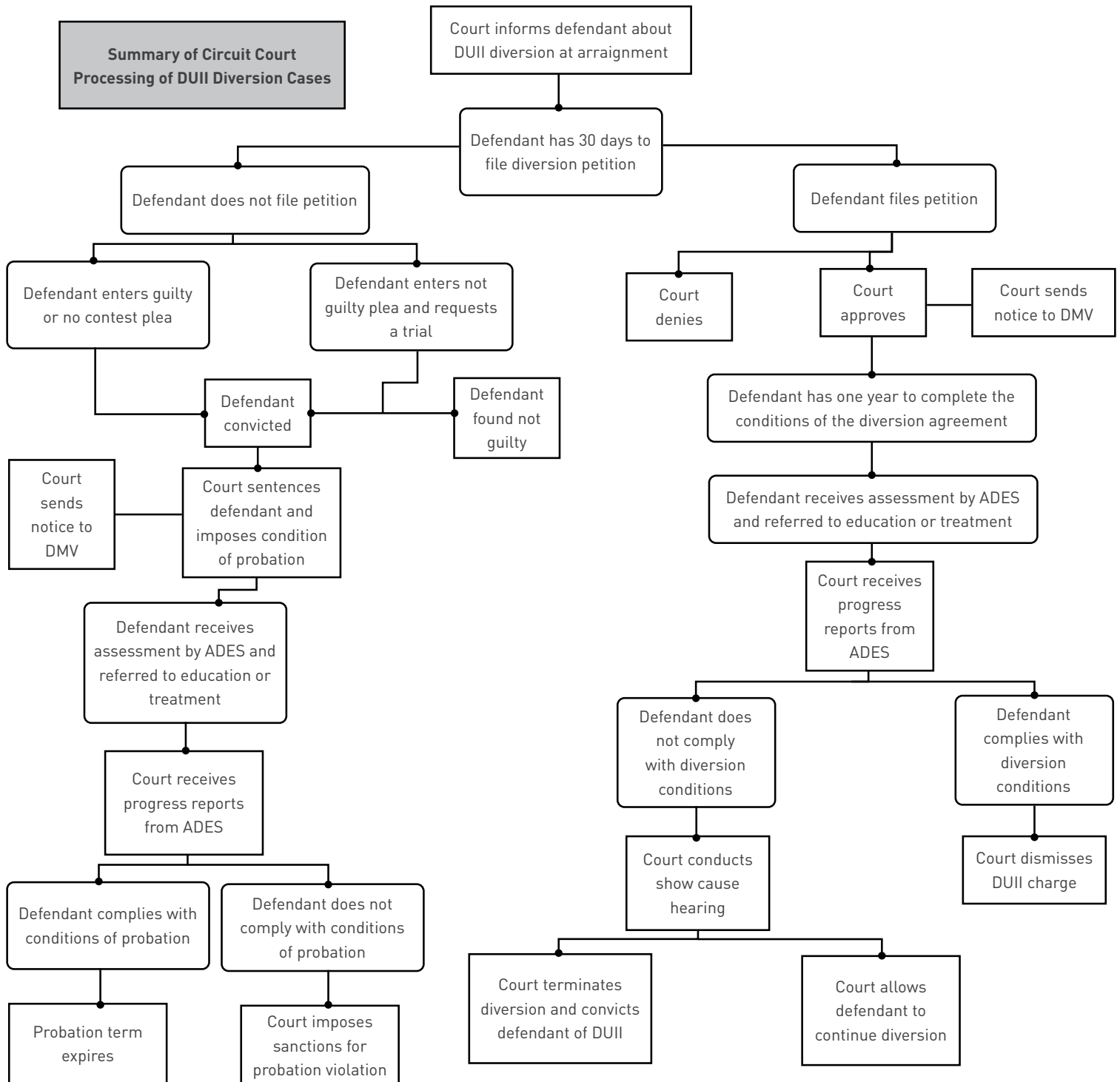
5. Program Process

At arraignment, DUII defendants are informed about the diversion program by the court. There are several incentives for individuals to enter into a diversion agreement including considerably lower court costs and minimal sanctions compared to those imposed on individuals convicted at trial (i.e., the filing fee for participation in diversion is less than a fine for conviction and there is no license suspension period, required jail time, or required community service for participation in the diversion program). Defendants are given 30 days to file a diversion petition. Once filed, the court has the discretion to approve or deny the diversion petition; if approved, individuals enter into diversion and are subject to program requirements (see **Figure 2**).

The participant must fulfill the administrative implied consent suspension before he/she is eligible to install an ignition interlock. Interlock compliance is monitored by an authority appointed by the court. If the participant violates the diversion agreement for any reason, including interlock requirements, the court terminates the diversion agreement, the participant does not receive a trial, and a conviction of DUII is entered on his/her record. The participant is then subject to first offense criminal penalties and suspensions (see **Table 1**).

Each participant must complete an assessment conducted by the ADES specialist who then refers the participant to education and/or treatment as appropriate. Interlock vendors report device installations, removals, and circumvention/tamper attempts to ADES. The court receives monthly progress reports from the ADES. Upon completion of the referred treatment program, a participant receives a DUII treatment completion certificate which is a required component of the diversion agreement. Once all requirements of diversion are completed, the DUII conviction is dismissed. The arrest is maintained on the driver record, but it is not noted as a conviction. The participant's license is reinstated if all DMV suspension requirement terms have been met upon payment of a license reinstatement fee.

Figure 2: DUI Diversion Program Process



If the participant does not comply with diversion conditions including interlock violations, the court conducts a “show cause” hearing to determine whether the offender will be allowed to continue in the diversion program. If the court terminates the diversion agreement, the offender does not receive a trial and is convicted of

DUII. Once a participant is convicted, the court sends notice of the conviction to the DMV and the participant is sentenced and subject to conditions of probation. A license suspension is then recorded on the driver record. The offender may then apply for a hardship license with an interlock.

6. Current Challenges

The Oregon Governor's Advisory Committee on DUII and the Transportation Safety Division of ODOT have identified the following challenges related to the DUII Diversion Program process. Practitioners and policymakers are currently working to identify solutions to address these issues and barriers.

Identification of DUII offenders. As with the rest of the country, there has been a decline in the number of impaired driving arrests in Oregon. This is most likely due to the decline in law enforcement staffing and dedicated traffic teams within the state. In 1987, when Oregon's first IID law went into effect, there were 39,000 + recorded DUII arrests annually. In 2017, less than 17,000 DUII arrests occurred. In addition, current vehicles are equipped with safety features that may affect indicators of impairment that law enforcement observe and use to establish reasonable suspicion to justify a traffic stop. According to Troy Costales, *"a vehicle may not indicate that it is being driven by an impaired driver as it did in the past prior to current technology vehicle enhancements. For example, in vehicles with this technology, weaving and lane departures are often corrected by the vehicle, not the driver. Those who are driving impaired and creating a public risk are not going to be as easily detectable. As a result, law enforcement criteria to identify potentially impaired drivers will change."*

The legalization of cannabis in Oregon has created further complications regarding legal limits, identifying impairment, and increased access to an intoxicating substance (ODOT, 2016). The Transportation Safety Division of ODOT identified that methods of collecting, sharing, and analyzing data between public entities needs improvement. Preliminary data collected by the Oregon State Police showed a significant increase (163 percent) of cannabis-related DUIIs in the six months following legalization. There was also a 111 percent increase in polysubstance DUIIs during this time where cannabis was identified as a contributing factor (ODOT, 2016).

Oregon does not track DUII crimes by impairing substance categories unless related to a diversion or conviction which makes it difficult to determine the magnitude and characteristics of the impaired driving problem, identify trends, and implement targeted countermeasures. There is no historical data regarding cannabis impairment while driving to inform the development of policy or implementation of strategies. Cannabis impairment in Oregon is currently established by proving that the driver has the drug in his/her body at the time of driving through blood or urine testing combined with officer observations of impairment based on performance of the standardized field sobriety tests (SFSTs) and a Drug Recognition Expert (DRE) evaluation and subsequent opinion (ODOT, 2016). There have been several changes in recent years regarding how recreational and medical use of cannabis fits into the Oregon DUII Diversion Program. Currently, eligibility for diversion enrollment for drug-impaired drivers is determined by the court on a case-by-case basis.

Data issues. Data issues commonly occur within diversion programs. In Oregon, interlock orders as a result of a conviction are easily tracked through the DMV however, the Oregon DUII Diversion Program does not have the ability to track interlock compliance statewide since there is no centralized data repository for the diversion program. Oregon is currently taking steps to increase data accessibility. The Oregon Judicial Information Network (OJIN) was recently updated. OJIN establishes the ability to track several different offenses including DUII. State level and delegated courts have been transitioning to the OJIN system recently, but full integration of this system statewide has not been implemented. As a result of varying levels of data availability and data-sharing, ADES may not obtain all the information for their participants regarding offenses other than the DUII.

Ignition interlocks. The court has the discretion to either require or waive an interlock requirement if the impaired driving offense does not involve alcohol. The Governor's Advisory Committee on DUII recommended that the interlock requirement should be based on the ADES evaluation and whether alcohol is part of the participant's abuse file, and not solely on whether the initial stop and arrest involved alcohol. Also, currently the interlock threshold is .00 BrAC for diversion participants. The interlock industry has established that any reading below a .02 cannot be considered accurate. Legislation to change this threshold will be proposed.

7. Key Program Components for Success

There are several components of the Oregon DUII Diversion Program that follow best practices and contribute to a strong program framework that enhances public safety. ODOT, the Governor's Advisory Committee on DUII, MADD, Oregon Transportation Safety Committee, DUII Multi-Disciplinary Training Task Force, and many partners within treatment, prevention education, law enforcement, victim advocates and prosecution are consistently monitoring impaired driving programs and identifying ways to improve them. **The key components that have led to the success of the Oregon DUII Diversion program include:**

- The Oregon DUII Diversion Program is governed by Oregon Revised Statute which ensures uniformity throughout the state unlike most diversion programs that vary by county.
- Individual county evaluators and treatment providers must follow State of Oregon guidelines. Since most diversion programs vary by jurisdiction, evaluator and treatment criteria may differ which could lead to lax practices or poor quality services.
- The offender must enter a "guilty" or "no contest" plea prior to program entry.
- An evaluation is conducted by ADES to determine appropriate level of education and/or treatment for the participant.
- Alcohol education and/or treatment is required based on the outcome of the ADES evaluation.

- The DUII arrest is “dismissed with prejudice” and a record of the diversion remains on the offender’s permanent record. This prevents offenders from being eligible for the program more than once.
- The DMV has changed the driver record retention period where the DMV no longer purges records after a certain time period. This allows for more accurate identification of prior offenses.
- The participant must install an ignition interlock in their vehicle as a condition of diversion. Program exit is compliance-based which ensures that participants have to demonstrate sustained behavior change as it relates to drinking and driving.
- Participants are closely monitored by probation throughout the program including regular random chemical tests to confirm sobriety.
- The Oregon DUII Diversion Program term is at least one year with the possibility for extension based on need.

In addition to reducing the number of DUII offenders that will be released without any monitoring or supervision prior to adjudication, the Oregon DUII Diversion Program has shown that as a result of participation in the program, eighty to ninety percent of the people stopped for DUII have a documentable substance abuse disorder that will be discovered in their assessment if re-arrested.

B. PRETRIAL RELEASE PROGRAM IN ISANTI COUNTY, MN

In February of 1993, Judge James Dehn, a presiding Judge in Isanti County, Minnesota, was the first judge in the country to order Remote Electronic Alcohol Monitoring (REAM) for repeat DWI offenders during the pretrial period. Historically, during this time, repeat DWI offenders were only required to post a set bail amount and were released back into the community without any restrictions or supervision while awaiting their scheduled court date. Due to the backlog of cases in misdemeanor courts, it was common for court dates to be scheduled several months to a year after the defendant posted bail. Judge Dehn recognized that this process was flawed, and changes were needed: *“We knew based on recidivism data that these offenders continue to drink and drive and commit more DWI offenses while awaiting trial. Electronic home monitoring afforded offenders a no-cost alternative to bail.”*

The impetus for the creation of the pretrial electronic home monitoring program was inspired by a case involving a habitual repeat offender who appeared before Judge Dehn. This offender posted bail for his first DWI and accrued an additional three DWIs while awaiting his court appearance for the initial impaired driving charge. Prior to the establishment of \$12,000 maximum bail in non-felony cases established in 1987 (Minnesota Statute Section 629.471 Sub 2), judges in Minnesota had the ability to impose unlimited bail. At this offender’s 4th DWI bail appearance, Judge Dehn assigned bail at \$50,000 because, as he stated, *“we knew this offender was a clear threat to public safety.”* At the suggestion of the offender’s defense attorney, Judge Dehn allowed him to submit

to multiple daily chemical tests from home to allow the offender to maintain his employment. As a result, the offender remained abstinent throughout the pretrial period, successfully completed treatment, and never committed another impaired driving offense. This case provided the mechanism that led to the implementation of electronic home monitoring for qualifying offenders during the pretrial period.

1. Minnesota Driving While Intoxicated Law

As of June 2016, of all Minnesota residents, 619,319 have a DWI on record. In addition, one in nine persons in Minnesota, including those with licenses revoked and cancelled, have a DWI. One in 21 residents (260,538) have two or more impaired driving arrests, and one in 45 (121,328) have three or more arrests.

Similar to all states except Utah, the legal alcohol limit for drivers in Minnesota is 0.08. It is always illegal to drive with an alcohol-concentration level of 0.08 or above; however, motorists can be arrested with a BAC below 0.08 if they demonstrate impaired driving behavior. If a motorist’s alcohol-concentration is at 0.08 or higher, it is a criminal offense that can be classified as a misdemeanor or felony depending on the facts of the case and the individual’s driving record. It is also a violation of civil law that triggers automatic driver license revocation for up to one year.

Minnesota’s DWI law stipulates that it is a crime to:

- **Drive, operate, or be in physical control of any motor vehicle anywhere in the state while:**
 - o under the influence of alcohol, a controlled substance, or an intoxicating substance (when the person knows, or has reason to know, that the substance has the capacity to cause impairment), or any combination of these;
 - o having a blood alcohol concentration (BAC) of .08 or more at the time or within two hours of driving;
 - o having any amount or the metabolites of a schedule I or II controlled substance, other than cannabis, in the body; or
 - o if the vehicle is a commercial motor vehicle, having a BAC of .04 or more at the time or within two hours of driving;
- refuse to submit to a chemical test of the person’s blood, breath, or urine under Minnesota Statutes, section 169A.52; or
- refuse to submit to a chemical test of the person’s blood or urine pursuant to a warrant under Minnesota Statutes, section 169A.51.

The consequences for driving impaired varies for each DWI offender, but a typical penalty for a first-time offender is potential jail time and loss of license for a minimum of 30 days up to a maximum of one year. Costs can be as high as \$20,000 when factoring court costs, legal fees, fines, monitoring, and increased insurance premiums.

Other important aspects of Minnesota's DWI statutes include penalty enhancements:

- First-time DWI offenders arrested at twice the legal limit and above (0.16 BAC) and second-time DWI offenders will be required to install an ignition interlock or lose driving privileges ranging from one to two years depending on offense level.
- DWI offenders with three or more offenses in a 10-year period will be required to install an ignition interlock for a period of three to six years, or they will never regain driving privileges.
- Offenders eligible to install an ignition interlock will regain full or limited driving privileges immediately after the offense, ensuring they are driving with a valid license and not a threat on the roadway.
- The blood alcohol-concentration level when enhanced administrative sanctions are applied is lowered from 0.20 percent to 0.16. The average BAC level in DWI cases in Minnesota is 0.15.

Implied Consent Law. A person who drives, operates, or is in control of any type of motor vehicle anywhere in the state consents to a chemical test of breath, blood, or urine for the purpose of determining the presence of alcohol or controlled or intoxicating substances in the person's body.

Before an officer can request a breath test or obtain a warrant for a blood or urine test, the officer must have probable cause to believe that a person has been driving while intoxicated. If a suspect refuses to cooperate, cannot cooperate because of injury or the level of intoxication, or these screening tests establish probable cause to believe that a person was driving while intoxicated, the officer may arrest the person and either demand a more rigorous evidentiary test of the person's breath or seek a warrant to obtain a sample of the person's blood or urine. Before administering the breath test, the officer must read the implied consent advisory statement to the suspect explaining that testing is mandatory, test refusal is a crime, and the person has the right to consult an attorney before taking the test. Before administering a blood or urine test, an officer must obtain a warrant approved by a judge and explain that test refusal is a crime. The officer can require a person to provide a blood or urine sample if there is probable cause of a criminal vehicular operation (CVO) violation. If the person is unconscious, the chemical test may be administered pursuant to a valid warrant.

The officer chooses whether the test will be of the person's breath, blood, or urine. A person who refuses a blood test must be offered a urine test, and a person who refuses a urine test must be offered a blood test. If blood and urine tests are analyzed by the Bureau of Criminal Apprehension (BCA), the laboratory may certify chemical test results directly to the Department of Public Safety (DPS).

2. Administrative Sanctions

The law provides for three administrative sanctions, which can commence immediately upon arrest – driver's license revocation, vehicle plate impoundment, and vehicle forfeiture (see **Table 2**). Administrative sanctions are intended to be an immediate consequence for driving impaired. While the imposition of criminal penalties can take several months or longer, administrative sanctions can be applied proximal to the traffic stop. Administrative sanctions are civil in nature and any related court proceedings are generally held separate from the criminal trial.

Upon arrest, if a person refuses or fails a chemical test for intoxication, the law enforcement officer reports the refusal or result to the commissioner of public safety and the commissioner revokes the person's license. First-time offenders arrested with a BAC of 0.16 and above are required to install an ignition interlock for one year. Offenders with three or more offenses are required to install an interlock for three to six years, or they will never regain driving privileges. Repeat DWI offenders, as well as first-time offenders arrested with a BAC of 0.16 and above, must install an interlock in order to regain legal driving privileges, or face at least one year without a driver's license.

LICENSE REVOCATION

A person's driver's license can be withdrawn immediately following any test failure or refusal. The person is given a seven-day temporary license to drive before the withdrawal becomes effective. The period of license withdrawal is based on the current offense and number of prior impaired incidents.

TABLE 2

Minnesota DWI Offense License Withdrawal Terms

DWI	IMPAIRED DRIVING INCIDENTS (UPDATED JUNE 2018)				
	1ST	2ND IN 10 YEARS OR 3RD ON RECORD	3RD IN 10 YEARS OR 4TH ON RECORD	4TH IN 10 YEARS	5TH + ON RECORD
	REVOCATION		CANCELLED AND DENIED		
BAC UNDER .16	90 days*/180 days if under 21	1 year	3 years	4 years	6 years
BAC .16 OR OVER	1 year	2 years	3 years	4 years	6 years
TEST REFUSAL	1 year*	2 years	3 years	4 years	6 years

*The revocation period may be reduced upon a conviction Minn Stat. 169A.54.
(<https://www.revisor.mn.gov/statutes/?id=169A.54>)

TABLE 3

Criminal Vehicular Operation Involving Alcohol License Withdrawal Terms

CRIMINAL VEHICULAR OPERATION INVOLVING ALCOHOL	IMPAIRED DRIVING INCIDENTS (UPDATED JUNE 2018)		
	1ST	2ND IN 10 YEARS	3RD IN 10 YEARS OR 4TH+ ON RECORD
BODILY HARM OR SUBSTANTIAL BODILY HARM	2 years	4 years	6 years
GREAT BODILY HARM OR DEATH	6 years	8 years	10 years

Offenders may appeal the administrative license revocation, either administratively to DPS and/or judicially through the court. A revocation following a failed or refused breath test follows the guidelines in [Minnesota Statutes, section 169A.53](#). A revocation following a failed or refused blood or urine test follows the guidelines in [Minnesota Statutes, section 171.177](#). Certain offenders have the option of regaining driving privileges sooner if they apply for a limited license or enroll in the ignition interlock device program.

RESTRICTED LICENSE

Limited Licenses/Work Permit (Cancelled-IPS drivers only)

Those revoked or cancelled offenders may be eligible for a limited or restricted license during the revocation or cancellation period. A limited license is a paper license that is issued to a person while their driving privileges are withdrawn. Limited licenses allow driving to work, school and abstinence-based support programs. In addition, a program participant may also drive to and from a service center for ignition interlock servicing and calibration. If the participant's license has been cancelled and denied, the participant must be on a limited license for a minimum of one year with no program violations before receiving a restricted license on ignition interlock. A limited license can only be used 6 days a week and no more than 60 hours. A restricted license allows a person to drive only vehicles equipped with an ignition interlock. Depending on the number of prior offenses, a person with a restricted license will have either limited or full driving privileges while on ignition interlock.

Offenders who have had their driver's license revoked for an impaired driving incident may choose to wait out the revocation period and not drive or apply for issuance of a limited or restricted license. Upon expiration of the revocation period, the offender may apply for reinstatement of full driving privileges.

An offender whose license has been cancelled is not eligible for reinstatement of driving privileges until the commissioner of public safety receives proof of abstinence through installation of an ignition interlock device. Cancelled drivers, unlike revoked drivers, cannot "wait out" the cancellation period if they want to regain driving privileges. The offender's current and past record determines the available license options and, in certain cases, the waiting period.

Treatment or other programs (if applicable) must be completed in order to be eligible for the restricted driver's license with ignition interlock. If the participant has been on a limited license for a minimum of one year but is still attending treatment or other programs, the participant must remain on the limited license until treatment or other programs are completed. Once complete, the treatment center, assessor, or alcohol/drug counselor must fax verification of successful completion of treatment or other programs directly to DVS. If no treatment was necessary, a chemical use assessment stating that treatment was not required must be on record at DVS. After reviewing the verification of successful completion of treatment or other programs and the participant's monitoring reports, a driver's license with the ignition interlock restriction will be issued.

In addition to limited and restricted licenses, there are other administrative sanctions available. An impaired driving violation involving an aggravating factor can result in vehicle plate impoundment. The minimum term of plate impoundment is one year, during which time the violator may not drive any motor vehicle unless the vehicle displays specially coded plates and the person has been validly re-licensed to drive. Minnesota's DWI law provides for vehicle forfeiture for a "designated license revocation" or "designated offense," which is typically the third DWI violation within a ten-year period, although with one or more aggravating factors, a person's second-time or even first-time violation might qualify as well.

IGNITION INTERLOCKS

Minnesota's strengthened DWI sanctions aim to enhance road safety to prevent alcohol-related crashes that account for one-third of all Minnesota traffic deaths annually (see **Table 4**). The stronger DWI sanctions include the use of ignition interlocks to give DWI offenders a chance to regain driving privileges by ensuring safe and legal driving. As noted previously, interlocks are highly effective in reducing recidivism while installed and if paired with treatment interventions, can facilitate long-term behavior change.

Effective July 1, 2011, first-time DWI offenders with a BAC of 0.16 or above and all second-time offenders have the option of regaining their driving privileges by participating in the Minnesota Ignition Interlock Device Program. Drivers whose licenses are cancelled and whose driving privileges are denied as "inimical to public safety" are required to enroll in the Ignition Interlock Device Program for a period of three to six years in order to regain full driving privileges. Drivers having received a notice of revocation or cancellation prior to July 1, 2011, have the option of enrolling in the Minnesota Ignition Interlock Device Program and must sign a waiver to participate.

TABLE 4

Alcohol Offense Ignition Interlock Sanctions/Options

LEVEL OF OFFENSE	OPTIONS
<p>1ST DWI OFFENSE WITH A BAC UNDER 0.16 OR TEST REFUSAL</p>	<p>Apply for an ignition interlock restricted license with full driving privileges; after a 15-day waiting period (90 days if under age 18), apply for a limited license; or not drive during the revocation period (i.e., may “wait out” the revocation period before regaining driving privileges).</p>
<p>1ST DWI OFFENSE WITH A BAC OF 0.16 OR GREATER; 2ND DWI OFFENSE IN 10 YEARS; OR, 3RD DWI OFFENSE ON RECORD</p>	<p>Apply for an ignition interlock restricted license with full driving privileges; or not drive during the revocation period (i.e., may “wait out” the revocation period before regaining driving privileges).</p>
<p>3RD IMPLIED CONSENT OR DWI OFFENSE IN 10 YEARS; OR, 4TH OR SUBSEQUENT DWI OFFENSE ON RECORD</p>	<p>Apply for an ignition interlock restricted license with limited driving privileges for at least one year; or not drive during the cancellation period (cannot seek reinstatement of driving privileges under this option).</p>
<p>CRIMINAL VEHICULAR OPERATION <i>(CVO)</i></p>	<p>Apply for an ignition interlock restricted license with limited driving privileges for at least one year; or not drive during the cancellation period (cannot seek reinstatement of driving privileges under this option).</p>

Revoked Status. During the last 90 days on the ignition interlock device program, a person whose driver's license is revoked must not have any failed breath tests (see page 10) recorded on the device. A failed breath test may extend the end of the program by 90 days from the date of the failed recorded breath test.

Cancelled Status. A person whose driving privilege is cancelled and denied must not have any failed breath tests recorded on the device during the length of the program. A failed breath test will require the participant to re-enroll in the program and start their revocation time over. In addition, a person whose driving privileges are cancelled and denied must demonstrate abstinence by regular and consistent use of the interlock device. The Department defines regular and consistent use as evidenced by 30 successful initial breath tests per month (Minnesota Rule 7503.1725, Subp. 5(B)). This does not include rolling retests. If a participant's license is withdrawn for an unrelated offense during the time on the interlock program, the participant can continue to meet this requirement by blowing into the device but not driving the car. Failure to provide 30 initial breath tests per month will result in an extension of the program.

Successful completion of the program (as proof of abstinence) is required to regain driving privileges for a person whose license has been cancelled and denied as a result of three or more impaired driving incidents in ten years or four or more incidents on record; or, for criminal vehicular injury involving alcohol.

The overall ignition interlock program length is dependent on the person's revocation or cancellation period but may be extended for violations. Program violations include: (1) tampering with or circumventing an ignition interlock device; (2) driving a vehicle not equipped with an ignition interlock device. These violations are also misdemeanor offenses. Also, anytime the use of alcohol is detected or there is sufficient cause to believe a cancelled person consumed alcohol or used drugs, the entire period restarts. For persons on revoked status, there must be no failed breath tests during the last 90 days of the program otherwise, participation is extended until the participant can demonstrate long-term compliance. The costs associated with installation, servicing/monitoring, and removal of the interlock is the responsibility of the offender. Discount rates, through ignition interlock providers, may be available to indigent offenders.

3. Court Process

Criminal charges trigger a separate action in criminal court. A criminal conviction can result in incarceration, probation, fines, chemical dependency treatment, and monitoring. Every person convicted of DWI or a reduced charge must submit to a chemical use assessment administered by the county prior to sentencing. If the conviction is for a repeat offense within ten years or the conviction was for DWI with a BAC of .16 or more, the court must order the person to submit to the level of treatment care recommended by the assessment. DPS rules outline treatment requirements.

The offender must pay for the cost of the assessment directly to the service provider and pay a \$25 assessment charge imposed by the court. There is an additional \$5 surcharge for repeat violations within five years.

Upon conviction for DWI, repeat offenders are subject to the following mandatory minimum criminal penalties (see Table 5 for additional details):

- Second DWI offense within ten years – 30 days of incarceration, at least 48 hours of which must be served in jail/workhouse, with eight hours of community work service for each day less than 30 served.
- Third DWI offense within ten years – 90 days of incarceration, at least 30 days of which must be served consecutively in a local jail/workhouse.
- Fourth DWI offense within ten years – 180 days of incarceration, at least 30 days of which must be served consecutively in a local jail/workhouse.
- Fifth or subsequent DWI offense within ten years – one year of incarceration, at least 60 days of which must be served consecutively in a local jail/workhouse

High-BAC offenders (.16 or more) may incur a penalty assessment up to \$1,000 in addition to any fines or other charges. The court may order the offender to spend the remainder (non-jail portion) of the mandatory minimum sentence under Remote Electronic Alcohol Monitoring (REAM) or on home detention. The court may also sentence repeat offenders to a program of intensive probation where the offender is required to consecutively serve at least six days in jail/workhouse. The remainder of the minimum sentence may be served on home detention. As another alternative, the court may require the offender to enter the ignition interlock program as a condition of probation. Long-term monitoring is available to most third-time DWI offenders and repeat offenders under age 19. When the court stays part or all of a jail sentence, it must order the offender to submit to REAM (if available) for at least 30 consecutive days each year of probation.

TABLE 5

Court Sanctions Based on Offense Level

OFFENSE	SANCTIONS	FACTORS DETERMINING LEVEL OF OFFENSE
FOURTH DEGREE DWI	Misdemeanor; punishable by up to 90 days of jail and a \$1,000 fine	DWI violation without test refusal or any aggravating factors*
THIRD DEGREE DWI	Gross misdemeanor; punishable by up to one year of jail and a \$3,000 fine	DWI violation with test refusal or one aggravating factor
SECOND DEGREE DWI	Gross misdemeanor; punishable by up to one year of jail and a \$3,000 fine	DWI violation with test refusal and one aggravating factor; or DWI violation with two aggravating factors
FIRST DEGREE DWI	Felony; punishable by up to seven years' imprisonment and a \$14,000 fine	Fourth impaired driving incident within ten years; or following a previous felony DWI or criminal vehicular operation conviction

First degree (felony) or second degree DWI offenders are taken into custody and detained until the first court appearance, at which time the court generally sets bail and specifies conditions of release.

Offenders charged with any of the following misdemeanor offenses can obtain pretrial release from detention by posting maximum bail or by agreeing to abstain from alcohol and to submit to remote electronic alcohol monitoring (REAM) involving at least daily breath alcohol measurements:

- Third implied consent or DWI violation within ten years;
- Second violation, if under 19 years of age;
- Violation while already cancelled as inimical to public safety for a prior violation; or,
- Violation involving a BAC of .16 or more, or a child under 16 is in the vehicle.

Further conditions apply to a person charged with a felony (four or more offenses within ten years), including:

- Impoundment of the vehicle registration plates, or impoundment of the off-road recreational vehicle or motorboat itself, if one was being driven;
- Requirement for reporting at least weekly to a probation officer, involving random breath alcohol testing and/or urinalysis; and,
- Requirement to reimburse the court for these services upon conviction for the crime.

FELONY DWI

Under Minnesota’s felony DWI law, a person who commits first-degree DWI is guilty of a felony and may be sentenced to imprisonment for not more than seven years (plus the term of conditional release); a fine of not more than \$14,000; or both.

If the court stays execution of the mandatory prison sentence, then it must apply the mandatory penalties for non-felony DWI offenses and must order that the person submit to long-term alcohol monitoring and comply with the level of treatment prescribed in the chemical dependency assessment. If the person violates any condition of probation, the court may order that the stayed prison sentence be executed.

The Minnesota sentencing guidelines presume a stayed sentence of 36 months, 42 months, and 48 months for a felony DWI conviction for a person with zero, one, or two criminal history points respectively, and they specify a presumptive commit-to-prison for a person with a criminal history score of three or more.

A person sentenced to incarceration in prison for felony DWI is not eligible for early release unless the person has successfully completed a chemical dependency treatment program while in prison. The court must place a felony DWI offender released from prison on conditional release for five years, under any conditions that the commissioner of corrections opts to impose, including an intensive probation program for repeat DWI offenders. If the person fails to comply with the conditions, the commissioner may revoke the release and return the person to prison.

4. Program Overview

The Remote Electronic Alcohol Monitoring (REAM) program is designed to reduce the incidence of recidivism among high-risk DWI offenders that are more likely to re-offend during the pretrial release period. Repeat DWI offenders who agreed to electronic home monitoring are released on their own promise to appear (PTA). During the early implementation of the program, a Mitsubishi electronic video telephone was used to monitor repeat DWI offenders. Upon receiving a call, the instrument would verify the offender's picture and confirm compliance with the house arrest court order.

Initially, there was a tremendous amount of push back and scrutiny from other judges regarding implementation of this program. Despite opposition from colleagues, Judge Dehn was able to receive legislatively mandated funding for the program (as described previously) and moved forward with the program. Several offenders placed on electric home monitoring were taken off by judges skeptical of the program and assigned to random chemical testing. However, random chemical testing rarely occurred since most jurisdictions lacked the manpower to implement this testing. Judge Dehn noted that *"the defense attorneys and other staff would chuckle whenever random chemical testing was ordered because they knew it would never happen. Eventually, all Minnesota judges came to embrace the home electronic monitoring program and it has been routinely ordered for several years."* Since 1993, thousands of repeat DWI offenders in Isanti County, Minnesota have been placed on electronic home monitoring during the pretrial period, and several pretrial programs across the country have adopted this concept.

5. Participant Eligibility

Any repeat DWI offender, high-BAC DWI offender, or aggravated DWI offender including felony DWI offenders are eligible to enter the REAM pretrial program. REAM now incorporates the use of cell phones to test throughout the day. This alleviates confinement to the home and allows the participant to test throughout the day from any location.

6. Current Program Requirements

To remain within the program and avoid negative consequences there are three main requirements that participants must adhere to. These include:

- Abstinence from the use of alcohol and any illegal substances.
- Compliance with pretrial electronic home monitoring.
- Compliance with probation supervision.

7. Program Process

DWI offenders who are eligible for monitoring appear before a judge within 36 hours of arrest. The judge may impose maximum bail or offer the pretrial electronic home monitoring to offenders. Those offenders that agree to home monitoring are ordered to be tested three times a day; before and after work, and late at night. This schedule was determined early on by Judge Dehn rather than

twice-daily testing, however during the initial implementation of this program, some jurisdictions opted for this approach. Judge Dehn stated that there were limitations to this approach because *"in the early days of this program, other jurisdictions in Minnesota that allowed only twice-a-day testing found the offenders would recidivate at a higher level because offenders figured out that they could strategically drink and have enough time to allow the alcohol to burn off by the next retest."*

Each jurisdiction has discretion regarding device monitoring and supervision of offenders. Most jurisdictions utilize private vendors to monitor device actions, however some smaller jurisdictions purchase the instruments and the sheriff monitors device actions in addition to supervising REAM participants. Probation acts as the monitoring agent for the program. Most probation departments appoint one agent to handle all pretrial monitoring participants. Once the probation agent is notified by the device vendor of a violation (e.g., either that the offender was not home during one of the prescribed calls during the day or that the offender tested positive for consuming alcohol), the probation agent, accompanied by law enforcement, travels to the home of the offender and makes an arrest. The offender is arrested with probable cause based on the failed test ordered by the court. The offender is required to appear before the court within 36 hours of arrest. The court will either impose maximum bail or allow the offender to re-enter the electronic home monitoring program. According to Judge Dehn, *"most people, once they get caught and understand that they will get caught will comply. We have found over the years, unless the offender had a significant drinking problem, they self-corrected and completed the remainder of the pretrial period without re-offending."*

8. Funding

The average cost of REAM for participants is approximately \$10-15 per day. Legislatively mandated funding is available for REAM. A REAM grant is available to all counties within the state of Minnesota. Approximately 12 million dollars in reinstatement fees are collected each year to fund the REAM pretrial program through these grants. Approximately \$675,000 is available per year for each jurisdiction. Each jurisdiction that applies for REAM funding will be awarded based on availability of funds. Within those jurisdictions that have been awarded these funds, DWI offenders that agree to the REAM program may apply for financial assistance. The amount of assistance received is determined by annual income after review of income tax returns.

9. Intensive In-Jail Treatment Program

In addition to REAM, Judge Dehn recently developed an intensive in-jail treatment pretrial program for those DWI offenders who cannot afford bail or who refused REAM and are required to remain in jail until their scheduled court appearance. Here an effective intensive "out-patient" treatment program is available for DWI offenders within the jail. Judge Dehn once again saw an opportunity

to improve practice. He notes that *“while they’re incarcerated waiting for trial, this program gives offenders the opportunity to start a treatment program and get treatment during this “dead time.” This is one of the most effective ways to assist an offender in changing their behavior.”*

To facilitate the provision of services, the court contracts with a treatment provider to provide interventions to incarcerated DWI offenders awaiting trial. Men and women are placed in separate treatment programs. Contracted treatment providers will give “credit” for this time when these offenders are required to complete treatment as a condition of probation upon conviction. For example, if an offender is accepted into an in-jail intensive 26-week program and is incarcerated for 10 of those 26 weeks, usually, the offender pleads guilty and moves to a post-conviction program during his/her probation period. Those 10 weeks invested into the program during their incarceration is transferred into the post-conviction treatment program. However, in-jail and post-conviction treatment programs must be compatible for this to occur.

Prior to the implementation of this program, DWI offenders would often request a conditional release from jail to pursue treatment. Upon release, these offenders frequently did not follow through in entering into a treatment program which resulted in a warrant being issued for their arrest. This also presented a public safety threat to the community. When Judge Dehn created the in-jail treatment program, it took away *“all of their excuses for not partaking in treatment. Their ability to “con” the court is minimized.”*

Since the inception of this program, each participating DWI offender opted to plead guilty and receive further treatment rather than fight the charge in court. As a result, Judge Dehn was able to show the effects of treatment in jail and demonstrate that *“participants want to move on, they don’t want to fight their addiction anymore, they want to get on with their treatment and their life.”* Recidivism rates for this program remain unknown as of the drafting of this report. There is no follow-up with these offenders and record-keeping for DWI offenders enrolled in this program is not available. It is recommended that reporting of those offenders participating in this program is filed within court records. It is also recommended that this program is evaluated to identify program recidivism rates over time. Judge Dehn currently shares this model with judges from across the country through his position as National Judicial College faculty.

10. Minnesota Statewide Pretrial Services - Recent Initiatives

The Minnesota Judicial Council Members identified the pretrial phase as an area where policymakers, agency administrators, and practitioners could benefit from guidance on how best to implement and/or strengthen services for impaired drivers. As part of the Minnesota Judicial Branch’s Strategic Plan, the Minnesota Judicial Council launched a Pretrial Release Initiative that utilizes and studies evidence-based tools to be used by judges when making decisions regarding pretrial release conditions. These tools include

pretrial evaluation forms to be used in each county (Minn. Stat. § 629.74) and a Pretrial Release Evaluation (Minnesota Judicial Council policy 524). This initiative also provides methods to collect information and document procedures conducted throughout the pretrial process to inform the evaluation process.

MINNESOTA PRETRIAL ASSESSMENT TOOL

In January 2018, the Minnesota Judicial Council approved the Minnesota Pretrial Assessment Tool (MNPAT) – see [Appendix E](#) to learn more. All counties, with the exception of Anoka, Cass, Hennepin, Sherburne, and Wright counties, began to use the MNPAT at the beginning of 2018. MNPAT is utilized to ensure that judges have the most predictive and least biased information available and that this information is also objective, accurate, and useful and can be used to inform pretrial release decisions.

PRETRIAL RELEASE EVALUATION

The Pretrial Release Evaluation involves the collection and analysis of a defendant’s information on factors impacting his/her likelihood to appear and risk to public safety. The evaluation may be conducted by local corrections or their designee (pretrial services, jail administration, or law enforcement). The Pretrial Release Evaluation adopts the use of a statewide pretrial evaluation form and MNPAT and directs the use of pretrial risk assessment tools in Minnesota District Courts. The statewide pretrial evaluation form and MNPAT are approved for use in all counties in Minnesota and must be used when conducting the pretrial evaluation for certain crimes as required by Minn. Stat. § 629.74. The form must be submitted to the court before the defendant’s first appearance.

PRETRIAL RELEASE INITIATIVE IMPLEMENTATION STEERING COMMITTEE

The Minnesota Judicial Council has established the Pretrial Release Initiative Implementation Steering Committee to implement the new statewide pretrial risk assessment tool and form. The Steering Committee is made up of public and private attorneys, probation representatives and law enforcement, court administration, and judges.

The Steering Committee first began meeting in March 2018. **To date the committee has made the following recommendations:**

- The Court Services Tracking System (CSTS) was selected as the case management system where data from the Minnesota Pretrial Release Evaluation Form will be entered and stored for use in the validation study.
- The modifications needed to the CSTS system to ensure data is entered and stored properly will be available in February 2019, but a mail-merge form can be created in CSTS until that time. The form can be found [here](#).
- The Minnesota Pretrial Evaluation Form (the Minnesota Pretrial Assessment Tool (MNPAT)) was to be implemented in each county by December 1, 2018. Counties could implement the

MNPAT any time after October 5, 2018 and before December 1, 2018. Before using the MNPAT, all stakeholders must receive training. Training materials, including an implementation training guide, can be found [here](#).

- The Committee acknowledged that each county may have unique implementation issues. To ensure a smooth rollout of the MNPAT, each county should have a “county leader” who oversees the rollout. That stakeholder can use training materials to assist in the rollout, including an implementation training guide (access [here](#)).
- [Judge and probation district champions](#) have also been identified to help the designated county leaders in administering the program.

The Steering Committee is now developing a rollout schedule for the MNPAT. The plan is for the MNPAT to be validated through the State Court Administrator’s Office to promote consistent risk analysis. Alternative tools require approval from the Minnesota Judicial Council. Districts or counties using an alternative tool are required to meet the statewide standards for validation.

[Minnesota Pretrial Release Evaluation Form and Assessment Tool \(MNPAT\)](#)

[Minnesota Pretrial Questionnaire](#)

11. Current Challenges

The current challenges encountered by pretrial practitioners in Isanti County include the following:

Maximum bail release. Offenders who post maximum bail cannot be required to participate in REAM. Once maximum bail is posted, these repeat offenders are not monitored and may continue to drive impaired, increasing risk to public safety.

Risk assessment. Prior to October 2018, pretrial REAM participants did not undergo a risk assessment since resources to monitor compliance with treatment are not available during the pretrial period. The implementation of MNPAT may provide a mechanism to identify higher risk offenders to properly assess whether pretrial programs are appropriate for these offenders.

Data issues. As with most pretrial programs, the absence of data recording and availability to track these offenders is lacking. Follow-up with pretrial program participants does not occur. Resources to conduct follow-up with participants are not available. However recent initiatives implemented in 2018 to improve data recording of pretrial services are underway.

12. Key Program Components for Success

The DWI Isanti Pretrial Program officials are consistently monitoring their program effectiveness and identifying best practices to implement within the existing framework. The development of innovative methods to facilitate monitoring can affect behavior change among this population. In addition, the practices utilized in Isanti and the pretrial program model has been cited as an influence for other pretrial services across the country.

In reviewing program elements and practices and speaking with experts in the field, the following components were identified as being particularly important. Other agencies should address these issues and attempt to maximize accountability and behavior change through early intervention.

Key program components in Isanti County include:

- Monitoring of high-risk (repeat, aggravated, and high-BAC) DWI offenders during the pretrial period through use of electronic home monitoring (REAM).
- Use of cell phone technology to monitor REAM participants instead of frequent in-person reporting which allows more individuals to maintain their employment.
- Legislatively mandated funding for pretrial services ensures that resources are not an overly significant concern.
- Transition to 3x day testing in lieu of twice-daily testing.
- Vendors monitor each test and report results to supervising agent who can then act on this information.
- Dedicated supervising agent (usually a probation officer).
- Immediate notification to supervising agent by device vendor when violations occur.
- Immediate consequences in response to violations (supervising agent and law enforcement officer engage in pursuit of offender upon notification of violation); swift accountability can create deterrence.
- Option to re-enter home electronic monitoring when a violation occurs.
- Option to receive treatment during REAM and jail detention programs; participation is voluntary, but participation can be encouraged.
- Compatibility of most pretrial program treatment with post-conviction services therefore, pretrial treatment is considered when determining post-conviction treatment plans.

Isanti County’s programs for DWI offenders (at both the pretrial and post-conviction phases) have led to national recognition. Judge Dehn and his programs have received numerous awards in recognition of the accomplishments made to reduce DWI recidivism and change behavior of high-risk offenders who present a critical threat on the nation’s roadways. The judge encourages his peers to also take a proactive approach. He stated that *“judges have to be brave and not talked out of programs that are working. Also, states that do not take advantage of that critical pretrial time period, they’re really missing the boat.”* To achieve progress the first step is to formulate an idea which, over time, can eventually become a full-fledged program.

C. TARGET 25 INITIATIVE IN YORK COUNTY, PENNSYLVANIA

The Target 25 Initiative is a supervised bail program rooted in the 24/7 Program concept (see previous sections for a discussion of what this model entails) and serves as a complimentary program to DUI courts and other DUI sentencing programs. The goals of the York County Supervised Bail Program are to reduce prison overcrowding through identification and placement of non-violent offenders under community supervision. Often these non-violent offenders are unable to provide the required monetary bail to secure their release, however, with minimal supervision and appropriate referrals to services, they typically appear for scheduled court dates and pose limited risk to the community. The Target 25 Initiative targets offenders with prior convictions or pending offenses within ten years. This program uses alcohol monitoring and drug testing to keep DUI offenders from using substances and re-offending while out on bail.

Judge John S. Kennedy is responsible for creating the program as he recognized the need for early intervention for DUI offenders as a significant portion of DUI defendants incurred a second DUI charge during the adjudication process for the previous DUI offense. In other words, these individuals continue to drive impaired and have multiple DUI cases proceeding through the criminal justice system within the same general timeframe. The fact that these individuals continue to engage in this behavior despite knowing there is a significant likelihood of detection reinforces Judge Kennedy's belief that *"if you are going to be killed by a stranger in the United States, it will likely be by a drunk driver."* This sparked court system internal reviews that discovered several jurisdictions do not investigate the background of DUI offenders at the time of arrest. As a result, mandatory record checks for prior DUI offenses during a traffic stop were implemented.

In 2011, York County's Criminal Justice Advisory Board (CJAB) formed a DUI Treatment Court Expansion subcommittee that identified concerns related to DUI offenders with multiple arrests prior to the resolution of their first DUI. The York County District Attorney's (DA) Office completed extensive review of all 2010 DUI offenses resulting in identification of three issues regarding repeat DUI offenders. This review determined that there were substantial delays between the date of the impaired driving incident and the date of case filing as well as substantial delays between the date of the incident and the date of the preliminary hearing. It was also determined that most repeat offenders received release on own recognizance (ROR) or low bail requirements with no other conditions or supervision prior to the preliminary hearing, regardless of the number of DUI arrests. The subcommittee also identified that repeat DUI offenders comprised nearly 25 percent of the York County Court caseloads in 2010. Acknowledgement of these problematic factors resulted in the creation of the pretrial program designated the *"Target 25 Initiative."*

The findings of the subcommittee also sparked the question of which individuals to target and why? Research has shown that two-thirds of DUI offenders are likely to self-correct and not have future contact with the criminal justice system. However, the other one-third is a challenging population consisting of offenders who repeatedly engage in risky behavior, lack insight, and are not deterred by sanctions. To identify which offenders, fall into the high-risk category, it is necessary to conduct assessments to inform decision-making. Unfortunately, traditional risk assessment tools are not ideal choices for identifying DUI offender risk level and treatment needs. As previously discussed, impaired drivers tend to be designated as low risk offenders even in circumstances where it is evident that they are actually at heightened risk to recidivate. As such, validated risk assessments specific to this population are critical tools for practitioners and should be relied upon to determine the most appropriate interventions for each individual offender. For the Target 25 program, it was determined that the BAC level of the offender at the time of arrest was another significant risk indicator and should be considered when assessing DUI offenders.

1. Pennsylvania Impaired Driving Law

Act 24, which lowered Pennsylvania's illegal per se limit for alcohol from .10 to .08, was signed into law on September 30, 2003. This law created a tiered approach regarding DUI enforcement and treatment, and included several changes to the penalties, suspension periods, fines, and other requirements. Act 24 introduced the requirement that the combination of a DUI offender's BAC level and prior offenses be used to determine licensing requirements and penalties; the Act also included provisions that indicated treatment is available for first-time DUI offenders who have specific needs.

2. Administrative and Court Sanctions

Act 24 designated three levels of DUI including 'general Impairment' (.08 to .099 BAC); high-BAC (.10 to .159) and 'highest BAC' (.16 and higher). Minors, commercial drivers, school vehicle or bus drivers, and offenders involved in an injury or property damage crash may be subject to the enhanced penalties associated with high-BAC even if their BAC level is not in that range. Offenders who refuse breath or other forms of chemical testing may be subject to the highest BAC sanctions. **Table 6** illustrates the penalties associated with each of the BAC categories:

TABLE 6

Pennsylvania DUI Penalties by BAC Category

GENERAL IMPAIRMENT PENALTIES (UNDETERMINED BAC; .08 TO .099 BAC)			
NO PRIOR DUI OFFENSES:	1 PRIOR DUI OFFENSE:	2+ PRIOR DUI OFFENSES:	
<ul style="list-style-type: none"> ungraded misdemeanor up to 6 months' probation \$300 fine alcohol highway safety school treatment when ordered 	<ul style="list-style-type: none"> ungraded misdemeanor 12-month license suspension 5 days to 6 months jail time \$300 to \$2,500 fine alcohol highway safety school treatment when ordered 1-year ignition interlock 	<ul style="list-style-type: none"> 2nd degree misdemeanor 12-month license suspension 10 days to 2 years prison \$500 to \$5,000 fine treatment when ordered 1-year ignition interlock 	
HIGH-BAC PENALTIES (.10 TO .159 BAC)			
NO PRIOR DUI OFFENSES:	1 PRIOR DUI OFFENSE:	2+ PRIOR DUI OFFENSES:	3+ PRIOR DUI OFFENSES:
<ul style="list-style-type: none"> ungraded misdemeanor 12-month license suspension 48 hours to 6 months prison \$500 to \$5,000 fine alcohol highway safety school treatment when ordered 	<ul style="list-style-type: none"> ungraded misdemeanor 12-month suspension 30 days to 6 months prison \$750 to \$5,000 fine alcohol highway safety school treatment when ordered 1-year ignition interlock 	<ul style="list-style-type: none"> 1st degree misdemeanor 18-month license suspension 90 days to 5 years prison \$1,500 to \$10,000 fine treatment when ordered 1-year ignition interlock 	<ul style="list-style-type: none"> 1st degree misdemeanor 18-month license suspension 1 to 5 years prison \$1,500 to \$10,000 fine treatment when ordered 1-year ignition interlock
HIGHEST BAC PENALTIES (.16 AND HIGHER) OR CONTROLLED SUBSTANCE			
NO PRIOR DUI OFFENSES	1 PRIOR DUI OFFENSE:	2+ PRIOR DUI OFFENSES:	
<ul style="list-style-type: none"> ungraded misdemeanor 12-month license suspension 72 hours to 6 months prison \$1,000 to \$5,000 fine alcohol highway safety school treatment when ordered 	<ul style="list-style-type: none"> 1st degree misdemeanor 18-month license suspension 90 days to 5 years prison \$1,500 to \$10,00 fine alcohol highway safety school treatment when ordered 1-year ignition interlock 	<ul style="list-style-type: none"> 1st degree misdemeanor 18-month license suspension 1 to 5 years prison \$2,500 to \$10,000 treatment when ordered 1-year ignition interlock 	

The Pennsylvania law as of February 1, 2004 created an additional set of penalties for high-BAC offenders which allows for treatment at all levels and requires alcohol highway safety school for all first and second-time offenders. In addition, drivers under the influence of controlled substances and those who refuse breath or chemical testing are subject to the highest BAC category penalties.

Additional components of the DUI statute include:

- Drivers who receive a second or subsequent DUI violation on or after September 30, 2003, can no longer serve an additional one-year suspension in lieu of installing an ignition interlock.
- Drivers are required to install an ignition interlock on all vehicles that they own (including vehicles that are leased) before driving privileges can be restored.
 - o Drivers may apply for an exemption from the requirement to install the ignition interlock on all their vehicles. If the exemption is granted, ignition interlock installation will only be required on one vehicle and they are limited to driving the vehicle that is equipped with the device.
- Treatment and evaluation processes are geared towards rehabilitation (Phased-in through 2009).
- Under certain circumstances, ignition interlock-restricted drivers may operate employer-owned vehicles but only in the course and scope of employment. The employee must notify the employer of their ignition interlock restriction and carry proof of employer notification on a Pennsylvania Department of Transportation (PennDOT) form. The employer-owned vehicle cannot be a school bus/vehicle or large passenger vehicle.
- Compliance-based exit criteria were established for the interlock program that ensures that only those offenders who are able to demonstrate their ability to separate drinking from driving are eligible to remove the device. Violations and circumvention/tampering attempts result in extension of program participation.
- First-time DUI offenders may be eligible for an Occupational Limited License (OLL) after serving 60 days of their administrative license suspension. First offenders whose licenses are suspended for 18 months (for DUI or refusing breath or chemical testing) may be eligible for an OLL with an ignition interlock after serving 12 months of their suspension. In addition, first-time underage drinking violators may be eligible for an OLL.
- PennDOT will automatically expunge ARD records after 10 years providing operating privileges were not revoked as a habitual offender and/or the offender was not a commercial driver at the time of the violation.
- Offenders suspended for driving a vehicle not equipped with an ignition interlock device or driving under a DUI-related suspension with a BAC of .02 percent or greater cannot receive credit for their suspension until jail time has been served.
- Suspensions for refusal to submit to breath or chemical testing may be increased. Breath or chemical testing may now be required for offenders arrested for driving under a DUI-related suspension or driving without an ignition interlock when required to have their vehicles equipped with the device.

3. Participant Eligibility

Participant eligibility criteria for the Target 25 Initiative is fairly straightforward. The program applies to any repeat, high-BAC, or aggravated DUI offender including individuals charged with felony DUI. It is important to ensure that these higher risk individuals are targeted during the pretrial phase to facilitate adequate supervision, testing, and connections to treatment as early in the criminal justice process as possible. Moreover, these are the individuals who are most likely to continue to engage in DUI behavior and the goal of the program is to prevent them from picking up new impaired driving charges while out on pretrial release for an initial DUI charge.

4. Funding

York County receives funding from a variety of different sources to support various aspects of the system aimed at impaired drivers. For example, the county's DUI court was established and continues to operate with grant funds from PennDOT and highway safety dollars from NHTSA. Blood testing/analysis in impaired driving cases is paid for by the district attorney's office. With respect to Target 25, participation in the program is paid for by the defendant. In addition, costs associated with alcohol monitoring (e.g., CAM bracelets) and drug testing are also the responsibility of defendants. In cases where a defendant is indigent or cannot afford to pay the costs associated with monitoring, special arrangements can be made to facilitate participation in the program.

5. Program Process

EARLY IMPLEMENTATION

The Target 25 Initiative developed an initial protocol for arrest and bail procedures where law enforcement officers were required to run the records of drivers when a DUI was suspected to determine if the individual is a repeat offender. If the driver record reflected prior arrest(s), the suspected impaired driver was arrested immediately, blood was drawn to determine the BAC level, and a bail hearing was set before a District Justice.

Objections to this new process were voiced by both law enforcement and the District Justices as officers did not want to be burdened with additional paperwork and District Justices did not want to hold bail hearings in the middle of the night. As a result, meetings were held where District Justices and Police Chiefs were informed that these offenders would not stop drinking until the day before their 24/7 alcohol monitoring bracelet was imposed. Upon learning this information, all relevant stakeholders agreed that change was necessary and buy-in for Target 25 was obtained. The process was re-examined and further streamlined.

CURRENT PROGRAM PROCESS

Currently, once a driver is stopped for suspicion of DUI, the officer requests the suspect's criminal history and driving record from the Sheriff's Department to identify prior or pending DUI arrests/convictions within the statutory 10-year lookback period. If the driver has prior DUI arrests, a blood sample is obtained from the suspect (either voluntarily or once a warrant is acquired). Once the individual is in custody, a bail officer administers a risk assessment tool to determine the defendant's risk level as well as criminogenic and treatment needs. The District Judge then preliminarily arraigns the DUI defendant with Target 25 bail conditions imposed. At a minimum, these conditions include supervised bail under an adult probation officer assigned to the Supervised Bail Unit of the Adult Probation Office (APO) and required use of a continuous alcohol monitoring bracelet to actively track alcohol consumption during pretrial release. A preliminary hearing takes place within 38 days of the DUI arrest. Charges can be amended during this time based upon toxicology results in the case. The Sheriff's Department is required to notify the District Attorney's Office of DUI arrests that fall within the Target 25 framework to ensure that everyone is aware of the population. The District Attorney's Office assumes responsibility for conducting a screening process to determine which individuals are eligible for placement in the DUI court; defendants who are potential candidates are referred to probation. Sentencing recommendations are made for defendants who are ineligible.

SCREENING PROCESS

The District Attorney developed a fast-tracked screening process where intake secretaries and/or the Vehicular Crimes Unit paralegal requests police and toxicology reports for arrests. Victim/witness coordinators screen these files for victim information and services including medical release forms, injury updates, and DUI treatment court input. Case managers calculate the prior records utilizing offender criminal history and driving records. The Assistant District Attorney (ADA) who supervises the Vehicular Unit is responsible for reviewing the files to determine which individuals are eligible for placement in the DUI court. As noted above, possible treatment court candidates are referred to probation for further review. The ADA then places sentencing recommendations in the file for defendants who are not eligible to participate in the DUI court. The entire screening process, including DUI court eligibility determinations, occurs within approximately 25 days.

ADULT PROBATION PROCESS

Supervision is critical to the success of Target 25 and this is a valuable takeaway from the program. All Target 25 participants are supervised by a probation officer from the Probation Services Pretrial Bail Unit. During pretrial release, all Target 25 participants are required to wear a continuous alcohol monitoring bracelet to ensure 24/7 sobriety. Defendants are referred to probation within 48 hours of their release at which point they will be assigned an officer, complete intake, and receive instructions to obtain their

CAM bracelet. Participants receive a CAM device within six to seven days and bail officers ensure that these individuals obtain and are compliant with the use of the CAM bracelet and other drug testing requirements throughout the duration of Target 25 participation.

Probation officers monitor court appearances and re-arrest rates of Target 25 participants and can recommend modifications to supervision requirements or revocation of bail in instances of non-compliance or if defendants violate release/program conditions. In addition, probation officers frequently refer Target 25 participants to various social services and ancillary supports within the community including counseling and/or treatment interventions for those individuals who are found to have substance use and/or mental health disorders.

6. Current Program Requirements

Target 25 participants must adhere to a number of requirements as a condition of their involvement in the program and pretrial release. These include:

- Complete the Court Reporting Network (CRN) evaluation and a drug and alcohol evaluation.
 - The CRN evaluation is required for all DUI offenders in the State of Pennsylvania. The CRN evaluation is a pre-screening tool used to determine if an individual should be referred for a more comprehensive drug and alcohol assessment. It is also used as a statistical tool for the state. The evaluation takes between 45 minutes to one hour to complete.
- Complete treatment if recommended by the evaluator.
- Pay all costs associated with the evaluation(s) and treatment programming.
- Remain abstinent from alcohol and any illegal substances.
- Comply with the SCRAM Program Agreement as administered by the York County Pretrial Services and the requirements of SCRAM CAM monitoring.

7. Current Challenges

There are two significant challenges that affect the Target 25 program which stakeholders are currently working to address. These barriers include:

Blood testing delays. For jurisdictions conducting blood draws, 50 percent of impaired drivers are found to have at least one drug other than alcohol in their system. With more jurisdictions conducting blood draws to determine the offender's BAC level and also identify whether that individual is a polysubstance user places a burden on the toxicology laboratories which can delay evidentiary results. A major drawback associated with reliance on blood testing is lab backlogs leading to delays in receiving test results. Once the blood is drawn and the impaired driver is released, a charge is not

filed until the results of the blood analysis are received. Currently, this process may take up to six months although in normal circumstances, results are returned within 3-12 weeks from the date of submission. Results are sent to law enforcement agencies via "snail-mail" which adds to the timeframe. Once the testing results are received, law enforcement then mails the notification of charges to the defendant. Ideally, this process could be expedited so that the turnaround is much quicker.

Disjointed systems. Lack of coordination and communication among practitioners at different intercepts of the system presents another challenge that can lead to a lack of accountability and supervision. These gaps in the system must be targeted and closed. For example, judges are frequently unaware of the arrest process. Conversely, law enforcement officers are not always educated on how the judicial process operates and progresses. The filing processes in impaired driving cases can be slow which has the potential to lead to confusion and errors. Certain misdemeanors including public drunkenness, disorderly conduct, harassment, possession of paraphernalia, etc. are often overlooked. Opportunities to address offender behavior can be missed as a result. For these and many other reasons, it is recommended that jurisdictions perform internal audits to identify where there are deficiencies and weaknesses in the DUI system and to bring together all relevant stakeholders to increase channels of communication and collaboration in an effort to address the identified shortcomings.

OUTCOMES

A significant amount of data is collected within the Target 25 program. This has allowed stakeholders to track some outcomes. The following data is from 2014.

District Attorney outcomes. The Executive ADA maintains a folder of DUI Court eligibility referrals to provide to Adult Probation. The Deputy Administrator of Case Management records Target 25 data for each case for future analysis and evaluation purposes. **The following DA outcomes were reported:**

- The incident date to filing date in DUI cases was reduced by an average of 20.99 days in the first year of Target 25 implementation; by 2014, the average timeframe was 3.90 days.
- The incident date to preliminary hearing date was reduced by an average of 52.92 days in the first year of Target 25 implementation; by 2014, the average timeframe was 38.04 days.
- Multiple DUI offender cases dropped from 209 (25.87 percent) in 2011 to 80 (12.94 percent) in 2014.
- 'True' Target 25 multiple offenders dropped from 46 (22 percent) in 2011 to 8 (10 percent) in 2014.
- Victims' claims in the county dropped by 50 percent.

Other jurisdictions across the country that have implemented these types of procedures, frequently referred to as 24/7 Sobriety Programs, have seen similar results.

Supervision outcomes. The Probation Services Pretrial Bail Unit also maintains records related to Target 25 participants including alcohol monitoring installation statistics; participation and completion of social services; court appearance rates; recidivism/re-arrest rates; new DUI offenses, and overall success rates. **The following Probation Services Pretrial Bail Unit outcomes were reported:**

- **Target 25 alcohol monitoring statistics:**
 - o A total of 883 participants used CAM bracelets during 2014 (936 total offenders on Target 25 bail conditions).
 - o The average time between arrest and CAM use is 6-7 days.
 - o The average time from placement in the program to case disposition is 152 days.
 - o The number of alcohol monitoring alerts prior to re-arrest: 0 total alerts.
- **Social services referrals:**
 - o There was a total of 817 Target 25 referrals to social services.
 - o There were 75 successful completions of social services programming at discharge.
 - o A total of 415 participants were still involved with social services at the time of discharge.
- **Employment and veterans statistics:**
 - o A total of 101 veterans were connected with services while on supervised bail.
 - o A total of 62 percent of participants were employed at the time of discharge.
- Overall court appearance rate among Target 25 participants was 96 percent.
- **Recidivism rates and compliance:**
 - o A total of 96 percent of Target 25 participants were not rearrested while in the program.
 - o Number of individuals re-arrested for DUI while on bail: 7.
 - o Average number of alcohol monitoring days prior to arrest for a new DUI: 93 days (four individuals never appeared or were arrested prior to CAM installation).
 - o Approximately 84 percent of participants had no re-arrests, no infractions, no failure to appears, and no revocations while in the program.
 - o York County saw a 17 percent decrease in impaired driving crashes and a 22 percent decrease in impaired driving cases between 2012 and 2014.

8. Key Program Components for Success

Prior to the establishment of Target 25, York County had fairly weak practices for managing DUI offenders, particularly at the pretrial phase. As such, any system improvements were bound to lead to significant progress. Many jurisdictions are in similar situations and stakeholders are encouraged to review the elements of Target 25 that could be easily replicated and work towards improving the processing of impaired driving cases and the management of high-risk DUI defendants who are released back into the community pending resolution of their cases. Some of the program components that should be implemented more broadly include:

- Identification of repeat/multiple DUI offenders at the point of arrest allows practitioners to quickly determine which defendants would benefit from comprehensive assessments and bail conditions that require more intensive supervision and interventions early in the criminal justice process.
- To address blood testing delays, the District Attorney discussed turnaround times directly with the toxicology lab (the lab in this jurisdiction is a private as opposed to a state lab). As a result of these discussions, the DA agreed to impose an initial DUI charge on the date of the offense and amend the charge, if needed, once test results are received in an effort to move the process forward as quickly as possible.
- Inclusion of all stakeholders to create buy-in for the program as well as to inform and evaluate this process resulted in everyone working collaboratively to facilitate implementation. Judge Kennedy noted that *“once stakeholders were educated about the problems in the jurisdiction and the proposed process that could address many of these issues, everyone came together to make the vision a reality.”*
- Understanding the process including how offenses are filed, what testing matrix is being used to identify impairment (blood/breath), and what the roles and responsibilities are for each stakeholder is critical to program success.
- Emphasis was placed on conducting a risk/needs assessment as early as possible. The Duty Judge Officer conducts a risk/needs services evaluation to provide treatment options to offenders in lieu of incarceration. In some jurisdictions, law enforcement officers are conducting these assessments at roadside.

To date Lancaster, Berks, Butler, and Washington County, in Pennsylvania as well as Warren County in Missouri have implemented programs that follow the Target 25 model. There has been widespread interest in the program and Judge Kennedy has received national recognition for his leadership in the form of GHSA’s Peter K. O’Rourke Special Achievement Award, NHTSA’s Public Service Award, and Responsibility.org’s Kevin E. Quinlan Award for Excellence in Traffic Safety.

D. SAN JOAQUIN COUNTY, CA PRETRIAL PROGRAM

California has historically struggled with significant bail issues. Currently, according to the Board of State and Community Corrections’ annual Jail Profile Survey, approximately two-thirds of California’s jail population, (about 48,000 people) are unsentenced. This includes both people who are eligible for release but have not (or cannot) post money bail and those who are not eligible for release. In an effort to reduce jail-overcrowding and address unaffordability issues regarding monetary bail and pretrial detention, a recent pretrial reform bill, Senate Bill 10 (SB 10) was drafted. SB 10 authorizes a change to California’s pretrial release system from a money-based system to a risk-based release and detention system. SB 10 was signed into law on August 28, 2018 and went into effect on October 1, 2019. SB 10 allows offenders to be released on their own recognizance or supervised release as part of a pretrial release program with the least restrictive nonmonetary condition or combination of conditions that will reasonably assure public safety and the defendant’s return to court. Offenders cannot be required to pay for any mandated supervision conditions. In addition, offenders can only be detained pending trial if detention is permitted under the United States and California Constitutions and if a judge finds “by clear and convincing evidence that no condition or combination of conditions of pretrial supervision will reasonably assure public safety and/or the appearance of the persons as required”.

Once implemented, offenders will be retained (pretrial detention) in jail or released based on a pretrial assessment tool (see [Appendix B Screening and Risk Assessment Tools](#)). The model for this process is the San Joaquin County Pretrial Services Program for all offenders including DUI offenders. The San Joaquin County pretrial services program was evaluated by the San Joaquin Community Data Co-Op and found to have over a 97 percent success rate. As a result, the San Joaquin County Court staff provided training to 31 counties in preparation of SB 10.

1. California Impaired Driving Law

California’s drunk driving law is also a drugged driving law that states “DUI of alcohol and/or drugs.” All DUI offenses are misdemeanor, however, fourth or subsequent offenders are designated as a Habitual Offender for three years. California’s DUI implied consent law stipulates that upon arrest of a DWI, an offender must consent to a chemical test for alcohol and/or drugs including breath, blood or, urine or a combination of both. Offenders that refuse these tests are subject to longer license suspensions and revocations. If the officer reasonably believes the offender is under the combined influence of alcohol and drugs, and the offender has already submitted to a preliminary alcohol screening (PAS) and/or breath test, the offender may still be required to submit to a blood or urine test to detect the presence of drugs. **As of January 1999, a urine test is no longer available unless:**

- The officer suspects the influence of drugs or a combination of drugs and alcohol, or
- Both the blood or breath tests are not available, or
- The offender is a hemophiliac or taking anticoagulant medication in conjunction with a heart condition.

California law states: “it is illegal for any person to operate a vehicle under the following conditions:

- BAC of 0.08 percent or higher, if the person is 21 years old or older.
- BAC of 0.01 percent or higher, if the person is under 21 years old.
- BAC of 0.01 percent or higher at any age, if the person is on a DUI probation.
- BAC of 0.04 percent or higher, in any vehicle requiring a CDL— with or without a CDL issued to the driver.
- BAC of 0.04 percent or higher, when a passenger for hire is in the vehicle at the time of the offense.”

Law enforcement may confiscate the license and issue an order of suspension along with a temporary 30 day license. The offender may request a DMV administrative hearing within 10 days (see [Appendix O. California SB 10 Arraignment to Trial Process Flow Chart](#)).

2. Administrative Sanctions

Administrative sanctions will be imposed immediately upon arrest of a DUI (Table 6). For a full list of California penalties see [Appendix P. California SB 1046/611 Restriction Requirements](#).

TABLE 7

California Administrative DUI Sanctions

LEVEL OF OFFENSE	FIRST OFFENSE	SECOND OR SUBSEQUENT OFFENSE (WITHIN 10 YEARS)	THIRD OR SUBSEQUENT OFFENSE (WITHIN 10 YEARS)
.08 BAC	4 month suspension; restricted license: proof of enrollment certificate (DL 107) in a DUI treatment program; file proof of financial responsibility; pay a \$125 reissue fee; after a mandatory 30-day suspension	1 year suspension; restricted license with ignition interlock after 90 day hard suspension	1 year suspension; restricted license with ignition interlock after 6 months hard suspension*
.15 BAC	10 month suspension; 5 month restricted license: 9 month DUI education and counseling program; file proof of financial responsibility; pay a \$125 reissue fee; after 30 days hard suspension		
.20 BAC	probation; 9-month (60 hour) alcohol and other drug education program Notice of Completion Certificate (DL 101)		
REFUSAL	1-year suspension	2-year revocation	3-year revocation

*Restricted license privileges are not allowed for offenders with three or more DUI offenses.

IGNITION INTERLOCK DEVICE

From January 1, 2019 to January 1, 2026, SB 1046, Hill mandates repeat offenders for driving under the influence (DUI) and first DUI offenders whose violations resulted in injury, to install an ignition interlock device (IID) for a period ranging from 12 to 48 months. SB 1046 also allows those who receive a suspension under the Administrative Per Se law to obtain an IID-restricted driving privilege and receive credit toward their required IID restriction period if they are later convicted of a DUI. This includes DUI violations that involve alcohol or the combined use of alcohol and drugs.

Repeat offenders that have three or more separate DUI convictions and are revoked for 10 years under CVC §23597 and may be eligible for early reinstatement an IID-restricted license. To be eligible for early reinstatement, a five-year hard suspension and proof of abstinence during the suspension period must be provided. In addition, a notice of completion certificate (DL 101) for an 18 or 30-month DUI program, and Verification of Installation Ignition Interlock (DL 920) must also be provided.

If an offender has been acquitted of DUI charges in court, a suspension or revocation will be reversed at the discretion of the DMV. A reduction of a DUI charge to reckless driving in the criminal court is independent from the administrative proceeding and does not affect the driving privilege suspension.

3. Court Process

Court actions may involve a fine, jail time, delay of the licensing, and completion of a DUI program. Completion of a DUI program is required for all DUI convictions. Offenders convicted of a DUI of either alcohol and/or drugs or both, will be required to pay a fine to be determined by the level of offense, may also be sentenced to serve up to six months in jail and subject to vehicle impoundment and storage fees.

Completion of a DUI education program is required for all DUI convictions. Those non-CDL offenders over the age of 21 that enroll in a DUI program, file a California Insurance Proof Certificate (SR 22/SR 1P), and pay the restriction and reissue fees, may be issued a restricted license. Low-risk first DUI offenders with a restricted license can drive to/from work, during the course of employment, and to/from a DUI program. Second and subsequent DUI convictions result in increased penalties, including a 2 year suspension or a revocation of up to 5 years.

Court sanctions base on level of offense include:

1st offense:

- 6-month license suspension;
- completion of a DUI program;
- provide a California Insurance Proof Certificate (SR 22/SR 1P); and
- payment of all fees prior to license reinstatement.

High BAC (.20 or higher)

- court ordered enhanced DUI treatment program;
- 10-month license suspension (1 year suspension with injury);
- ignition interlock device.

Those High BAC (.15 percent or higher), repeat offenders, and refusals are required to provide Notice of Completion Certificate (DL 101) for a minimum nine month DUI program.

All DUI convictions remain on DMV's records for 10 years. Effective January 1, 2007, new legislation extended the reporting period for DUI offenses from 7 to 10 years for all public requestors, including insurance companies. The new law allows insurance companies access to the driving record information to properly apply the new provisions of the Insurance Code established under Senate Bill 597 (2005), to determine a customer's eligibility for a good driver discount. Based on the new laws, drivers with a DUI violation occurring within the past 10 years are not entitled to receive a good driver discount. DUI violation under California Vehicle Code sections 23140, 23152, or 23153 will report for 10 years. Other non-DUI violations (e.g. 23103.5 "wet" reckless) report to courts and law enforcement for 10 years and determine increased penalties for repeat offenders but will continue to show on a public driving record for only 7 years.

4. Program Overview

Judge Vlavianos modeled the San Joaquin Pretrial Program specific to repeat DUI offenders after the Target 25 Initiative in York County, Pennsylvania (see Target 25 Initiative Case Study). The goal of the San Joaquin County Pretrial Program is to screen out the low risk offenders from high risk offenders to assist with the jail's population management and to decrease the risk to public safety. All offenders undergo this process and are screened. Based on the outcome of the pretrial assessment tool, screened DUI offenders are either released with the mandated condition to wear a transdermal continuous alcohol monitoring bracelet or sent to an Alcohol and Drug Education Program.

5. Participant Eligibility

All Misdemeanor DUI repeat offenders are eligible for the San Joaquin County Pretrial Services DUI Program. Felony DUI offenders are assigned to formal probation where the probation officer can send them to the pretrial DUI program at their discretion.

First DUI offenders are "cited out" by the jail as a result of overcrowding. First DUI offenders could be mandated to the program at the judge's discretion; however, the program is currently limited regarding the number of transdermal continuous alcohol monitoring devices to be distributed to DUI program participants. There have been discussions to expand the DUI program to first offenders, however the current target population focuses on repeat DUI offenders.

6. Current Program Requirements

- The Pretrial Assessment Unit evaluation.
- Submit to Virginia Pretrial Risk Assessment Instrument (VPRAI) Payment of evaluation and treatment programming costs.
- Abstinence from the use of alcohol and any illegal substances.
- Compliance with the transdermal continuous alcohol monitoring device and supervision requirements.
- Compliance with probation supervision.

7. Program Process

DUI repeat offenders are reviewed within 24 hours by the Pretrial Assessment Unit located at the San Joaquin County Jail. The unit is staffed 24 hours a day, 7 days a week including holidays by probation staff. The Pretrial Assessment Unit was established in October of 2014 to implement Evidence Based Practices in the Pretrial Services Unit. These Evidence-based Practices include the implementation of early interventions to modify behavior and use of a validated instrument to screen pretrial offenders for appropriate interventions. Pretrial staff conduct an evidence-based assessment using the Virginia Pretrial Risk Assessment Instrument (VPRAI). The VPRAI is automated and contained in the Pretrial and Community Corrections Case Management System (PTCC). VPRAI examines the status of the offender at the time of the arrest including current charges, pending charges, criminal history, residence, employment, primary caregiver, and history of drug abuse. This tool has been found to be 97-99 percent accurate when used for all offenders. The Pretrial Assessment Unit also interviews the offender and drafts a Pretrial Report. The Pretrial assessment eliminates the monetary requirement as a determination whether an offender is detained during the court process. This process is utilized for all offenders. Once the Pretrial Report is provided to the Judge, he will determine whether DUI offenders (as well as other offenders) are eligible for the DUI pretrial release program or if they should be retained in custody while their case moves through the court process based on the level of risk and potential harm to the community. Those repeat DUI offenders determined eligible by the Judge will be required to wear a transdermal continuous alcohol monitoring device and are supervised by probation.

Pretrial supervision for offenders can include a range of mandated pretrial release. For repeat DUI offenders specifically, the transdermal continuous alcohol monitoring device is monitored by the contracted manufacturer who sends daily reports to probation. Probation will review the device reports to identify any violations including circumvention of the device or positive alcohol events. In addition to wearing the device, repeat DUI participants are often mandated to complete drug and alcohol education. The hours and length of the drug and alcohol education are based on level of offense (see CA DUI Law section). Depending on the outcome of the VPRAI, participants are required to report by phone, in person, or with GPS weekly to the assigned staff person. Offenders

are provided support by Probation Officers and Pretrial Program staff and are guided through the Court process until sentencing. Participants will also receive reminders for any scheduled appointments or court appearances.

Violations of repeat DUI offender pretrial requirements are resolved in court. Violations can include non-compliance with scheduled probation appointments and confirmed positive alcohol events as noted on the transdermal device reports. The probation notifies the Judge of any violations, whereby the participant is required to appear in court. In California, attorneys can appear on behalf of the offender, however Judge Vlavianos requires the participant to appear. Judge Vlavianos reviews the violation and will determine appropriate sanctions. To date, Judge Vlavianos reports that none of the repeat DUI participants have received a subsequent DUI.

According to Judge Vlavianos, most San Joaquin County DUI pretrial participants transfer to his DWI Court. Approximately 95 percent of misdemeanor DUI offenders plea to the DWI court at arraignment (first appearance). The court works closely with the Data Co-Op to track offenders' success in the program and reports to the Community Corrections Partnership. Additional stakeholders in the project include the Courts, Sheriff's Department, District Attorney's Office, Public Defender, Behavioral Health, and community-based partners. The processes were developed, and ongoing support is provided by the Pretrial Sub-Committee, which is headed by the Chief Probation Officer, Stephanie L. James.

8. Funding

In 2011, California lawmakers passed a "Realignment Bill"-Assembly Bill 109, that shifted responsibility for thousands of offenders convicted of all nonviolent crimes including DUI offenses from state prisons to counties. Offenders convicted of nonviolent crimes now serve sentences in county jails, not prison. This bill also required community corrections(probation)/community parole to supervise these offenders upon release, however as part of AB 109, the state also allocated billions of dollars to the counties for these supervision purposes. **San Joaquin County allocated this funding, approximately \$6.8 million in the first year, to the following:**

- day reporting center;
- specialty courts aimed at helping former prisoners' transition back to the community; and,
- expanded use of a risk assessment tool to rank each former inmate's likelihood of committing new crimes.

The funding allocated to the elements above include these services provided for the pretrial DUI offender program. Specific to the Repeat DUI Pretrial Program, transdermal continuous alcohol monitoring devices for repeat DUI pretrial program participants is funded by these state funds allocated from the realignment bill through the community corrections partnership.

9. Current Challenges

Challenges faced by the San Joaquin Pretrial DUI Program include the following:

Risk Assessment. The San Joaquin County Probation Supervision Unit does not currently use DUI specific tool to assess DUI offenders. Judge Vlavianos has addressed this since the current assessment is likely underscoring DUI offenders. A change to a DUI specific assessment, the DUI-RANT (see Appendix B. Risk Assessment and Screening Tools) is under review. In addition, those offenders who score low on the assessment tool and are not placed into the repeat DUI pretrial program are sent to an Alcohol and Drug Education Program which is not an evidence-based practice regarding responsibility and reform for DUI offenders.

Diversion. In California, because of the jail overcrowding issues, several misdemeanor cases are granted diversion. For those DUI cases that are granted diversion, the DUI charge is expunged from the record. Judge Vlavianos has discussed this with PAS underlying the importance of keeping a DUI offense on record to accurately identify potential repeat offenders regarding public safety.

10. Key Program Components for Success

The following have been identified as key components to the success of the program:

- Utilizing the evidence-based transdermal continuous alcohol monitoring device paired with probation supervision holds repeat DUI offenders accountable and allows for other interventions to be utilized to change behavior.
- Implementing a multitrack screening process to identify appropriate levels of supervision and alcohol education and treatment.
- Utilizing an evidence-based tool for screening. The VPRAI has been shown to be 97-99 percent effective in identifying low-risk offenders.
- Identifying best practices utilized in the field (Target 25 Program, see case study) and modifying them to fit the San Joaquin County community.
- Identifying stakeholders that support the program. The Pretrial Assessment and Monitoring Program in San Joaquin County has drawn praise and support from an array of local leaders, including the District Attorney, Public Defender, and Sheriff.

E. SOUTH ST. LOUIS COUNTY (SSLC), DWI COURT, DULUTH, MN

According to the Minnesota Department of Public Safety (MN DPS), Office of Traffic Safety (OTS), in 2015 of all Minnesota residents, 619,319 had a DWI on record. Additionally, one in nine persons in Minnesota, including those with licenses revoked or cancelled had a DWI; one in 21 (260,538) had two or more arrests; and one in 45 (121,328) had three or more.

After attending foundational training from the National Center for DWI Courts (NCDC) in 2006 and identifying a critical need in the community, Judge Shaun Floerke facilitated the implementation of the South St. Louis County (SSLC) DWI Court located in Duluth, MN in February 2008. The SSLC DWI Court took their first client on Superbowl Sunday.

1. Minnesota Impaired Driving Law, Administrative Sanctions, and Court Process

see **Isanti County, MN Pretrial Programs** section of guide.

2. Program Overview

The mission of the South St. Louis County DWI Court is “to provide a comprehensive, multi-disciplinary response to the repeat DWI offender that breaks the cycles of addiction and crime through accountability and improved access to services” (SSLC DWI Court Policy and Procedure Manual, 2017). The goals and objectives of the SSLC DWI Court are to reduce recidivism, promote abstinence of substances, retain participants within the program, provide improved access to services and improve function levels of participants (SSLC DWI Court Policy and Procedure Manual, 2017).

	MEASURED BY:
GOAL 1: REDUCE RECIDIVISM	<ul style="list-style-type: none"> • Arrests • Charges • Convictions • Probation violations
GOAL 2: ABSTINENCE	<ul style="list-style-type: none"> • PBT testing • Urinalysis testing • Self-report on follow-up interviews
GOAL 3: RETENTION	<ul style="list-style-type: none"> • Rates of graduations versus terminations • Appearances at DWI Court hearings • Attendance at probation appointments • Completion of treatment programming • Completion of other programming requirements
GOAL 4: IMPROVED ACCESS TO SERVICES	<ul style="list-style-type: none"> • Comprehensive assessment completed during first week • Referrals to identified services/further assessments • Identified services entered/completed • Enrollment with primary care physician
GOAL 5: IMPROVED FUNCTION LEVELS	<ul style="list-style-type: none"> • Attendance at self-help groups • Obtaining stable housing • Paying fines and court costs • Participation in pro-social activities • Attaining employment • Reinstatement of driver's license

The SSLC DWI Court Program is designed to promote public safety while protecting participants' right to due process through a non-adversarial approach. The SSLC DWI Court has made significant changes over the years, including a fundamental shift from a focus on sanctions to adjusting treatment to better serve participants. The SSLC DWI Court Program follows the evidence-based "10 Guiding Principles of DWI Courts" which are best practices based on research that set guidelines for DWI Courts. However, unlike most DWI courts that occur post-sentencing, the SSLC DWI Court includes pre-plea, post-plea/pre-conviction, and post-conviction participants, implementing early intervention treatment services both pretrial and post-trial. Program participants typically consist of repeat DWI offenders and after several years expanded to gross misdemeanors and felony DWI offenders. The SSLC DWI Court serves the needs of the high-risk/high-needs offenders who pose the biggest risk to the public safety of their community. The SSLC DWI Court Program includes offenders that many DWI Court programs exclude. Participants often have significant mental health issues and several co-occurring disorders in addition to their substance abuse issues. The SSLC DWI Court has had great success in helping these high-risk offenders recover and serve as productive members of their community.

The SSLC DWI Court staff is a "team" that works together to provide an informed and cohesive individualized case management plan for participants in the program. The SSLC DWI Court team includes the court coordinator; county attorney; city attorney; a private defense attorney; a public defender; a case manager from public health; law enforcement officers from the Minnesota State Patrol, the St. Louis County Sheriff's Department and the Duluth Police Department; a representative from the DreamLife Psychological Services, a representative from the Fond du Lac Tribe, and a client advocate and treatment representative from the Center for Alcohol and Drug Treatment (CADT). The case manager, Recovery Community Representative from Recovery Alliance Duluth, NERCC Representative, and two Probation Officers from Arrowhead Regional Corrections (ARC) were originally funded by SAMHSA grant funding and now through a grant from the Minnesota Department of Human Services.

The length of the SSLC DWI Court program is determined by the participant's screening and assessment outcomes, compliance with program requirements, and their ability to meet their individual case plan goals. The minimum length of time the program can be completed in is 14 months (see [Appendix F SSLC DWI Court Graduation Application](#)) however the average time is 18 months with additional supervision during the five or six years of remaining probation. Participants must complete all five phases of the program to graduate. Graduation is considered the sixth Phase that includes continuing care post-graduation until their probation requirement is completed.

Program requirements include:

- intensive supervision and treatment;
- regular court appearances;
- random drug and breathalyzer testing;
- Bluetooth alcohol monitoring devices-Outreach Smartphone Monitoring System (OSM)
- random home visits (via probation officer and law enforcement on nights and weekends);
- regular case management contacts;
- chemical dependency treatment;
- cognitive-based educational programs; and,
- other supportive programming.

The SSLC DWI Court program is an abstinence-based program. The program typically includes 40-45 active participants in addition to graduates and alumni participants that continue to receive supervision as delineated in the sixth phase (see [Appendix G. SSLC DWI Court Phases Cheat Sheet](#)). The target population are residents of South St. Louis County who are at least 18 years old and have been arrested for a Felony DWI; a 3rd in 10 years DWI with one additional conviction, or who are facing a violation of probation on a 2nd Degree DWI that could result in revocation of their stay of execution; or a Felony Criminal Vehicular Operation with victim approval prior to entry (SSLC Policy and Procedures Manual, 2017). However, all high risk/high needs offenders are typically placed into the program. Offenders that do not agree to the program who "bail out" or are subject to an alternate conditional release go to prison, according to agreements with the County Attorney's Office and Public Defender's Office; and will be required to participate in the program upon conviction. Offenders are advised to talk to their attorney regarding the legality of their due process rights. Clients, while they are accountable to the SSLC DWI Court and getting the help they need, can exercise every legal right they have including bail, which may delay their entry and prolong their experience, rather than opt for supervised release to the SSLC DWI Court. The SSLC DWI Court pretrial process does not take the participant's due process away--the participant's DWI Pretrial Release components are part of the DWI Court.

3. Participant Eligibility

The following eligibility criteria for entrance into the SSLC DWI Court program include:

- The participant has received a Felony DWI, 3rd DWI in 10 years DWI (not a felon) on a probation violation, 2nd Degree DWI facing a VOP, or a Felony Criminal Vehicular Operation with victim approval.

- The participant must be a United States Citizen.
- The participant must be a resident of South St. Louis County and/or the offense occurred in South St. Louis County and it is feasible for the Court to supervise the participant.
- The participant must be 18 years of age or older.
- The participant must submit to a chemical assessment of substance abuse or dependence and be determined high-risk/high-needs (DUI-RANT).
- Pay DWI Court fee \$100 per month in program.
- Previously excluded presumptively probationary offenders, are now eligible.

Offenders are not be admitted into the SSLC DWI Court based on the following exclusionary criteria:

- The offender is a juvenile (under the age of 18).
- The offender is not mentally competent or medically capable of complying with the rules of the DWI Court.
- The offender is currently on Conditional Release parole from prison.
- Certain sex offenses/domestic assaults/violent offenses/weapons convictions are given discretionary review by the DWI Court Team to determine client eligibility and additional program conditions for acceptance.

Violent offenders are admitted based on the discretion of the DWI Court Team. Prior convictions for assault are given discretionary review by the DWI Court Team to determine client eligibility and additional program conditions for acceptance. The sentence for clients who are presumptive commitments will be different than for clients who are subject to the standard DWI felony sentence.

4. Current Program Requirements

Requirement for those DWI Court participants on a presumptive commit must:

- Complete longer phases (a total of 2 years minimum between phases I-IV of the program)
- Serve six consecutive days in jail (encouraged to serve upon point of arrest/entry)
- Complete community service hours as determined by the DWI Court team (typically 160 hours)
- Pay DWI Court fee \$100 per month in program
- Comply with all other DWI Court Rules
- Plead to charges prior to starting Phase 1

5. Program Process

Participants for the DWI Court Program are screened for eligibility at arraignment or after a probation violation by probation and referred to the DWI Court team for review. Probation officers check the arrest sheets every day for felony DWI offenders. According to statute, offenders are retained in jail prior to first appearance. Probation screens potential participants utilizing the DUI-RANT (see [Appendix B Risk Assessment and Screening Tools](#)). The treatment director also screens potential participants using a clinical in-house assessment that includes parameters to define mental health, substance abuse, and other factors affecting treatment. The case manager will sometimes conduct a CARS assessment (see [Appendix B Risk Assessment and Screening Tools](#)). Outcomes from these screenings are also used to inform the participant's individualized case plan, wrap-around services, and referrals to treatment including mental health and/or other supportive agencies. All participants including those that are eligible for public funding for treatment undergo a chemical dependency assessment.

SUPERVISION AND TREATMENT

If offenders are eligible (felony or targeted gross misdemeanor, high risk, high need) they brought into the program. The DWI Court Team would discuss on rare occasions whether there might be reasons to exclude offenders if they do not fit eligibility. Those accepted into the program prior to submitting a plea, agree to undergo treatment upon release from custody. Participants that bail out of the program avoiding pretrial supervised release are required to participate upon plea or finding of guilt. **Participants are required to agree to the following to enter the program:**

- supervised release status (with probation);
- chemical health assessment and compliance with recommendations;
- compliance with random urine and breathalyzer testing;
- compliance with OSM including GPS tracking;
- probation home visits;
- drug test within 24 hours of release from jail and random drug testing for the duration of the program; and
- attendance with the DWI Court Judge according to phase requirements.

Participant entry into the program from arrest is approximately one week. There are five Phases that define the SSLC DWI Court Program for detailed phase structure and components (see [Appendix G SSLC DWI Court Phases](#)). Participants are supervised by probation upon their release from jail. Each participant is referred to two dedicated probation officers specifically assigned to the DWI Court for case planning, monitoring, accountability, and direct services. After sentencing, the probation officer conducts an LSI-R (Level of Service Inventory-Revised), a pre-screening and risk/needs assessment tool; and a Pre-Sentence Investigation for each participant. At intake, the treatment director conducts ASAM and a SOCRATES assessment (see [Appendix B Risk Assessment and Screening Tools](#)). These screenings and assessments are used to inform a case management plan based on the participant's individual risk and needs. Participants are also screened for co-occurring psychiatric disorders and referred to relevant additional treatment as needed. The case manager also addresses housing, insurance, medical, dental, and other participant needs.

Participants enter a treatment program as soon as possible following the assessment. Treatment components include:

- Detox/Withdrawal Management Assessment and funding determination (may include county-paid-consolidated funds, medical assistance, or self-insured)
- Referral to appropriate treatment
- Residential/extended care program
- High-intensity outpatient program
- Low-intensity outpatient program
- Continuing care
- Support group meetings
- In-custody outpatient programming at Northeast Regional Corrections Center

Upon entry into the program, DWI Court participants are informed about testing policies and procedures and are required to sign a testing agreement. This document informs participants that random urine analysis (UA) and breathalyzer tests are administered by the probation officer throughout each phase and mandatory compliance is required for the program. Participants are also required to utilize and comply with Bluetooth Alcohol Monitoring Devices (OSM device) requirements. The frequency of testing is determined by each Phase and may be increased or decreased based on compliance or non-compliance at the discretion of the DWI Court Team.

A participant call-in drug testing system is utilized and supervised by probation where participants will make daily calls to the center to receive notification of their required drug test. Treatment providers also perform drug testing independent of the call-in system. UA panel results are immediate; however, UA tests can be sent to a lab for further testing on an as-needed basis. In these cases, results are typically reported within 48 hours. Participants must have 90 consecutive days of negative alcohol and drug screens to advance to Phase 6 (Graduate Status.) Graduate relapse, results in the participant returning to Phase 1, day 60, where the participant must progress through the Phase program requirements again. However, the graduate will accelerate through the phases quicker and back to graduate status within six months if they are compliant with all the remaining requirements.

Intensive supervision is one of the primary components of the program. Probation, the primary treatment provider and the court coordinator track participant progress for the duration of the SSLC DWI Court Program. Probation will conduct randomized field visits to the participant's home or place of work. Case notes are documented and included in staffing meeting debrief documents. Participants receive assistance from the DWI Court Team in obtaining ancillary services as needed including supportive housing, employment skills training, GED classes, childcare, transportation and other needs. Participants may be required to install an ignition interlock device in their vehicle to obtain license reinstatement. Arrowhead Regional Corrections received grant funding to provide a dedicated probation officer that works with the State DMV to help participants get their license back including grant money for participants to pay for their ignition interlock devices. One interlock vendor is used for the program. The interlock device utilized by the program has video, GPS, and real-time reporting to immediately address any violations on the interlock device. In addition, OSM are required and provided by the DWI Court. The DWI Court will also aid participants with transportation issues in the form of monthly bus passes and have in the past given participants donated bicycles as needed. Participant case management throughout the program is determined on an individual basis based on determinations from the SSLC DWI Court Team. The SSLC DWI Court Program is a truly individualized program which accounts for the program's highly successful outcomes.

SANCTIONS AND INCENTIVES

Sanctions and incentives are immediate. Sanctions are imposed to correct a violation or inappropriate behaviors/choices made by the participant. Sanctions are defined in the SSLC Policy and Procedure manual as “the imposition of one or more negative consequences in response to undesirable behavior(s)”. According to the SSLC Policy and Procedures Manual, sanctions must be predictable, consistent and immediate. Sanctions are imposed according to evidence-based best practices and are implemented on a graduated scale where the participant receives the least restrictive sanction based upon past behavior and the severity of the violation. Sanctions include

community service, written assignments, restricted travel, house arrest, modified curfew/check-in time, extra UA/breath testing, and increased supervision or court reporting.

Incentives are imposed to enforce positive behaviors. Incentives are defined in the SSLC Policy and Procedure manual as: “the award of one or more positive consequences that is the direct result of, and is a reward for, the participant’s positive behavior”. Incentives include gift cards, late curfew and leave court early cards.

Driving offenses are met with specific consequences as outlined in table 8:

TABLE 8

South St. Louis County DWI Court Driving Offenses and Penalties

<p>CANCELLED LICENSE AND DRIVING OR IGNITION INTERLOCK VIOLATIONS</p>	<p>Minimum 24 hours jail. Add 6 months to the end of phase 5. Graduates will return to phase 5 for 6 months.</p>
<p>CANCELLED LICENSE OR USE OF DRUGS OR ALCOHOL AND EITHER DRIVING OR ATTEMPTING TO DRIVE (INCLUDING ATTEMPTED USE OF AN IGNITION INTERLOCK DEVICE)</p>	<p>Minimum 7 days jail. Revocation and execution of sentence.</p>

Participants may be terminated from the program for one or more of the following program violations or noncompliance:

- failure to maintain contact and/or absconding for a minimum of 30 days;
- incurring a new DWI charge;
- failure to comply with program requirements within a reasonable period of time and participant has failed to improve attendance or motivation;
- any conduct deemed inappropriate for DWI Court participation as determined by the DWI Court Team.

The SSLC DWI Court Judge and his team attempt to mitigate these behaviors through corrective action at the first sign of non-compliance throughout the program. **Often, in lieu of termination, the court will impose the following at the discretion of the Judge and the DWI Court Team:**

- extension of current phase;
- return to prior phase;
- more frequent court appearances;
- flash incarceration (24 hours, sometimes 48);
- electronic monitoring;
- Community Service Work (CSW) or Sentence to Service (STS) work;
- extension of probation term.

GRADUATION

Graduation from the SSLC DWI Court program requires completion of the following:

- successful completion of all phase and program requirements, including chemical dependency treatment and cognitive programming;
- 90 days minimum continuous, documented sobriety;
- minimum of 14 months in the program;
- submission of graduation application see ([Appendix L South St. Louis County DWI Court Graduation Application](#));
- payment of all fees.

Participants are required to submit an application for graduation. This application provides a mechanism for participants to reflect on their life, the changes they have made, and how they plan to continue those changes. Upon graduation, participants will continue to have supportive services from the DWI Court Team. Unique to the SSLC DWI Court, graduated participants continue to be monitored by dedicated probation officers for the balance of their probation term. Graduated or Alumni participants will come to court and report to the DWI Court Judge every six months and are subject to random UAs and home visits throughout the remainder of their probation period. Graduated participants also belong to an Alumni group that meets once a month. A peer-peer program is currently being established in the community.

FEES

DWI Court fees range are \$100/month for all active phases to be paid to the SSLC DWI Court. Although the SSLC track fees and payments, participants are responsible for maintaining their own records of their payments and remaining balances. It is not required that fees are paid to advance to the next Phase in order to alleviate disparity issues regarding Phase completion, however Graduation requires that all fees are paid in full. The SSLC DWI Court team monitors the participant's ability to pay on schedule. Participants are not held back from "phasing up" however, they are encouraged to take a thoughtful approach and are not allowed to wait until just prior to graduation to start paying. Participants that are deemed unable to pay may complete community service work (CSW) or Sentence to Service (STS) work in lieu of payment at the discretion of the SSLC DWI Court Team. Participant failure to comply with payments, CSW or STS are reviewed by the DWI Court Team and sanctions may be imposed.

DATA TRACKING

Data deemed necessary to measure goals and objectives as identified by evidence-based drug court proposed variables is manually entered into the electronic Court Services Tracking System (CSTS) and maintained by Arrowhead Regional Corrections. This database is used statewide to collect, store, and distribute information about each participant. Collected variables include the participant's progress on probation, court participation, and treatment and evaluation needs. This information is maintained by the DWI Court Coordinator, stored on the St. Louis County computer network, and shared statewide through the Statewide Supervision System (SSS). Yearly evaluations are conducted to determine the program's effectiveness regarding meeting goals and objectives and to ensure fidelity to the program design. In addition, an outcome evaluation is conducted through an outsource contractor.

6. Funding

Research has provided evidence-based data and outcomes to support on-going grant funding for DWI Courts including the identification of targeted populations, best practices to reduce recidivism, and varying judicial tracks to meet the needs of different risk levels of offenders.

The SSLC DWI Court Program is grant-funded by the MN OTS through federal grants from the National Highway Traffic Safety Administration (NHTSA), and Bureau of Justice Assistance (BJA) and has supplemental funding received from the county that is distributed throughout the district. Participant fees and grant funding are used to pay for UA testing. Additional SAMHSA funding is provided for the DWI Court Team case manager; however, this funding is nearing its term. Certain team members are not funded through the SSLC DWI Court; however, these members are indefinite members of the team and participate on a voluntary basis in addition to their employment by their participating agency. These members include the Probation Department, County Sheriff, County Attorney, Northeast Regional Corrections Center (NERCC), Fond du Lac, Recovery Alliance Duluth (RAD), and Public Defenders. However, half of the probation officers' compensation comes from grant funding.

7. Current Challenges

The current challenges faced by the SSLC DWI Court include the following:

- Access to treatment can be a barrier however, the SSLC DWI Court Team always determine an alternative plan. **Some advantages to overcome this challenge as acknowledged by the SSLC DWI Court are:**
 - o Not having a one size fits all treatment plan.
 - o Clients are allowed to choose providers as long as they match the assessed level of care. This gives them a voice in their treatment and what the federal law requires.
 - o Providing different levels of care for clients. For example, for participants who are actively using substances where certain logistical barriers may delay treatment, a lower level of care is often allocated including electronic home monitoring, daily alcohol monitoring, etc. Often these participants stabilize with these lower levels of care.
- Running an individualized court that takes an incredible amount of time can be challenging for team members. However, the passion and the dedication of the SSLC DWI Court Team members and their agency's support account for the continued longevity and success of the program.
- Funding is always a challenge; however, it is not a barrier. The primary costs of the court are UA costs that are paid for by the participant and grant funding.
- Transportation for participants in rural areas can be a challenge, however the SSLC DWI Court obtains bus passes and other transportation solutions for these instances.

8. Key Program Components for Success

The SSLC DWI Court Program has proven to be extremely successful in their mission to break the cycle of addiction with their participants (see Outcomes section below). All team members are in constant communication and respect each other. Judge Floerke provides the leadership necessary to conduct an individualized non-adversarial approach where all DWI Court Team members have an equal voice. The highly individualized case management plan including continued support beyond graduation of participants are considerable key components to the success of the program.

Additional key components that contribute to the success of the program include the following:

• Fidelity to the Drug Court Model

As previously mentioned, the SSLC DWI Court program strictly follows evidence-based best practices as defined in the "10 Guiding Principles of DWI Courts" and Key Components for DWI Courts.

• Program Entry Pre-Plea

According to NPC Research, allowing participants into the drug court program only post-plea was associated with lower graduation rates and higher investment costs while drug courts that mixed pretrial and post-trial offenders had similar outcomes as drug courts that keep those populations separate (Carey, Finigan, & Pukstas, 2008). Participant entry into the DWI Court program pre-plea allows for early interventions and admission into treatment to facilitate behavior change and enhance recovery outcomes.

• Utilizing a Validated Risk Assessment Tool

The SSLC DWI Court Program conducts validated screening and assessment tools to properly identify participant risk and need levels to appropriately assign interventions and treatment. In addition, a mental health assessment is conducted for all incoming participants to determine if they need additional services which is then incorporated into their case management plan.

• Rapid Testing Outcomes

UA, Bluetooth Alcohol Monitoring Devices, and interlock results are real time with immediate response. Further testing is conducted on an as-needed basis. Research has shown that obtaining drug testing results within 48 hours of submission is associated with higher graduation rates and lower recidivism (Carey, Finigan, & Pukstas, 2008). The SSLC DWI Court team demonstrates swift and appropriate measures in response to drug test violations and compliance. This has been shown to increase positive behavior change outcomes.

• Community Involvement

The SSLC DWI Court Program team includes members of their community, specifically a local tribal representative as well as a local law enforcement representative. Research has shown that drug court programs that included law enforcement on the drug court team had 88 percent greater reductions in recidivism and an increase of 44 percent in cost savings compared to programs that did not include law enforcement (Carey, Mackin, & Finigan, 2012).

• Consistent and Effective Communication

DWI Court team members communicate regularly and attend every staffing meeting to report participant status and progress on a regular basis. In addition, probation and treatment share updates through email. Studies conducted by NPC Research show that programs have 50 percent greater reductions in recidivism when these staff members regularly attend team meetings compared to programs that do not perform this practice (Carey et al., 2012).

- **Consistency Among Team Members, Program Processes and Continued Best-Practices Training**

Staff are indefinite members of the DWI Court Team that have been specifically assigned to the DWI Court including Judge Floerke. The SSLC DWI Court Program has written guidelines for program and program processes including eligibility, Phase requirements, incentives, sanctions and graduation criteria. The team continuously attends DWI Court Training and is well-versed in evidence-based best practices.

- **Electronic Data Reporting**

The SSLC DWI Court Program has successfully implemented an electronic data system. This allows for the availability of reliable real-time data to adequately monitor participant behavior and actions throughout the program. Electronic data reporting also provides information for evaluations of court practices to ensure fidelity to evidence-based best practices and identification of elements within the program that may need modifications.

- **Evaluation and Review of the DWI Court Program.**

The SSLC DWI Court Program is consistently monitoring their program effectiveness and identifying best practices to implement within their programs. A policy committee has been created to discuss global issues such as sustainability, community connections, and participant needs. Policy meeting discussions include information learned at drug court conferences, sanctions and incentives reviews, and potential updates to the DWI court policy manual. The committee includes DWI Court team members and meets at regular policy meetings.

9. Outcomes

The SSLC DWI Court Program was evaluated by NPC research in 2014. **Evaluation outcomes included the following when compared to traditional court systems:**

- SSLC DWI Court Participant graduation rate is 98 percent, which is double the national average.
- SSLC DWI Court Participants had three times fewer rearrests for any charge in the first year.
- SSLC DWI Court Participants had 66 percent fewer rearrests, and 66 percent fewer new DWI arrests three years after program entry.
- SSLC DWI Court Participants received half as many victimizations (person and property arrests) two years after entry.
- SSLC DWI Court Participants had 60 percent fewer felony arrests two years after entry.

Overall, the evaluation showed that DWI court participants were rearrested less often than the comparison group even though the DWI court group had more offenders with felony DWI arrests than the comparison group. The evaluation also revealed that high-risk/high-need participants benefit the most from this program, and those who had been arrested the most in the past, that have a higher criminal history, performed the best during the program. In addition, there were significant cost savings for the county as a result of the positive outcomes that occur while the participant is still in the program. The current retention rate for the SSLC is 93 percent and the recidivism rate is 4 percent.

In 2018 Judge Floerke and his team received the National Center for DWI Courts (NCDC) DWI Court Leadership award. "We're trying really hard to do the right thing. We've brought in trainers from around the country. Our team knows the research and knows the best practices."

3 Recommendations

The case studies presented in this report provide examples of how these jurisdictions identified the need within their community; addressed certain barriers presented when initially implementing these pretrial services; and sustained these programs to provide a safer public safety service to the community. Most notable, each Case Study Jurisdiction is led by a champion for the program who is not only a leader in their judicial district but is also a prominent figure within their community. Strong leadership is a vital component for success among these programs. Each Case Study jurisdiction also expressed the importance of consistent and effective communication between participating agencies and stakeholders and identifying stakeholders in the community that support the program. Community support is a key element in sustaining a successful program, especially in particularly political climates.

As shown in Joaquin County, a dedicated pretrial services agency is helpful when implementing these services. A dedicated pretrial services agency guarantees that there is a single entity responsible for and managing the pretrial functions under a single organization. This allows for better coordination among stakeholders and review of process elements provided to the pretrial programs management that can make independent decisions on budget, staffing, and policy. A dedicated agency provides better staff direction and motivation to critical work priorities and clearer lines of communication. The pretrial services agency should be a separate, independent entity although jurisdictions may incorporate pretrial services agencies within a larger parent organization if that component has: a clearly defined, pretrial service related function as its purpose as seen with the SSLC DWI Court. As with the SSLC DWI Court, various stakeholder agency staff are dedicated to the SSLC DWI Court only to work with these offenders.

Elements of an effective pretrial system include pretrial release and detention decisions based on risk and designed to maximize release, court appearance, reduce jail overcrowding and enhance public safety. A key component to effectively and properly identify DUI offenders including their element of risk is by identifying their number of prior offenses. Pretrial Diversion Programs that expunge the offense from the record is eliminating a key factor to identify the potential level of risk for the offender. An alcohol-related offense must be retained on the offender's record (Hedlund and McCartt, 2002) see Case Studies Oregon DUII Diversion Program section.

The period between arrest and arraignment is a window of opportunity to not only identify offender risk level, but also intervene and articulate the value of substance abuse treatment. Drug testing, screening, and assessment for substance abuse and dependence, needs assessment in other areas, and relapse prevention are important components of intervention at this time as well as at other points along the continuum. Each of the case studies in this report

identified that utilizing an evidence-based validated screening and risk assessment tool, preferably one that is specific to alcohol such as the DUI-RANTS, CARS, and IDA (see [Appendix B Risk Assessment and Screening Tools](#)) is considered a best practice and allows for the identification of appropriate bail conditions and levels of intervention in this regard. Utilizing an assessment that is not specific to alcohol for DUI repeat offenders may underscore the level of risk for these offenders thereby leading to inappropriate pretrial intervention measures.

Perhaps the strongest recommendation for pretrial services programs as defined in each of the case studies contained in this report is the importance of supervision of these offenders. Appropriate supervision measures include an alcohol monitoring device such as an ignition interlock device, transdermal continuous alcohol monitoring devices, or home alcohol monitoring device; combined with supervision of the offender during this time. Supervision usually conducted by community corrections, probation or in some instances the County Sheriff. Holding offenders accountable for violations on these devices in a swift and timely manner is critical to the effectiveness of the program. Immediate notification to the supervising agent by device vendor for violations is an integral component of the supervision process.

Each of the Case Study jurisdictions also noted the importance of consistently monitoring their program effectiveness and identifying best practices to implement within their programs. Some jurisdictions conduct in-house evaluations in addition to hiring an outside contractor to fully evaluate their program. The San Joaquin County Pretrial DUI Program and the SSLC DWI Court Program have hired an outside research agency to identify both program strengths and areas to improve the program. This allowed for the development of innovative ways to monitor and provide tools affect behavior change for this population.

It is understood that jurisdictions vary when adjudicating DUI offenders. These variations may affect a jurisdiction's ability to implement certain recommendations as presented in this report. There may be jurisdictions that do not have established procedures or resources for those offenders who are deemed in need of substance abuse or mental health treatment, or their resources are limited. In addition, the political climate of various jurisdictions may not allow for certain recommended legislative changes.

Recognizing the disparities mentioned above, the following practices have been noted as key factors for success presented in each of the Case Studies within this report. The following recommendations should be considered when seeking to establish or improve pretrial services for DUI offenders.

TABLE 9

Recommendations for Strong Pretrial Services for DUI Cases

LEGISLATIVE RECOMMENDATIONS	<ul style="list-style-type: none"> • Reduce jailable offenses; • Revise state bail laws to eliminate indigency as a requirement for detention; • Implement statewide diversion programs governed by state statute <ul style="list-style-type: none"> ◦ Statute should include that the alcohol offense remains on the record and is not expunged once the offender has completed the program; ◦ Statute should require that a subsequent offense be treated as a second offense, not a first; ◦ Statute should require assessment and treatment guidelines for diversion. • Retain DMV records to identify prior alcohol-related offenses on the driver record <ul style="list-style-type: none"> ◦ Unlimited or lifetime “lookback” period; ◦ Ensure the state does not “purge” historical records prior to a certain date.
LAW ENFORCEMENT RECOMMENDATIONS	<ul style="list-style-type: none"> • Train and educate law enforcement officers regarding substance abuse and mental health issues; • Require background checks for offenders at time of arrest to quickly identify prior alcohol-related offenses (i.e., repeat/high-risk offenders).
SCREENING AND ASSESSMENT RECOMMENDATIONS	<ul style="list-style-type: none"> • Conduct universal screening of all defendants eligible by statute and use a validated pretrial risk assessment to inform release decisions; • Conduct a risk and needs assessment as a condition of pretrial release; • Utilize assessment instruments validated among the impaired driver population to ensure accurate identification of risk level; • Utilize assessment instruments that identify a range of behavioral health needs; ensure that tools look beyond alcohol consumption; • Assume that many impaired drivers are actually polysubstance users who have not been identified as such; • Facilitate connections to treatment interventions that match needs (based on assessment outcomes).
AGENCY AND STAFFING RECOMMENDATIONS	<ul style="list-style-type: none"> • Establish a single dedicated pretrial services agency; • Encourage inter-agency coordination and collaboration among stakeholders and promote strong communication; • Facilitate the allocation of resources efficiently; • Identify opportunities to collaborate with other agencies to achieve mutual goals/desired outcomes.

<p>SUPERVISION RECOMMENDATIONS</p>	<ul style="list-style-type: none"> • Use dedicated pretrial supervision agents (could be probation officers that are assigned to pretrial units); • Use alcohol monitoring technology including ignition interlock devices, transdermal/continuous alcohol monitoring, and electronic home monitoring devices; <ul style="list-style-type: none"> ◦ Require immediate notification to supervising agent by device vendor for violations. • Create accountability and deterrence by imposing swift, certain, and proportionate sanctions in response to non-compliance; • Notify the court of defendant violations and the possible need for supervision adjustment; • Require regular and random drug testing to confirm sobriety; <ul style="list-style-type: none"> ◦ Rapid testing outcomes; ◦ Effective and constant communication between testing lab and supervising agency; ◦ Utilize various methods including urinalysis, oral fluid testing, drug patches, etc. • Notify defendants of upcoming court dates; • Always rely on risk-based supervision and performance measurement/feedback.
<p>EVALUATION RECOMMENDATIONS</p>	<ul style="list-style-type: none"> • Create an evaluation plan and consistently collect data; <ul style="list-style-type: none"> ◦ Consider performing both process and outcome evaluations. • Identify target performance and outcome measures; consistent monitoring of program effectiveness and identifying best practices to implement within the program; • Obtain feedback from staff, partners, and clients; • Identify shortcomings and limitations in existing processes and device strategies to address these problems.
<p>EDUCATION AND AWARENESS RECOMMENDATIONS</p>	<ul style="list-style-type: none"> • Increase education and awareness of pretrial programs to bolster public confidence in and support for criminal justice processes, enhancing system performance, and upholding the integrity of the law. <ul style="list-style-type: none"> ◦ These efforts should focus on criminal justice practitioners, agency administrators/decision-makers, policymakers, and the general public.

4 Conclusions

Repeat DUI offenders are at especially high-risk of being involved in alcohol-related crashes and represent a critical threat to public safety (Simpson et al. 1996). Effective pretrial programs use a variety of sanction methods and requirements to intervene early in the adjudication process to promote behavior change, reduce the risk to public safety, and reduce recidivism within the community. Each of the Case Study jurisdictions have adopted evidence-based pretrial program elements that have been found to produce successful outcomes among program participants. Although substantial barriers may exist when implementing these processes, change can be accomplished in a piecemeal fashion over time. Utilizing a champion for the program to promote these elements and strategies as well as involving stakeholders from the system and the community to support these programs is also important.

By implementing robust and evidence-based pretrial programs to address high-risk, repeat offenders, we allow for early intervention which can help prevent subsequent DUI arrests by these offenders and, in doing so, save lives on our roadways.

References

- AAA Foundation for Traffic Safety (2017). 2016 Traffic Safety Culture Index. Washington, D.C.: AAA Foundation for Traffic Safety. <https://aaafoundation.org/wp-content/uploads/2018/03/TSCI-2017-Report.pdf>.
- Alarid, L.F. and Montemayor, C.D. (2010) Legal and extralegal factors in attorney recommendations of pretrial diversion. *Criminal Justice Studies* 23: 3. 239-252. DOI: 10.1080/1478601X.2010.502348. <https://www.tandfonline.com/doi/full/10.1080/1478601X.2010.502348>.
- Alcohol and Drug Abuse Institute (2018). Screening and Assessment Instruments Research Institute on Addictions Self-Inventory (RIASI). University of Washington. http://bit.ly/RIASI_inst.
- Anderlini, L., Felli, L., Immordino, G. (2017). Costly Pretrial Agreements (Working Paper). Department of Economic Georgetown University. Washington, D.C. https://www.researchgate.net/publication/314006742_Costly_Pretial_Agreements
- Blincoe LJ, Miller TR, Zaloshnja E, Lawrence BA. National Highway Traffic Safety Administration. The economic and societal impact of motor vehicle crashes, 2010. (Revised). U.S. Department of Transportation, Washington, DC; 2015. Available at: <http://www.nrd.nhtsa.dot.gov/pubs/812013.pdf>
- Berning, A., Compton, R., and Wochinger, K. (2015). Results of the 2013–2014 National Roadside Survey of Alcohol and Drug Use by Drivers. Traffic Safety Facts Research Note. (Report No. DOT HS 812 118). Washington, DC: National Highway Traffic Safety Administration. <http://www.nhtsa.gov/Driving+Safety/Research+&+Evaluation/Alcohol+and+Drug+Use+By+Drivers>
- Buner, E. (2015). Traffic Resource Center for Judges Pretrial Diversion Programs for DUIs. National Center for State Courts (NCSC). Issue Brief 2. <http://home.trafficresourcecenter.org/~media/Microsites/Files/traffic-safety/Issue%20Brief%20%20Pretrial%20Diversion%20programs.ashx>.
- Casanova Powell, T. (2018). Supervising the Impaired-Driving Population Through the Use of Technology. National Center for DWI Courts Webinar. <https://www.dwicourts.org/e-learning/supervising-the-impaired-driving-population-through-use-of-technology/>.
- California Courts, The Judicial Branch of California, (2019). SB 10: Pretrial Release and Detention. Accessed 6-24-19. <https://www.courts.ca.gov/pretrial.htm>
- Carey, S. M., Finigan, M. W., & Pukstas, K. (2008). Exploring the Key Components of Drug Courts: A Comparative Study of 18 Adult Drug Courts on Practices, Outcomes and Costs. Submitted to the U. S. Department of Justice, National Institute of Justice, May 2008. NIJ Contract 2005M114.
- Carey, S. M., Fuller, B., E., Kissick, K., Taylor, E., & Zold-Kilbourn, P. (2008). Michigan DUI Courts Outcome Evaluation, final report. Submitted to Michigan Supreme Court.
- Carey, S., Fuller, B., and Kissick, K. (2008). Michigan DWI Courts Outcome Evaluation: Final Report. Portland: NPC Research. https://council.legislature.mi.gov/Content/Files/sdtcac/mi_dui_outcome_eval_final_report_0308.pdf.
- Carey, S. M., Mackin, J. R., & Finigan, M. W. (2012). What Works? The 10 Key Components of Drug Courts: Research Based Best Practices. *Drug Court Review*, 8(1), 6-42.
- C' de Baca J, Miller WR, Lapham S. A multiple risk factor approach for predicting DWI recidivism. *Journal of Substance Abuse Treatment*. 2001;21:207–215.
- Center for Disease Control and Prevention. (2018). *Intervention Fact Sheets*. Limits on Diversion and Plea Agreements. Atlanta, GA. <https://www.cdc.gov/motorvehiclesafety/calculator/factsheet/plealimits.html>.
- Chief Probation Officers of California, 31 Counties Attend Pretrial Training in San Joaquin; Learn About Model Pretrial Program, website accessed 6-25-19. <https://www.cpoc.org/post/31-counties-attend-pretrial-training-san-joaquin-learn-about-model-pretrial-program>
- Compton, R., and Berning, A. (2015). Drug and Alcohol Crash Risk. Traffic Safety Facts Research Note. DOT HS 812 117. Washington, DC: National Highway Traffic Safety Administration. https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/812117-drug_and_alcohol_crash_risk.pdf.
- Council of State Governments Justice Center. (2017). Practical Considerations Related to Release and Sentencing for Defendants Who Have Behavioral Health Needs: A Judicial Guide. https://csgjusticecenter.org/wp-content/uploads/2017/11/11.15.17_Practical-Considerations-Related-to-Release-and-Sentencing-for-Defendants-Who-Have-Behavioral-Health-Needs.pdf.
- DeMihele, M., Baumgartner, P., Wenger, M., Barrick, K., Comfort, M., Shilpi, M. (2017). Center for Justice, Safety, and Resilience. <https://www.arnoldfoundation.org/wp-content/uploads/3-Predictive-Utility-Study.pdf>
- Dobbie, W., Goldin, J., and Yang, C. (2016) The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges. NBER Working Paper No. 22511 JEL No. J24,J70,K14,K42. <https://www.nber.org/papers/w22511.pdf>.

- Drew, L., Royal, D., Moulton, B., Peterson, A., Haddix, D. (2010). Volume I. Summary Report National Survey of Drinking and Driving Attitudes and Behaviors: 2008. (Report No. DOT HS 811 342). (Report No. DOT HS 812 118). Washington, DC: National Highway Traffic Safety Administration. <https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/811342.pdf>.
- Fell, J., Tippetts, S., & Langston, E. (2011). An Evaluation of Three Georgia DWI Courts. DOT HS 811 450. Washington, D.C.: Department of Transportation. <http://www.nhtsa.gov/staticfiles/nti/pdf/811450.pdf>.
- FIELDS, L.L. Pretrial diversion: A solution to California's drunk-driving problem. *Federal Probation* LVIII(4):20-30, 1994.
- Foundation for Advancing Alcohol Responsibility. (2017). *Computerized Assessment and Referral System (CARS)*. <https://www.responsibility.org/end-impaired-driving/initiatives/cars-dui-assessment-project/>.
- Freeman James E, Maxwell Jane C, Davey Jeremy D. Unraveling the complexity of driving while intoxicated: a study into the prevalence of psychiatric and substance abuse comorbidity. *Accident Analysis and Prevention*. 2011;43(1):34-39.
- Gowin, JL, Sloan ME, Stangl BL, Vatsalya V, Ramchandani VA. Vulnerability for Alcohol Use Disorder and Rate of Alcohol Consumption. *Am J Psychiatry*. 2017 Nov 1;174(11):1094-1101. PMID:28774194
- Hon. Karl B. Grube, "Florida's Non-Statutory, De Facto DUI/DWI Diversion Program: Diverting Justice for Judicial and Prosecutorial Expediency?" 8 *Stetson L. Rev.* 547 (July 2019) <https://www.stetson.edu/law/lawreview/media/2019-summer-Grube.pdf>
- Hedlund JH, McCartt AT. Drunk driving: Seeking additional solutions. Trumbull, CT: Preusser Research Group; 2002.
- Hedlund, H., & McCartt, A.T. (2002). Drunk driving in the United States. A roadmap for progress. Proceedings of the 16th International Conference on Alcohol, Drugs and Traffic Safety, Montreal, Canada, [CD-ROM], ICADTS.
- Holmes, E. (2017). Computerized Assessment and Referral System (CARS): Screening and Assessment of Co-occurring Disorders. National Center for DWI Courts Webinar. <https://www.dwicourts.org/wp-content/uploads/2017/08/Holmes-2017-CARS-NCDC-Webinar-8.1.pdf>.
- Holmes, E. & Dalbec, M. (2017). Computerized Assessment and Referral System (CARS) Implementation Process Evaluation. Foundation for Advancing Alcohol Responsibility. <https://www.responsibility.org/wp-content/uploads/2015/02/CARS-Report.pdf>.
- Hunter SB, Wong E, Beighley CM, Morral AR. Acculturation and driving under the influence: A study of repeat offenders. *Journal of Studies on Alcohol*. 2006;67:458-464.
- Johnson, B. (2018). An Overview of Minnesota's DWI Laws. Research Department Minnesota House of Representatives. St. Paul, MN. <https://www.house.leg.state.mn.us/hrd/pubs/DWlover.pdf>
- Jones, R. L., and Lacey, J.H. (2000). State of Knowledge of Alcohol-Impaired Driving: Research on Repeat DWI Offenders. (Report No. DTNH22-98-C-05109). National Highway Traffic Safety Administration. Washington, D.C. <https://one.nhtsa.gov/people/injury/research/pub/Alcohol-ImpairedDriving.html>.
- Jones, R.L.; Wiliszowski, C.H.; AND Lacey, J.H. Evaluation of Alternative Programs for Repeat DWI Offenders. Technical Report No. DOT- HS-808-493. Washington, DC: National Highway Traffic Safety Administration, Office of Program Development and Evaluation, 1996.
- Karberg, J.C., and James, D.J. (2005) Substance Dependence, Abuse, and Treatment of Jail Inmates, 2002. Bureau of Justice Statistics Special Report, U.S. Department of Justice Office of Justice Programs, July 2005 NCJ 209588, <https://www.bjs.gov/content/pub/pdf/sdatj02.pdf>
- Kilmer, B., Nicosia, N., Heaton, P., and Midgette, G. (2013). Efficacy of Frequent Monitoring with Swift, Certain, and Modest Sanctions for Violations: Insights from South Dakota's 24/7 Sobriety Project. *American Journal of Public Health, Vol. 103(1)*.e37-e43 http://www.rand.org/pubs/external_publications/EP51155.html.
- Kubras, A., Kayabas, P., and Vachal, K. (2017) Does the 24/7 Sobriety Program Positively Influence Driver Behaviors in North Dakota? Upper Great Plains Transportation Institute North Dakota State University Department Publication No. 296. Fargo, North Dakota. <https://www.ugpti.org/resources/reports/downloads/dp-296.pdf>.
- Lacey, J.H, Kelley-Baker, T., Berning, A., Romano, E., Ramirez, A., Yao, J., Moore, C., Brainard, K., Carr, K., Pell, K., and Compton, R. (2016). Drug and Alcohol Crash Risk: A Case-Control Study. (Report No. DOT HS 812 355). Washington, DC: National Highway Traffic Safety Administration. https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812355_drugalcoholcrashrisk.pdf.
- Laura and John Arnold Foundation. (2018). *Initiatives/Pretrial Justice*. <https://www.arnoldfoundation.org/initiative/criminal-justice/pretrial-justice/>.
- Levin, M. and Haugen, M. (2018) Open Roads and Overflowing Jails: Addressing High Rates of Rural Pretrial Incarceration. Center for Effective Justice. Texas Public Policy Foundation. <https://files.texaspolicy.com/uploads/2018/08/16104511/2018-04-RR-Rural-Pretrial-Incarceration-CEJ-Levin-Haugen-1.pdf>.

- Lowe, N. (2014). Screening for Risk and Needs Utilizing the Impaired Driving Assessment. (Report No. DOT HS 812 022). Washington, DC: National Highway Traffic Safety Administration. <https://www.appa-net.org/eweb/docs/APPA/pubs/SRNUIDA.pdf>.
- Lowenkamp, C.T., VanNostrand, M., and Holsinger, A. (2013) Investigating the Impact of Pretrial Detention on Sentencing Outcomes. Laura and John Arnold Foundation. <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=172dd7bf-96cf-aa8d-75d0-399b1a9b17e3&forceDialog=0>.
- Mabry, A. South Dakota 24/7 Sobriety Program PowerPoint. Accessed 7-2-19. <https://atg.sd.gov/docs/247ppt.pdf>
- Marlowe, D., Festinger, D., Arabia, P., Croft, J., Patapis, N., & Dugosh, K. (2009). A systematic review of DWI court program evaluations. *Drug Court Review*, 6(2), 1-52. <http://www.ndci.org/sites/default/files/ncdc/DCR%2C%20Vol.%206%2C%20%20No.%202.pdf>.
- McKnight, S.A., Fell, J.C., and Auld-Owens, A. (2012). Transdermal Alcohol Monitoring: Case Studies. Report No. DOT HS 811 603). Washington, DC: National Highway Traffic Safety Administration.
- MCKNIGHT, A.J., AND VOAS, R.B. The effect of license suspension upon DWI recidivism. *Alcohol, Drugs and Driving* 7(1):43-54, 1991.
- McMillen DL, Adams MS, Wells-Parker E, Pang MG, Anderson BJ. Personality traits and behaviors of alcohol-impaired drivers: A comparison of first and multiple offenders. *Addictive Behaviors*. 1992;17:407-414.
- Mitchell, O., Wilson, D., Eggers, A., & MacKenzie, D. (2012). Assessing the effectiveness of drug courts on recidivism: A meta-analytic review of traditional and non-traditional drug courts. *Journal of Criminal Justice*, 40(1), 60-71.
- Mothers Against Drunk Driving (MADD) (2009). New Data Shows Disturbing Number of Repeat Drunk Drivers on America's Roadways.
- Minnesota Department of Public Safety Office of Traffic Safety, Minnesota Impaired Driving Fact Sheet, 2015. June 2016.
- National Association of Pretrial Services Agencies. (2006). Promising Practices in Pretrial Diversion. U.S. Department of Justice. Washington, D.C. <http://www.nationaltasc.org/wp-content/uploads/2012/11/Promising-Practices-in-Pretrial-Diversion%E2%80%9D-Published-by-the-National-Association-of-Pretrial-Service-Agencies-with-support-from-the-Bureau-of-Justice-Assistance.pdf>.
- National Center for Statistics and Analysis. (2018, November). Alcohol-Impaired Driving: 2017 data (Traffic Safety Facts. Report No. DOT HS 812 630). Washington, DC: National Highway Traffic Safety Administration. <https://crashstats.nhtsa.dot.gov/Api/Public/View-Publication/812450>.
- National Conference of State Legislatures. (2019) Website Pretrial Diversion. Accessed 6-29-19. <http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-diversion.aspx>
- National Institute on Alcohol Abuse and Alcoholism. (2018). Alcohol Dependence Scale. Assessing Alcohol Problems: A Guide for Clinicians and Researchers. https://pubs.niaaa.nih.gov/publications/assessingalcohol/instrumentpdfs/10_ads.pdf.
- National Institute on Alcohol Abuse and Alcoholism. (2018). *Publications Alcohol Use Disorders Identification Test (AUDIT)*. <https://pubs.niaaa.nih.gov/publications/audit.htm>.
- National Institute on Alcohol Abuse and Alcoholism. (2018). *Publications Inventory of Drug-Taking Situations (IDTS)*. https://pubs.niaaa.nih.gov/publications/assessingalcohol/InstrumentPDFs/40_IDTS.pdf.
- National Institute on Alcohol Abuse and Alcoholism. (2018). *Publications Michigan Alcohol Screening Test (MAST)*. https://pubs.niaaa.nih.gov/publications/AssessingAlcohol/InstrumentPDFs/42_MAST.pdf.
- National Institute on Alcohol Abuse and Alcoholism. (2018). *Publications Substance Abuse Subtle Screening Inventory (SASSI)*. https://pubs.niaaa.nih.gov/publications/assessingalcohol/Instrument-PDFs/66_SASSI.pdf.
- National Institute on Drug Abuse. (2010). *Comorbidity: Addiction and Other Mental Illnesses*. Research Report Series. Publications Number 10-5771. <https://www.drugabuse.gov/sites/default/files/rccomorbidity.pdf>.
- National Transportation Safety Board. (1984) Safety Recommendations H-84-86. Letters to Governors of the 50 States and Mayor of D.C. National Transportation Safety Board. Washington, D.C. https://www.nts.gov/safety/safety-recs/reclatters/H84_77_86.pdf.
- Nelson, S. E., Belkin, K., LaPlante, D. A., Bosworth, L., & Shaffer, H. J. (2015). A prospective study of psychiatric comorbidity and recidivism among repeat DUI offenders. *Archives of Scientific Psychology*, 3(1), 8-17. <http://dx.doi.org/10.1037/arc0000009>
- Nochajski TH, Stasiewicz PR. Relapse to driving under the influence (DUI): A review. *Clinical Psychology Review*. 2006;26:179-195.
- North Dakota Attorney General. (2018). 24/7 Sobriety Program. North Dakota State Government. <https://attorneygeneral.nd.gov/public-safety/247-sobriety-program>.

- NPC Research. (2014). Minnesota DWI Courts: A Summary of Evaluation Findings in nine DWI Court Programs. Portland: Author.
- Oregon Department of Transportation. (2016). DUII Data Book for Oregon Counties: 2009-2013. Transportation Safety Division Oregon Department of Transportation. Salem, Oregon. https://www.oregon.gov/ODOT/Safety/Documents/DUII_DataBook2009-2013.pdf
- Picard, H. and Fazel, S. (2013). Substance abuse as a risk factor for violence in mental illness: some implications for forensic psychiatric practice and clinical ethics. *Curr Opin Psychiatry* 26(4): 349-354. doi:10.1097/YCO.0b013e328361e798. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3907744/pdf/emss-56286.pdf>.
- Pretrial Justice Institute. (2018). *Why We Need Pretrial Reform*. <https://www.pretrial.org/get-involved/learn-more/why-we-need-pretrial-reform/>.
- Pretrial Justice Institute. (2017). *Outcomes from the Smart Pretrial Initiative*. <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=56a48c85-d376-ea-ba-e15c-1e34fe8f05a2&forceDialog=0>.
- Reichert, J. & Gatens, A. (2018). An examination of Illinois and national pretrial practices, detention, and reform efforts. Chicago, IL: Illinois Criminal Justice Information Authority. https://www.researchgate.net/publication/326211532_An_Examination_of_Illinois_and_National_Pretrial_Practices_Detention_and_Reform_Efforts.
- Richard, C. M., Magee, K., Bacon-Abdelmoteleb, P., & Brown, J. L. (2018, April). Countermeasures that work: A highway safety countermeasure guide for State Highway Safety Offices, Ninth edition (Report No. DOT HS 812 478). Washington, DC: National Highway Traffic Safety Administration.
- Rivolta, P.M., (2013). Pretrial diversion for first-time DWI offenders? An evaluation of the Harris County "DIVERT" program. Doctor of Philosophy (Criminal Justice). Sam Houston State University, Huntsville, Texas.
- Rodriguez, R. (2018) Second chance law gives some first-time DWI offenders new options. *Kristv.com*. <https://kristv.com/news/state-news/2018/10/25/second-chance-law-gives-some-first-time-dwi-offenders-new-options/>.
- Royal D. Racial and ethnic group comparisons: National surveys of drinking and driving: Attitudes and behaviors—1993, 1995, and 1997. Vol. 1. Washington, D.C.: National Highway Traffic Safety Administration; 2000.
- Sacks, S., and Pearson, F.S. (2003) Co-Occurring Substance Use and Mental Disorders in Offenders: Approaches, Findings and Recommendations. *Federal Probation* V.67(2). http://www.uscourts.gov/sites/default/files/67_2_5_0.pdf.
- SAMHSA-HRSA Center for Integrated Health Solutions. (2018). *SBIRT*. <https://www.integration.samhsa.gov/clinical-practice/sbirt>.
- SALZBERG, P., AND KLINGBERG, C. The effectiveness of deferred prosecution for driving while intoxicated. *Journal of Studies on Alcohol* 44: 299-306, 1983.
- Shaffer HJ, Nelson SE, LaPlante DA, LaBrie RA, Albanese M. The epidemiology of psychiatric disorders among repeat DUI offenders accepting a treatment-sentencing option. *Journal of Consulting and Clinical Psychology*. 2007;75(5):795-804.
- Schauffler, R., LaFountain, R., Strickland, S., Holt, K. & K. Genthon, Examining the Work of State Courts: An Overview of 2015 State Court Caseloads, National Center for State Courts. <http://www.courtstatistics.org/~media/Microsites/Files/CSP/EWSC%202015.ashx>.
- Sixth Judicial District Treatment Courts, Minnesota, South St. Louis County DWI Court Policy and Procedure Manual, March 2017.
- State of California, Department of Motor Vehicles, Arrest for Driving Under the Influence DUI General Information (2019). Accessed 6-25-19. <https://www.dmv.ca.gov/portal/dmv/detail/dl/driversafety/dsalcohol#conf>.
- Tauber, J. and Huddleston, C.W., (1999) DWI/Drug Courts: Defining a National Strategy. National Drug Court Institute. Alexandria, VA. <https://www.ndci.org/wp-content/uploads/Mono1.DWI%20v2.pdf>
- Texas Department of Criminal Justice. (2015). The Texas Risk Assessment System: a new direction in supervision planning. Employee Publication of the Texas Department of Criminal Justice Vol. 22(3). https://www.tdcj.state.tx.us/connections/JanFeb2015/Images/JanFeb2015_agency_TRASS.pdf.
- Tison, J., Nichols, J. L., Casanova-Powell, T., & Chaudhary, N. K. (2015, April). Comparative study and evaluation of SCRAM use, recidivism rates, and characteristics. (Report No. DOT HS 812 143). Washington, DC: National Highway Traffic Safety Administration. <file:///C:/Users/tarac/Downloads/812143-SCRAMRecidivismRates-Report.pdf>.
- Morales, R., The Van Horn Advocate Website Local News February 7, 2014. Candidate Profile Daniel Anchondo, 205th District Court Judge. Accessed July 1, 2019. <https://vhtx.news/2014/02/07/Candidate-Profile-Daniel-Anchondo-205th-District-C/>
- Treatment Research Institute (2018). *Products for Problem-Solving Courts*. <http://www.tresearch.org/products/courts>.
- United States Department of Justice. (2018). *9-22.00-Pretrial Diversion Program*. <https://www.justice.gov/jm/jm-9-22000-pretrial-diversion-program>.

- Verstraete, A.G. (2004). Detection times of drugs of abuse in blood, urine, and oral fluid. *Therapeutic Drug Monitoring*. 2004 Apr;26(2):200-5.
- Voss, R.B., DuPont, R.L., Talpins, S., and Shea, C.L. (2011). Towards a national model for managing impaired driving offenders. *Addiction*. 106(7):1221-7. doi:10.1111/j.1360-0443.2010.03339.x. <https://www.ncbi.nlm.nih.gov/pubmed/21205054>.
- Wagner, P. and Rabuy, B. (2017). Following the Money of Mass Incarceration. Prison Policy Initiative. <https://www.prisonpolicy.org/reports/money.html>.
- Wanberg, K. W. (2004, 2009). The adult substance use survey - revised (ASUS-R). Arvada, CO: Center for Addictions Research and Evaluation. http://bit.ly/ASUSR_inst.
- Wanberg, K. W., & Timken, D. (1998). The adult substance use and driving survey (ASUDS). Arvada, CO: Center for Addictions Research and Evaluation.
- Wanberg, K. W., & Timken, D. (2012). The adult substance use and driving survey - revised (ASUDS-R): Psychometric properties and evidence of construct validity. Arvada, CO: Center for Addictions Research and Evaluation.
- Webster JM, Oser CB, Mateyoke-Scriver A, Cline VD, Havens JR, Leukefeld CG. Drug use and criminal activity among rural probationers with DUI histories. *International Journal of Offender Therapy and Comparative Criminology*. 2009a;53(6):717-730.
- Wieczorek WF, Nochajski TH. Characteristics of persistent drinking drivers: Comparisons of first, second, and multiple offenders. In: Hennessey DA, Wiesenthal DL, editors. *Contemporary Issues in Road User Behavior and Traffic Safety*. Hauppauge, NY: Nova Science; 2005. pp. 153-166.
- White, W. & Gasperin, D. (2007) The "hard core drinking driver": Identification, treatment and community management. *Alcoholism Treatment Quarterly*, 25(3), 113-132.
- Wooditch, A., Tang, L.L., and Taxman, F.S. (2013). Which Criminogenic Need Changes are Most Important in Promoting Desistance from Crime and Substance Use?. *Crim Justice Behav*. 2014 Mar; 41(3): 276-299. <https://dx.doi.org/10.1177%2F0093854813503543>
- World Health Organization (2018). *Management of Substance Abuse Research Tools*. Addiction Severity Index. http://www.who.int/substance_abuse/research_tools/addictionseverity/en/
- Zhen Zeng, Jail Inmates in 2016 (NCJ 251210), Bureau of Justice Statistics (February 2018). <https://www.bjs.gov/content/pub/pdf/ji16.pdf>

APPENDICES

APPENDIX A

Comparison of Pretrial Diversion Programs

in Pennsylvania, Kansas, Florida, and Oregon

	PENNSYLVANIA	KANSAS	FLORIDA	OREGON
STATUTORY PROVISION OR STATE RULES	234 Pa. Code Rule 300-320	Kansas §12-4414; §22-2907 and §22-2908 (pretrial diversion in general; not specific to DUIs)	Florida §397.334; §948.08; §948.16 (pretrial diversion in general; not specific to DUIs)	§ 813.200-§ 813.270
STATEWIDE/ BY COUNTY	Statewide Accelerated Rehabilitative Disposition (ARD) program, though requirements may vary by county	Statewide, though requirements may vary by county	By County—DUI Diversion Program offered in Orange and Osceola counties	Statewide
CRITERIA/ ELIGIBILITY	No prior DUI convictions · Have not been placed in ARD program within the past 10 years · Current crash must not have caused serious bodily injury to anyone else · There must have been no children under the age of 14 in the vehicle during the offense.	First offense. May be denied if: have previous conviction or diversion for any offense, were in a crash where anyone (self-included) was injured, high BAC tests, belligerent or untruthful with police, have a commercial driver's license.	No prior alcohol-related driving history. No more than two prior misdemeanor convictions. Have completed no more than one diversion program. Must not have been involved in a crash in the instant case. Facts of the case must suggest that the defendant is a good candidate for the DUI diversion.	Generally, one qualifies for diversion if: No DUII within the past fifteen years and the presently charged DUII did not involve a crash in which anyone but the person accused was injured; and 3) The person did not have a commercial driver's license (regardless of whether they were operating a commercial motor vehicle at the time).
WHO DECIDES	Generally, the county or district attorney is responsible for determining which cases will be recommended for entry into the ARD program and for deciding the terms of the program.	The county or district attorney has discretion as to whether to offer diversion.	The State (Office of the State Attorney) decides whether to approve or deny admission to the diversion program. ⁷	The Court
REQUIRED TO ADMIT GUILT?	No	Yes		When petitioning for a diversion agreement, must plead guilty or no contest.

	PENNSYLVANIA	KANSAS	FLORIDA	OREGON
HOW IT WORKS	Offender agrees to follow a court-mandated probationary program (including supervision) in exchange for suspension of the charges.	Offender must admit guilt, agree to a year of supervision, and fulfill a number of conditions. If this is done, the DUI charge is to be dismissed.”		Offender must plead guilty or no contest. If the person then pays for and completes an alcohol or drug treatment program and stays out of similar trouble for one year, the court then dismisses the criminal case.
CONDITIONS	Common conditions include alcohol/drug evaluation and then assessment, complete prescribed treatment program, complete Alcohol Highway Safety School, community service and payment of required fees.	The usual terms of a diversion contract require you to accept responsibility for the crime, obtain an alcohol evaluation from an alcohol counselor, not violate the law for a year, not drink alcohol for a year or go to establishments that serve alcohol, and to take random urine tests. You will pay a diversion fee, generally in the range of \$800 to \$1,250. You will be required to meet with a diversion monitor at least monthly to assess your compliance. You must also attend an alcohol education class, attend a DUI Victim Impact Panel, and do anything else required by the diversion coordinator. Some people will be required to complete outpatient or inpatient alcohol treatment.”	There are two tiers of DUI diversion based on BAC or if there was a refusal to take the breath test. The tier determines how long the diversion program lasts and the conditions. Tier 1 (BAC .15% or a refusal) is a 15 month program and includes a 6 month mandatory ignition interlock and higher costs. Generally, pretrial diversion consists of supervision, substance abuse evaluation and recommended treatment, and community service hours. The offender also must attend DUI school, pay all court costs and program expenses, submit to urine screens, make a mandatory contribution to MADD, and attend a victim impact class.	Typically, the offender must pay any required fees, complete an alcohol and drug abuse assessment, complete the recommended treatment program, attend a victim impact panel, not use alcohol or another intoxicant during the term of the diversion agreement, and install an ignition interlock device in their vehicle for the duration of the 1 year period.

	PENNSYLVANIA	KANSAS	FLORIDA	OREGON
LENGTH	Maximum period for ARD supervision is two years.	Depends on the facts of the case.	For tier 1 offenders (BAC <.15%), it is typically a 12 month program. For tier 2 offenders (BAC →.15% or refusal), it is typically a 15 month program.	One year, though it may be extended six months.
BENEFITS	Penalties like license suspension may be mitigated. Upon successful completion of the program, the charges are dropped, and the offender can apply to have the record of the DUI complaint expunged. As long as the offender is not arrested again within a certain amount of time, his record is essentially clean.	Because a diversion is not a conviction, it does not result in a criminal suspension of driving privileges. (However, you can still have your driving privileges suspended in the administrative (civil) proceeding)	Successful completion of the program allows for dismissal of the DUI charge, and the individual will likely be eligible to have their record expunged.	Dismissal of the charges upon successful completion of the program with prejudice, however the diversion stays on the public record. No criminal conviction. No conviction based license suspension. No probation, jail or community service. Less fines and fees.
SPECIAL INFORMATION	“One should be aware that by accepting entry into the ARD program alone is sufficient to trigger that event as being considered a first time DUI, if the program is not successfully completed and the offender is eventually found guilty. The acceptance of the offender into the program will trigger any subsequent DUI to be considered a 2nd offense, thereby causing the offender to suffer the enhanced penalties for a subsequent DUI.” (See Commonwealth v. Bowers, 2011 Pa. Super 135; Commonwealth v. Becker, 530 A.2d 888).	“Upon successful completion of the diversion program, no conviction will appear on your criminal record, although the [DUI charge and completed] diversion will still appear on your driving record. . . If you complete the DUI diversion program and are later charged with another DUI, the diversion will be treated as a prior conviction, so the new DUI charge would be considered your second offense.” If the individual has been off of diversion for at least 10 years, upon petition to the court, he may be able to have his record of the diversion expunged.		A diversion is reported on the individual’s driver’s license (as a diversion, not a conviction). In Oregon, DUI diversions and convictions cannot be expunged from one’s record.

Source: Issue Brief 2: Pretrial Diversion Programs for DUIs, National Center for State Courts (NCSC) (Buner, 2015)

APPENDIX B
Risk Assessment
and Screening Tools

Alcohol Dependence Scale (ADS)

The ADS provides a quantitative measure of the severity of alcohol dependence consistent with the concept of the alcohol dependence syndrome. There are 25 items that cover alcohol withdrawal symptoms, impaired control over drinking, awareness of a compulsion to drink, increased tolerance to alcohol, and salience of drink-seeking behavior. The ADS is widely used as a research and clinical tool, and studies have found the instrument to be reliable and valid. Instructions can be altered for use as an outcome measure at selected intervals (e.g., 6 months, 12 months, 24 months) following treatment. Use of the ADS has been reported mostly for clinical adult samples, however, studies have used the instrument in general population and correctional settings. The ADS has been found to have excellent predictive value with respect to a DSM diagnosis. Moreover, the ADS yields a measure of the severity of dependence that is important for treatment planning, especially with respect to the intensity of treatment. In addition to the questionnaire version of the ADS, a computer-administered version is available as part of the Computerized Lifestyle Assessment (Alcohol Module) (NIAAA, 2018).

Addiction Severity Index (ASI)

The ASI is a semi-structured instrument used in face-to-face interviews conducted by clinicians, researchers or trained technicians. The ASI covers the following areas: medical, employment/support, drug and alcohol use, legal, family/social, and psychiatric. The ASI obtains lifetime information about problem behaviors, as well as problems within the previous 30 days (WHO, 2018).

Adult Substance Use Survey (ASUS)/Adult Substance Use Survey-Revised (ASUS-R)

The Adult Substance Use Survey-Revised, which contains all scales of the original ASUS, is a 96-item adult self-report survey comprised of 15 basic scales and three supplemental scales. It is appropriate for clients 18 years or older and may be self or interview administered. The ASUS-R can be used to provide guidelines for assessing levels of alcohol and other drug (AOD) use problems, abuse, and dependence, or to provide referral guidelines for various levels of services for clients with a history of AOD and co-occurring problems (e.g. antisocial and criminal conduct, mental health concerns, etc.). It can also be used to assess during- and post-treatment changes (Wanberg, 2009).

The ASUS-R is designed to differentially screen and assess an individual's alcohol and other drug use involvement in ten commonly defined drug categories and to measure the degree of disruptive symptoms that result from the use of these drugs. There is also an AOD use benefits scale. The ASUS-R provides a mental health screen, a scale that measures social non-conformity and a scale that measures legal non-conformity. The ASUS-R also provides measures of motivation and treatment readiness, defensiveness and resistance to self-disclosure, and a measure of self-perceived

strengths. Three supplemental scales provided a differential assessment of disruptive AOD use outcomes which are subscales of the general DISRUPTION scale. The ASUS-R provides measures of AOD involvement and legal conforming for the most recent six-month period the client has been in the community. The ASUS-R rater scale allows a comparison of the evaluator's perception of the client's drug use and abuse with the client's perception of that use (Wanberg, 2004, 2009).

Adult Substance Use and Driving Survey (ASUDS)/Adult Substance Use and Driving Survey-Revised (ASUDS-R)

The ASUDS and its revised version ASUDS-R is an in-depth differential assessment of the DWI offender in the areas of substance use and abuse, alcohol involvement and other areas of life-adjustment problems. The ASUDS-R is a 123-item psychometric-based, self-report, differential screening instrument, designed and normed for impaired driving offenders. It is appropriate for clients 16 years or older and may be administered by self-report or interview format. The ASUDS-R meets the needs of a self-report instrument that is an essential component of a convergent validation approach to the assessment of patterns and problems associated AOD (alcohol and other drugs) use within impaired driving populations (Wanberg & Timken, 2012).

AUDIT (Alcohol Use Disorders Identification Test)

The AUDIT was developed by the World Health Organization to identify adults whose alcohol consumption has become hazardous or harmful to their health. AUDIT is a 10-item screening questionnaire with 3 questions on the amount and frequency of drinking, 3 questions on alcohol dependence, and 4 on problems caused by alcohol. The AUDIT screening procedure is linked to a decision process that includes brief intervention with heavy drinkers or referral to specialized treatment for patients who show evidence of more serious alcohol involvement. Another feature of the AUDIT is the optional Clinical Screening Procedure. This consists of two questions about traumatic injury, five items on clinical examination, and a blood test, the serum GGT. The Clinical Screening Procedure does not refer directly to problems with alcohol and may be particularly relevant for defensive patients in situations where alcohol-specific questions cannot be asked with confidence (NIAAA, 2018).

Computerized Assessment and Referral System (CARS)

Developed by the Division of Addiction, Cambridge Health Alliance, a teaching affiliate of Harvard Medical School, CARS is a standardized mental health assessment that incorporates a structured diagnostic mental health assessment. CARS is a risk and needs assessment used to identify mental health and substance use disorders among DUI offenders and facilitate the appropriate treatment referral. In addition, CARS is used to predict

DUI recidivism risk from mental health profiles (Holmes, 2017). CARS generates a diagnostic report that gives providers immediate diagnostic information for up to 20 DSM-IV Axis I disorders. The CARS tool provides geographically and individually targeted referrals to treatment services based on outcomes. The CARS tool is an electronic assessment tool available as free open source software and contains three versions: a full assessment, screener, and a self-administered screener. The CARS tool is divided into modules representing various mental disorders and psychosocial factors where the individual administering CARS can select any subset of modules. In addition, the CARS tool allows for 12-month or lifetime versions of questions for each disorder (Holmes, 2017).

In 2016, CARS was implemented at six pilot sites to identify ways to improve the assessment and to inform the development of online training materials (FAAR, 2017). These sites include:

- IMPACT DWI Program (Milwaukee, WI)
- Isanti County probation; Judge James Dehn (Cambridge, MN)
- Lackawanna/Susquehanna Office of Drug and Alcohol Programs; Judge Michael Barrasse (Scranton, PA)
- Laramie County DUI Court (Cheyenne, WY)
- San Joaquin County DUI Monitoring Court; Judge Richard Vlavianos (Stockton, CA)
- South St. Louis County DWI Court and probation; Judge Shaun Floerke (Duluth, MN)

CARS is now available for national distribution in English and Spanish, free of charge at www.carstrainingcenter.org.

Impaired Driving Assessment (IDA)

The IDA is a screening tool developed by the American Probation and Parole Association (APPA) to identify a DWI offender's risk of engaging in future conduct of impaired driving, and to help determine the most effective community supervision that will reduce such risk (Lowe, 2014). The practical application of the IDA is to provide guidelines for practitioners to assess risk to reoffend, service-level needs, level of responsiveness to supervision and services, and the degree to which the DWI has jeopardized traffic and public safety among individuals arrested and convicted of DWI offenses. Practitioners undergo proper training in order to administer the IDA to DWI supervisees (Lowe, 2014).

The IDA is comprised of two components a self-report and an evaluator report. The self-report component of the IDA (IDA-SR or SR) is comprised of 33 questions designed to measure both retrospective and current perceptions of conditions related to mental health and mood adjustment, alcohol and other drug (AOD) involvement and disruption, social and legal non-conformity, and acknowledgment of problem behaviors and motivation to seek help for these problems. The evaluator report component of the IDA (IDA-ER or ER) is comprised of 10 questions that provided the other

report component of the convergent validation model of assessment approach in estimating the client's condition. The questions provide information around the client's past DWI and non-DWI involvement in the judicial system, prior education and treatment episodes, past response to DWI education and/or treatment, and current status with respect to community supervision and assignment to education and/or treatment services. The comparison of the two components also provides an estimate of the client's level of defensiveness and openness to self-disclose, measures that are also important in the estimation of potential risk for recidivism (Lowe, 2014).

Inventory of Drug-Taking Situations (IDTS)

The IDTS, developed by Annis and Martin (1985), is a 50-item self-report questionnaire that provides a profile of the situations in which a client has used alcohol or another drug over the past year. Clients are asked to indicate their frequency of heavy drinking or drug use in each of 50 situations on a 4-point scale ranging from "never" to "almost always." The questionnaire may be administered in either pencil-and-paper or computerized version; the latter allows a client to name up to three substances that are currently causing a problem; the 50 IDTS items are presented for each substance in turn, and a computer-generated report is produced for each substance. Eight subscales are obtained, providing a profile of the client's use across eight types of high-risk situations: unpleasant emotions (10 items), physical discomfort (5), pleasant emotions (5), testing personal control (5), urges and temptations (5), conflict with others (10), social pressure to use (5), and pleasant times with others (5) (NIAAA, 2018).

Level of Service Inventory-Revised (LSI-R)

The LSI-R is a general risk assessment tool used in the community corrections field today to measure recidivism and develop case plans for offenders. LSI-R scores are proven to help predict parole outcome, success in correctional halfway houses, institutional misconduct, and recidivism. This predictive validity is partly a result of the method of its construction. The item content was developed to reflect three primary sources: recidivism literature, the professional opinions of probation officers, and the social learning perspective of social behavior. Scores can then be used in conjunction with professional judgment to arrive at valid placement decisions.

Michigan Alcoholism Screening Test (MAST)

The MAST is one of the most widely used measures for assessing alcohol abuse. The measure is a 25-item questionnaire designed to provide a rapid and effective screening for lifetime alcohol-related problems and alcoholism (NIAAA, 2018).

Public Safety Assessment (PSA)

The PSA was created through the Laura and John Arnold Foundation using a database of over 1.5 million cases drawn from approximately 300 U.S. jurisdictions. These data were analyzed to identify the factors that are the best predictors of whether a defendant will commit a new crime, commit a new violent crime, or fail to return to court (DeMichele, 2017). The PSA is intended to assist judges and court professionals to quickly and accurately classify individuals for release or detention. The PSA includes prediction models for three outcomes during the pretrial phase: failure to appear (FTA), new criminal activity (NCA), and new violent criminal activity (NVCA). The PSA does not consider factors such as race, gender, level of education, socioeconomic status, and neighborhood, and does not include arrest or charges as risk factors (DeMichele, 2017). The PSA has been adopted by several jurisdictions in California, North Carolina, Ohio, and Arizona. As of winter, 2018, over 38 state and local jurisdictions use the PSA. To date, the PSA has not been examined by external validation to assess overall validity or predictive bias (i.e., differential prediction) by race and gender (DeMichele, 2017).

Substance Abuse Subtle Screening Inventory (SASSI)

The SASSI is a brief self-report, easily administered psychological screening measure that is available in separate versions for adults and adolescents. The Adult SASSI-3 helps identify individuals who have a high probability of having a substance dependence disorder with an overall empirically tested accuracy of 93 percent (NIAAA, 1997).

Research Institute on Addiction Self Inventory (RIASI)

The RIASI is a 49-item instrument developed as a brief screen to identify individuals who might require a more thorough diagnostic assessment for an alcohol-use disorder and as a potential predictor of subsequent DUI recidivism. It consists of 41 true-false items and eight items in which the respondent fills in the frequency or quantity of certain behaviors or events. The RIASI represents a careful and empirical development of a screening device for use with the DWI population. Developed specifically for the New York State Drinking Driver Programs, the RIASI used in several states. The RIASI is designed to screen for alcoholism and address issues of hostility, sensation seeking, depression and other personality characteristics linked to DWI (ADAI, 2018).

The Risk and Needs Triage (RANT/DUI-RANT)

RANT tools are highly secure web-based decision support solutions for judges and other criminal justice professionals. They are derived from empirical evidence showing that outcomes in community correctional settings are influenced by how well drug and DUI-involved offenders are matched to services suited to both their criminogenic risks and clinical needs.

APPENDIX C

Oregon DUI Diversion Program Declaration of Eligibility

IN THE _____ COURT, THE STATE OF OREGON
_____ COUNTY, CITY OF _____

State of Oregon

Case No: _____

v.

**DEFENDANT'S DECLARATION OF
ELIGIBILITY**

DUII Diversion

Defendant

I am eligible to participate in a driving under the influence of intoxicants (DUII) diversion program because:

1. I have never been convicted of a felony DUII offense in Oregon or any other place
2. On the date I sign the attached petition for a DUII diversion agreement:
 - a. Except for the DUII charge in this case, there is no charge pending against me in Oregon or any other place for an offense involving operation of a vehicle while:
 - under the influence of alcohol, cannabis, a controlled substance, an inhalant, or any combination of the four, or
 - having a blood alcohol content above the allowable blood alcohol content
 - b. I am not participating in a DUII diversion program or any similar alcohol or drug rehabilitation program in Oregon or any other place except:
 - a program I may have entered as a result of the DUII charge in this case, or
 - a charge for minor in possession of alcohol under ORS 471.430
 - c. There is no charge of an offense pending against me in Oregon or any other place for any degree of aggravated vehicular homicide, murder, manslaughter, criminally negligent homicide, or assault that resulted from the operation of a motor vehicle
3. During the fifteen (15) years before the date of the alleged DUII offense in this case and from the time between the alleged DUII offense and the date I sign the attached petition:
 - a. I have not been convicted in Oregon or any other place for an offense involving the operation of a vehicle while:
 - under the influence of alcohol, cannabis, a controlled substance, an inhalant, or any combination of the four, or
 - having a blood alcohol content above the allowable blood alcohol content
 - b. I have not participated in a DUII diversion program or any similar alcohol or drug rehabilitation program in Oregon or any other place except a program I may have entered as a result of a charge for minor in possession of alcohol under ORS 471.430
 - c. I have not been convicted, in Oregon or any other place, on any charge of an offense in any degree for aggravated vehicular homicide, murder, manslaughter, criminally negligent homicide, or assault that resulted from the operation of a motor vehicle, **and**

- d. If this is my second or subsequent diversion, I have not been convicted of any criminal offenses involving a motor vehicle
4. The DUI offense described in the attached petition did not involve any deaths or any physical injury to any other person (*“physical injury” means impairment of physical condition or substantial pain*)
 5. At the time of the alleged offense, I did not have commercial driving privileges
 6. At the time of the alleged offense, I was not operating a commercial motor vehicle

Certificate of Document Preparation. Check all that apply:

- I chose this form for myself and completed it without paid help
 A legal help organization helped me choose or complete this form, but I did not pay money to anyone
 I paid (or will pay) _____ for help choosing, completing, or reviewing this form

I hereby declare that the above statement is true to the best of my knowledge and belief. I understand it is made for use as evidence in court and I am subject to penalty for perjury.

 Defendant's Signature

 Defendant's Name (printed)

 Date

NOTE: this declaration must be completed by Defendant and filed with DUI diversion *Petition and Agreement (with attached Explanation of Rights and DUI Diversion Agreement)*, *Order re: DUI Diversion*, *Petition to Plead Guilty or No Contest*, and *Order on Petition to Plead Guilty or No Contest*

APPENDIX D

Oregon DUI Participant Diversion Petition

IN THE _____ COURT, THE STATE OF OREGON

_____ COUNTY, CITY OF _____

State of Oregon

Case No: _____

v.

PETITION AND AGREEMENT

Defendant

DUII Diversion

Date of DUII Offense: _____

Defendant's Residence:			
Street	City	State	ZIP
Mailing Address (if different)			
Date of Birth:	Phone #:	Driver License:	SID# (if known):
Month / Day / Year	_____	Number State	_____

DEFENDANT'S AGREEMENT AND WAIVER

I am the Defendant. I ask the court to grant a diversion under ORS 813.200 to 813.270 for the charge of driving under the influence of intoxicants (DUII). If the court allows this petition:

- (1) I have read and understand all of the information in the attached *Explanation of Rights and DUII Diversion Agreement* and I agree to:
 - a) Pay the required diversion fees and any restitution ordered
 - b) Complete an alcohol and drug abuse assessment and any recommended treatment
 - c) Attend a victim impact panel as ordered by the court
 - d) Not use alcohol or other intoxicants except as allowed in the attached *Explanation of Rights and DUII Diversion Agreement*
 - e) Install and use an approved Ignition Interlock Device (IID) if ordered by the court
 - f) Keep the court advised of my current mailing address
- 2) I plead guilty or no contest to the DUII charge as shown in the *Petition to Plead Guilty or No Contest* submitted with this diversion petition
- 3) I waive (give up) the rights listed in the *Petition to Plead Guilty or No Contest*
- 4) I waive my former jeopardy rights under the federal or state constitutions and ORS 131.505 to 131.525 in any future action on the charge or any other offenses based on the same criminal incident

Certificate of Document Preparation. Check all that apply:

- I chose this form for myself and completed it without paid help
- A legal help organization helped me choose or complete this form, but I did not pay money to anyone
- I paid (or will pay) _____ for help choosing, completing, or reviewing this form

Defendant's Signature

Defendant's Name (typed or printed)

Date

NOTE: the *Defendant's Declaration of Eligibility, and Petition to Plead Guilty or No Contest* must be filed with this form and served on the district attorney or city attorney who filed the charge

EXPLANATION OF RIGHTS AND DUII DIVERSION AGREEMENT

Read this entire form carefully. You are charged with driving under the influence of intoxicants (DUII). You can apply for the DUII Diversion Program, but you can enter the program only if you meet all eligibility requirements. The court will appoint a lawyer to help you if you ask for one and you are financially eligible.

ELIGIBILITY FOR DIVERSION PROGRAM

You are eligible to participate in the diversion program only if:

- you meet all requirements described in the attached *Defendant's Declaration of Eligibility* and
- you appeared in court on the date scheduled for your first appearance on the charge (unless the court finds good reason to excuse your failure to appear) and
- you file the *Petition and Agreement* with the court within thirty (30) days of your first appearance in court (unless the court finds there is good cause to allow a later date)

AGREEMENT WITH THE COURT

The *DUII Diversion Petition and Agreement* is your agreement with the court. To have the DUII charge dismissed, you must do all the following (if ordered by the court):

- a. **Pay the required diversion fees to the court.** Fees are listed in Section 1 of the *Summary of DUII Diversion Fees*. If you cannot afford to pay these fees, tell the judge. The court may waive some of the fees or allow you to make payments over time, depending on your financial situation.
- b. **Pay restitution** (See Section 1 of the *Summary of DUII Diversion Fees*)
- c. **Complete an alcohol and drug abuse assessment.** The court will assign you to an agency for assessment. You must give the agency accurate and truthful information about your use of drugs and alcohol. You must pay fees to the agency. The agency will recommend a treatment program if they find that you need treatment.
- d. **Complete the recommended treatment program.** You must pay the treatment provider directly. If you cannot pay the cost of treatment, tell the treatment provider. They may be able to waive certain costs or let you make payments over time.
- e. **Attend a victim impact panel and pay the participation fee**
- f. **Do not use any alcohol or other intoxicant (includes marijuana) during the term of the diversion agreement.** Comply with state laws that prohibit the use of intoxicants. You can use:
 - sacramental wine given or provided as part of a religious rite or service
 - alcohol or a controlled substance taken *as directed* with a valid prescription
 - a non-prescription drug that contains alcohol if you follow the directions for use that are printed on the label
- h. **Keep the court advised of your current mailing address**
- i. **Install and use an approved ignition interlock device (IID) in all the vehicles you operate during the term of the diversion agreement when you have driving privileges, if ordered by the court**

REQUIRED BOOKING

If the court grants your petition, you will have to be booked and fingerprinted on the DUII charge, if you have not already been book and fingerprinted.

INFORMATION ON IGNITION INTERLOCK DEVICES (IIDs)

- j. You must install and use an approved ignition interlock device (IID) in all vehicles you operate during the term of the diversion period when you have driving privileges if:
 - Your Blood Alcohol Content (BAC) was 0.08 or above
 - You refused a breath/blood test when requested by the arresting officer
 - Your BAC was greater than 0.00 and less than 0.08 and your blood test showed the presence of cannabis, a controlled substance, or an inhalant, or
 - The court orders you to do so, if your BAC was less than 0.08

- k. The IID requirement applies in all cases and to all vehicles you operate during the term of the diversion agreement when you have driving privileges, except:
 - If the court finds that you meet requirements for a medical exemption under the rules of the Oregon Department of Transportation
 - While operating an employer's vehicle in the course and scope of your employment (contact DMV for more information), or
 - If you submitted to a test of your blood, breath, or urine, and your BAC was less than 0.08, and the court does not order the installation and use of the IID

- l. The IID requirements continue until you submit a certificate to the DMV from the IID provider. The certificate must state that the device did not record a negative report for the last 90 consecutive days of the required installation period.

- m. After 6 months, you can apply for an order vacating (ending) the IID requirement as a condition of diversion if:
 - You provide the court with a certificate from the IID service provider stating that the device has not recorded a negative report for at least 6 consecutive months, *and*
 - You have been in compliance with any treatment program you were ordered to participate in as a condition of your diversion agreement

ADDITIONAL INFORMATION AND WAIVER OF RIGHTS

- n. The diversion agreement applies only to the DUII charge. If you are charged with other offenses arising from the same incident, the other charges will be prosecuted separately. By entering into a diversion agreement, you give up the right to have the DUII charge decided at the same time as your other charges (former jeopardy - which means the right not to be prosecuted twice for the same offense).
- o. If you have a prior DUII conviction, the Interstate Compact for Adult Offender Supervision rules may prohibit you from leaving the state without permission during the diversion period
- p. Prosecution of the DUII charge will be delayed during the diversion period
- q. If you successfully complete the diversion agreement, the court may automatically dismiss the DUII charge at the end of one year. If you do not receive notice of dismissal, you must file a motion at the end of the diversion period asking the court to dismiss the DUII charge.

- r. If the court finds that you violated the terms of the diversion agreement or that you were not eligible for diversion, the court will terminate the diversion agreement. The court may hold a hearing where you can “show cause” why the court should not terminate your diversion agreement. **The court will send notice of such hearings by regular mail. If you fail to appear in court, the court can terminate the diversion agreement and may issue a warrant for your arrest.**
- s. The court will terminate the diversion agreement if at any time during the diversion period the court finds that you failed to fulfill all of the terms of the agreement. Among other things, a new DUII or breaking open container laws will violate the agreement.
- t. If the court terminates your diversion agreement or you fail to fulfill the terms of the agreement by the end of the diversion period, the court will sentence you without a trial
- u. You may file a motion asking the court to extend the diversion period, **but you must file the motion within the last 30 days of your scheduled diversion period.** The court may grant an extension if the court finds that you have made a good faith effort to complete the diversion program and that you can complete all remaining conditions within the extension period. The court may grant an extension **only once and for not more than 180 days.**
- v. If the court denies the diversion petition, the state cannot use your guilty or no contest plea (in the *Petition to Plead Guilty or No Contest*) when the state continues the prosecution

ADDITIONAL INFORMATION FOR ACTIVE MILITARY PERSONNEL

The following may apply if you are engaged in active military service:

- w. The court may not deny your petition for a DUII diversion agreement solely because military service will impair your ability to complete the diversion program if:
 - You are a member of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States, or the National Guard and
 - You have been called to active duty
- x. You may ask the court to allow you to participate in a comparable treatment program conducted by or authorized by a government entity in another jurisdiction
- y. You may file a motion asking the court to extend the diversion period. The court may grant an extension if the court finds you have made a good faith effort to complete the diversion program and that you can complete all remaining conditions within the extension period. **If you are serving on active duty, you must file the motion by the end of your scheduled diversion period.** The court may extend the diversion period as necessary to allow you complete the conditions of the diversion agreement.

APPENDIX E

Minnesota Pretrial Assessment Tool (MNPAT)



Minnesota Pretrial Release Evaluation Form

Name (Last)		(First)		(Middle)		Assessment Date	
Case #			County of Residence		Duration yr mo		Age
Marital Status		# Children:		Have you ever been in or served		□ Yes	
<input type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Never Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed		# Dependents:		in the U.S. armed forces?		□ No	
Pretrial Assessment Tool Section							
Pretrial Factor						Points Assigned	
Main Charge:							
Other Charges:							
Employment/Income Sources or School Status							
Current Problematic Chemical Use (see definition)							
Homeless or Three or More Address Changes in Past Year							
Age at First Delinquency Adjudication/Conviction				Age:			
Criminal Conviction History		# Felony Person:		# Other Felony:			
		# Non-Felony Person:		# Other Non-Felony:			
Bench Warrants		# Last 3 Years:					
Total Scale Score							
Pretrial Score Risk Ranges						Lower = 0-11 Moderate = 12-25 Higher = 26+	
Current Monitoring Status							
<input type="checkbox"/> Pretrial Conditional Release		<input type="checkbox"/> Probation		<input type="checkbox"/> Revoked Probation		<input type="checkbox"/> Supervised Release	
Is the defendant currently assigned to a probation or pretrial officer?						□ Yes □ No	
Does the defendant have a pending case (targeted misdemeanor or higher) that has not yet reached disposition?						□ Yes □ No	
Comments from Collateral/Victim Sources:							
Lethality Assessment Conducted			If conditions are ordered, probation recommendations for conditions of release:				
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown							

Case #	ICR/CCN #
---------------	------------------

Name: (Last)	(First)	(Middle)
---------------------	----------------	-----------------

SID #	FBI #	Local ID #
--------------	--------------	-------------------

Additional Data Collection Questions for Validation

Was the defendant unemployed at the time of the arrest?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Has the defendant had an alcohol abuse problem in the last six months?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Has the defendant used illegal mood-altering chemicals during the last six months?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Criminal Conviction History Details

Felony

Gross Misdemeanor

Misdemeanor

Failure to Appear Bench Warrants in the Last Three Years

Date Ordered	Type	County of Issuance

APPENDIX F
South St. Louis County
DWI Court Phases

Source: SSLC DWI Court Policy and Procedure Manual. Revised 3/2017

PHASE 1

Acute Stabilization (60 days)

In addition to all the terms of DWI Court probation, participants will also be required to:

- Report to Court every week
- Call UA line daily
- Comply with random home visits
- Comply with Probation Office visits as directed by Probation Officer
- Comply with random and/or scheduled UA's/PBT's as directed by Probation Officer
- 7 pm curfew
- Comply with Treatment Requirements
- Comply with all Supervision Requirements
- Pay DWI Court fees at \$100 per month
- With the help of your Probation Officer, develop Case Plan, which may include, but will not be limited to:
 - Address transportation
 - Address housing
 - Maintain employment or education
- Obtain mental health and medical assessments
- Serve statutory-mandated jail time
- Make appropriate changes to maintain a sober lifestyle

PHASE 2

Clinical Stabilization (90 Days)

In addition to all the terms of DWI Court probation, participants will also be required to:

- Report to Court 2 times per month
- Call UA line daily
- Minimum of 2 UA's per week
- Comply with random home visits
- Comply with Probation Office visits as directed by Probation Officer
- Comply with random and/or scheduled UA's/PBT's as directed by Probation Officer
- 8 pm curfew
- Comply with Treatment Requirements
- Comply with all Supervision Requirements
- Pay DWI Court fees at \$100 per month

- With the help of your Probation Officer, review Case Plan, which may include, but will not be limited to:
 - Address transportation
 - Address housing
 - Address financial situation if necessary
 - Maintain employment or education
- Obtain mental health and medical assessments
- Continue making appropriate choices to maintain a sober lifestyle
- Begin to focus on Peer Support Groups and Pro-Social Activities

PHASE 3

Pro-Social Habilitation (90 Days)

In addition to all the terms of DWI Court probation, participants will also be required to:

- Report to Court 1 times per month
- Call UA line daily
- Minimum of 2 UA's per week
- Comply with random home visits
- Comply with Probation Office visits as directed by Probation Officer
- Comply with random and/or scheduled UA's/PBT's as directed by Probation Officer
- 9 pm curfew
- Comply with Treatment Requirements
- Comply with all Supervision Requirements
- Pay DWI Court fees at \$100 per month
- With the help of your Probation Officer, review Case Plan, which may include, but will not be limited to:
 - Continue to address transportation
 - Continue to address housing
 - Continue to address financial situation if necessary
 - Maintain employment or education
- Continue making appropriate choices to maintain a sober lifestyle
- Focus on relapse prevention
- Maintain consistent Peer Support group and Pro-Social Activity attendance
- Begin Cog Skills if deemed necessary by the DWI Court Team
- Establish a sober network

PHASE 4

Adaptive Habilitation (90 Days)

In addition to all the terms of DWI Court probation, participants will also be required to:

- Report to Court 1 times per month
- Call UA line daily
- Minimum 2 UA's per week
- Comply with random home visits
- Comply with Probation Office visits as directed by Probation Officer
- Comply with random and/or scheduled UA's/PBT's as directed by Probation Officer
- 10 pm curfew
- Comply with Treatment Requirements
- Comply with all Supervision Requirements
- Pay DWI Court fees at \$100 per month
- With the help of your Probation Officer, review Case Plan, which may include, but will not be limited to:
 - o Continue to address transportation
 - o Address license reinstatement if you haven't done so already
 - o Continue to address housing
 - o Continue to address financial situation if necessary
 - o Maintain employment or education
- Continue making appropriate choices to maintain a sober lifestyle
- Focus on relapse prevention
- Maintain consistent Peer Support group and Pro-Social Activity attendance
- Continue and complete Cog Skills if deemed necessary by the DWI Court Team
- Establish a sober network

PHASE 5

Continuing Care (90 Days)

In addition to all the terms of DWI Court probation, participants will also be required to:

- Report to Court 1 times per month
- Call UA line daily
- Minimum 2 UA's per week
- Comply with random home visits

- Comply with Probation Office visits as directed by Probation Officer
- Comply with random and/or scheduled UA's/PBT's as directed by Probation Officer
- 11 pm curfew
- Comply with Treatment Requirements
- Comply with all Supervision Requirements
- Pay DWI Court fees at \$100 per month
- With the help of your Probation Officer, review Case Plan, which may include, but will not be limited to:
 - o Maintain transportation
 - o Address license reinstatement if you haven't done so already
 - o Maintain housing
 - o Maintain financial stability
 - o Maintain employment or education
- Continue making appropriate choices to maintain a sober lifestyle
- Continue focusing on relapse prevention
- Maintain consistent Peer Support group and Pro-Social Activity attendance
- Maintain a sober network
- Develop continuing care plan

PHASE 6

Graduate Status (From your graduation date until probation is completed)

In addition to all the terms of DWI Court probation, participants will also be required to:

- Report to Court 1 time every 6 months
- Comply with random home visits
- Comply with Probation Office visits as directed by Probation Officer
- Comply with random and/or scheduled UA's/PBT's as directed by Probation Officer
- Comply with all Supervision Requirements
- Maintain sober lifestyle and network

APPENDIX G

South St. Louis County DWI Court Phases

Cheat Sheet

South St. Louis County DWI Court Phase Structure



1 Acute Stabilization (60 Days)

- Court weekly
- Call UA line daily
- Random home visits
- Probation Office visits
- Random and/or scheduled UAs/PBTs (at least 2x/week)
- Outreach Smartphone Monitoring (OSM)
- 7PM curfew
- Comply with Treatment Requirements
- Comply with Supervision Requirements
- Pay \$100/mo. DWI Court fees
- Develop Case Plan
- 14 days negative alcohol and drug screens to advance to Phase 2

2 Clinical Stabilization (90 Days)

- Court 2x/month
- Call UA line daily
- Random home visits
- Probation Office visits
- Random and/or scheduled UAs/PBTs (at least 2x/week)
- Outreach Smartphone Monitoring (OSM)
- 8PM curfew
- Comply with Treatment Requirements
- Comply with Supervision Requirements
- Pay \$100/mo. DWI Court fees
- Review Case Plan
- Peer Support Groups and Pro-Social Activities
- 30 days negative alcohol and drug screens to advance to Phase 3

3 Pro-Social Habilitation (90 Days)

- Court 1x/month
- Call UA line daily
- Random home visits
- Probation Office visits
- Random and/or scheduled UAs/PBTs (at least 2x/week)
- Outreach Smartphone Monitoring (OSM)
- 9PM curfew
- Comply with Treatment Requirements
- Comply with Supervision Requirements
- Pay \$100/mo. DWI Court fees
- Review Case Plan
- Peer Support Groups and Pro-Social Activities
- Begin cog-skills if deemed necessary
- Relapse prevention
- Establish sober network
- 45 days negative alcohol and drug screens to advance to Phase 4

4 Adaptive Habilitation (90 Days)

- Court 1x/month
- Call UA line daily
- Random home visits
- Probation Office visits
- Random and/or scheduled UAs/PBTs (at least 2x/week)
- 10PM curfew
- Comply with Treatment Requirements
- Comply with Supervision Requirements
- Pay \$100/mo. DWI Court fees
- Review Case Plan
- Peer Support Groups and Pro-Social Activities
- Begin cog-skills if deemed necessary
- Relapse prevention
- Establish sober network
- 60 days negative alcohol and drug screens to advance to Phase 5

5 Continuing Care (90 Days)

- Court 1x/month
- Call UA line daily
- Random home visits
- Probation Office visits
- Random and/or scheduled UAs/PBTs (at least 5x/month)
- 11PM curfew
- Comply with Treatment Requirements
- Comply with Supervision Requirements
- Pay \$100/mo. DWI Court fees
- Review Case Plan
- Peer Support Groups and Pro-Social Activities
- Relapse prevention
- Maintain sober network
- Develop continuing care plan
- 90 days negative alcohol and drug screens to advance to Phase 6 (Graduate Status)

6 Graduate Status (from graduation date until probation is completed)

- Court 1 time every 6 months
- Random home visits
- Probation Office visits
- Random and/or scheduled UAs/PBTs (at least 1x/month)
- Comply with Supervision Requirements
- Maintain sober lifestyle and network
- Attend Alumni Group 1x/month

APPENDIX H

South St. Louis County DWI Court Phase 2

Application



South St. Louis County DWI Court Application for Advancement to Phase 2

Name: _____ Date: _____ Phase 2 date: _____

You must submit this form 2 weeks prior to the date you are eligible for advancement.

Phase 1 Requirements Checklist (Minimum 60 days)

- € Attending all required appointments and court sessions € Being honest with team € Maintain sobriety
- € \$100 per month DWI court fee paid € Have a stable place to live
- € Diagnostic Assessment complete if required € Comply with treatment requirements
- € OSM (breathalyzer monitoring) € Address transportation € Maintain employment (to every extent possible)
- € Comply with probation supervision requirements € Minimum 14 days negative drug/alcohol screens
- € Start creating a network of support including friends, and sober activities

€ One personal short term goal for this phase was: _____

€ One personal long-term goal for the rest of the program: _____

€ Date of last positive drug or alcohol test _____.

Thoughts Exercise

Please select from the following list to create an expression of your recovery and/or its process, whether through words or art. It is not the final aesthetical product of the artwork or compilation of words that is of interest; it is the experience of creating and the growth of self-awareness, transformation, and emotional exploration that comes from this process:

1. Write an essay, or schedule a meeting with the DWI court team to discuss the following questions:
 - a) What are you learning in treatment?
 - b) How you are feeling physically, mentally, emotionally, and spiritually?
 - c) Are there any other services you need,
 - d) Why is it important to be honest in this program
 - e) What does your next step look like.

OR

2. Choose a medium whether it is dancing, painting, sculpting, drawing, singing, playing an instrument, making cut paper art (collage), cooking sewing, jewelry making, woodworking, creative writing, acting, or poetry for expression,

Whatever you choose to do, you will have several options for sharing. You may share at court to all, or to just the team, or just one team member.

“The aim of art is to represent not the outward appearance of things, but their inward significance.”
~Aristotle~

APPENDIX I

South St. Louis County DWI Court Phase 3

Application



South St. Louis County DWI Court Application for Advancement to Phase 3



Name: _____ Date: _____ Phase 3 date: _____

You must submit this form 2 weeks prior to the date you are eligible for advancement.

Phase 2 Requirements Checklist (Minimum 90 days)

- € Attending all required appointments and court sessions € Being honest with team € Maintain sobriety
 - € \$100 per month DWI court fee paid € Have a stable place to live
 - € Comply with treatment requirements
 - € OSM (breathalyzer monitoring) € Address transportation € Maintain employment
 - € Comply with probation supervision requirements € Minimum 30 consecutive days negative drug/alcohol screens
 - € Continue creating a network of support including friends, and sober activities
 - € Maintain consistent peer support group and pro-social activity: _____
 - € One personal short term goal for this phase was: _____
-
- € One personal long-term goal for the rest of the program: _____
 - € Date of last positive drug or alcohol test _____
-

Thoughts Exercise

Please select from the following list to create an expression of your recovery and/or its process, whether through words or art. It is not the final aesthetical product of the artwork or compilation of words that is of interest; it is the experience of creating and the growth of self-awareness, transformation, and emotional exploration that comes from this process:

1. Write an essay, or schedule a meeting with the DWI court team to discuss the following questions:
 - a) What are you learning in treatment and/or therapy?
 - b) How are you feeling physically, mentally, emotionally, and spiritually?
 - c) What are you doing to better your employment or education status if this is a need?
 - d) Are you starting to make sober support connections?
 - e) What are you doing to take care of yourself?

OR

2. Choose a medium whether it is dancing, painting, sculpting, drawing, singing, playing an instrument, making cut paper art (collage), cooking sewing, jewelry making, woodworking, creative writing, acting, or poetry for expression,

Whatever you choose to do, you will have several options for sharing. You may share at court to all, or to just the team, or just one team member.

“The aim of art is to represent not the outward appearance of things, but their inward significance.”
~Aristotle~

APPENDIX J

South St. Louis County DWI Court Phase 4

Application



South St. Louis County DWI Court Application for Advancement to Phase 4



Name: _____ Date: _____ Phase 4 date: _____

You must submit this form 2 weeks prior to the date you are eligible for advancement.

Phase 3 Requirements Checklist (Minimum 90 days)

- € Attending all required appointments € Being honest with team
- € Maintain stable housing € \$100 per month DWI court fee paid € Address transportation
- € Comply with OSM € Minimum 45 consecutive days negative drug/alcohol screens
- € Continue creating a network of support including friends, and sober activities
- € Comply with treatment requirements
- € Maintain work, education, or volunteering
- € Maintain consistent peer support group and pro-social activity: _____
- € One personal short term goal for this phase was: _____
- _____
- € One personal long-term goal for the rest of the program: _____
- € Date of last positive drug or alcohol test _____.
- _____
- _____

Thoughts Exercise

Please select from the following list to create an expression of your recovery and/or its process, whether through words or art. It is not the final aesthetic product of the artwork or compilation of words that is of interest; it is the experience of creating and the growth of self-awareness, transformation, and emotional exploration that comes from this process:

1. Write an essay, or schedule a meeting with the DWI court team to discuss the following questions:
 - a) If attending therapy/treatment/cognitive skills/ aftercare what are you learning?
 - b) How are you managing stress in your life?
 - c) What is your supportive network like? Who are your supports?
 - d) What are you doing to take care of yourself?

OR

2. Choose a medium whether it is dancing, painting, sculpting, drawing, singing, playing an instrument, making cut paper art (collage), cooking sewing, jewelry making, woodworking, creative writing, acting, or poetry for expression,

Whatever you choose to do, you will have several options for sharing. You may share at court to all, or to just the team, or just one team member.

“The aim of art is to represent not the outward appearance of things, but their inward significance.”
~Aristotle~

APPENDIX K

South St. Louis County DWI Court Phase 5

Application



South St. Louis County DWI Court Application for Advancement to Phase 5



Name: _____ Date: _____ Phase 5 date: _____

You must submit this form 2 weeks prior to the date you are eligible for advancement.

Phase 4 Requirements Checklist (Minimum 90 days)

- € Attending all required appointments € Being honest with team
- € Maintain supportive housing € \$100 per month DWI court fee paid € Minimum 60 consecutive days negative drug/alcohol screens
- € Maintain a network of support including friends or family, and sober activities
- € Comply with treatment requirements
- € Address DL reinstatement
- € Maintain work, education, or volunteering
- € Maintain consistent peer support group and pro-social activity: _____
- € One personal short term goal for this phase was: _____
- _____
- € One personal long-term goal for the rest of the program: _____
- € Date of last positive drug or alcohol test _____.
- _____
- _____

Thoughts Exercise

Please select from the following list to create an expression of your recovery and/or its process, whether through words or art. It is not the final aesthetical product of the artwork or compilation of words that is of interest; it is the experience of creating and the growth of self-awareness, transformation, and emotional exploration that comes from this process:

1. Write an essay, or schedule a meeting with the DWI court team to discuss the following questions:
 - a) What have you learned thus far through the DWI court process?
 - b) How are you managing stress in your life?
 - c) What is your supportive network like? Who are your supports?
 - d) What are you doing to take care of yourself?

OR

2. Choose a medium whether it is dancing, painting, sculpting, drawing, singing, playing an instrument, making cut paper art (collage), cooking sewing, jewelry making, woodworking, creative writing, acting, or poetry for expression,

Whatever you choose to do, you will have several options for sharing. You may share at court to all, or to just the team, or just one team member.

“The aim of art is to represent not the outward appearance of things, but their inward significance.”
~Aristotle~

APPENDIX L

South St. Louis County Court Graduation

Application

Your Deadline is:

**South St. Louis DWI Court
GRADUATION APPLICATION**

In addition to completing the application for graduation, you also must have paid your DWI Court fees in full and have the approval of the DWI Court Team to advance to Phase VI: Graduation.

Name of Applicant: _____ Date: _____

- All Fees Paid.
- All Treatment Requirements Met.
- Community Service Work is Done if Required.
- 6 days consecutive jail time
- 90 days negative alcohol/drug screens

NARRATIVE

The next section of this application gives you an opportunity to look at the changes and accomplishments made in your life during your participation in DWI Court. We hope that in completing this application you will be reminding yourself of the hard work you have put into the program and the support system you have created in the process. This is quite an accomplishment and you should be very proud of yourself.

List 5 words to describe yourself the day you were arrested.

What did you think of DWI Court when you started? How do you feel about the program now that you are graduating?

How often do you have contact with your sponsor and what do you enjoy doing together? Who else is in your support system? What do you like to do with those people?

Describe your experience with support groups (AA/NA/Other) before DWI Court and now. What impact, if any, has this had on your recovery? Will you continue attending after you leave DWI Court? Why or why not?

What are two things you learned in treatment?

How did your life change during DWI Court?

What are the three biggest reasons you are sober today?

List one thing in your life you have dealt with in a healthy way while in DWI Court that you think you would have dealt with differently if you had been using.

Of all the things that have been required of you in DWI Court, what would you say has been the most helpful to your recovery? Was there anything that was of very little or no help to you?

List five words that describe you today.

Fill out the attached RELAPSE PREVENTION PLAN.

Is there anything else you want to say that you want us to consider in approving your application for graduation?

* * *

Applicant Signature

Date

This application has been reviewed by the DWI Court Team and the following action is recommended: _____

DWI Court Team Member

Date

Graduation Date is: _____

* * *

RELAPSE PREVENTION PLAN

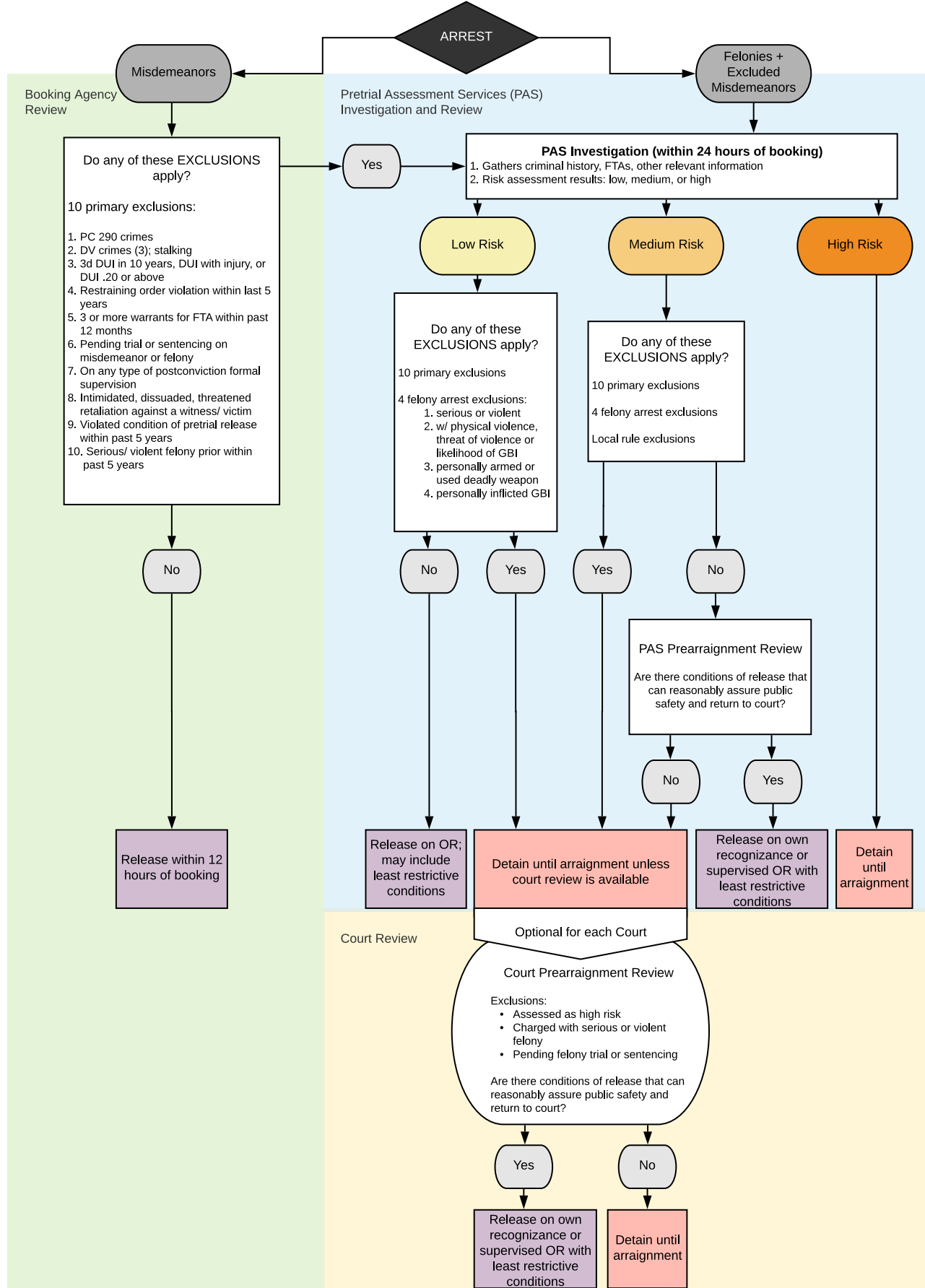
Please include the following:

- A list of at least five things that could trigger a relapse
- Solutions for each of the triggers
- Five people you can call for support whether it is for a difficult time or a celebration
- What are your coping strategies for thoughts of using/cravings/urges?
- What do you plan to do in the case of a relapse?
- What are your strengths?
- What is an area you will need to continue to work on after court/treatment?
- What professionals will you maintain contact with? How often?
- What supports have you established in the community?
- What was/were your goal(s) coming into the DWI Court? Do you feel you have accomplished these? How or how not?
- What is your recovery structure? What will you do daily/weekly to maintain the changes you have described in your application?

APPENDIX M
**California SB 10
Prearraignment Process**

Flow Chart

SB 10: PREARRAIGNMENT



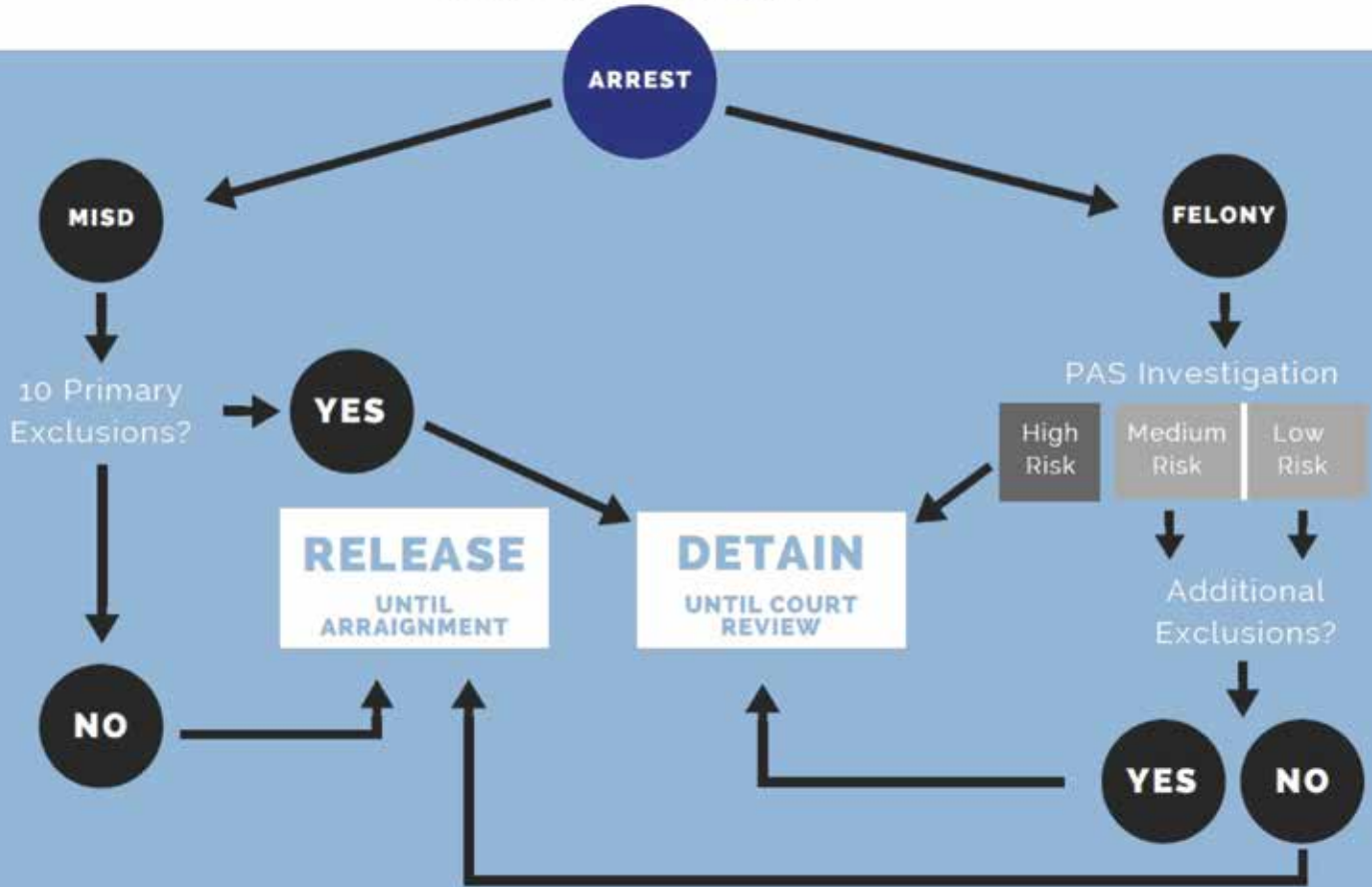
APPENDIX N

California SB 10 Prearraignment Process without Court Review

Flow Chart

SB 10 PREARRAIGNMENT

WITHOUT COURT REVIEW



PREARRAIGNMENT WITHOUT COURT REVIEW

PAS Investigation

Pretrial Assessment Services (PAS) investigates within 24 hours of booking

- 1 Gathers criminal history, failures to appear (FTA), other relevant information
- 2 Risk assessment results: low, medium, or high

10 Primary Exclusions

- | | |
|---|--|
| <ol style="list-style-type: none"> 1 PC 290 crimes 2 Domestic Violence crimes (3); stalking 3 3rd DUI in 10 yrs, DUI with injury, or DUI .20 or above 4 Restraining order violation within last 5 yrs 5 3 or more warrants for FTA within past 12 months | <ol style="list-style-type: none"> 6 Pending trial or sentencing on misdemeanor or felony 7 On any type of postconviction formal supervision 8 Intimidated, dissuaded, threatened retaliation against a witness/ victim 9 Violated condition of pretrial release within past 5 yrs 10 Serious/ violent felony prior within past 5 yrs |
|---|--|

Low Risk

If low risk, released on own recognizance (OR) (may include least restrictive conditions) unless the following exclusions apply:

- 10 primary exclusions
- 4 felony arrest exclusions
 - 1 Pending trial or sentencing in a felony matter
 - 2 Arrested for a felony with element of physical violence, threat of violence, or likelihood of great bodily injury (GBI)
 - 3 Arrested for a felony in which personally armed or personally used a deadly weapon or firearm
 - 4 Arrested for a felony in which personally inflicted GBI

If YES to any exclusions, then detained until arraignment

Medium Risk

If medium risk, released on OR or supervised OR with least restrictive conditions, unless PAS detains after review or the following exclusions apply:

- 10 primary exclusions
- 4 felony arrest exclusions
- Local rule exclusions

If YES to any exclusions, then detained until arraignment

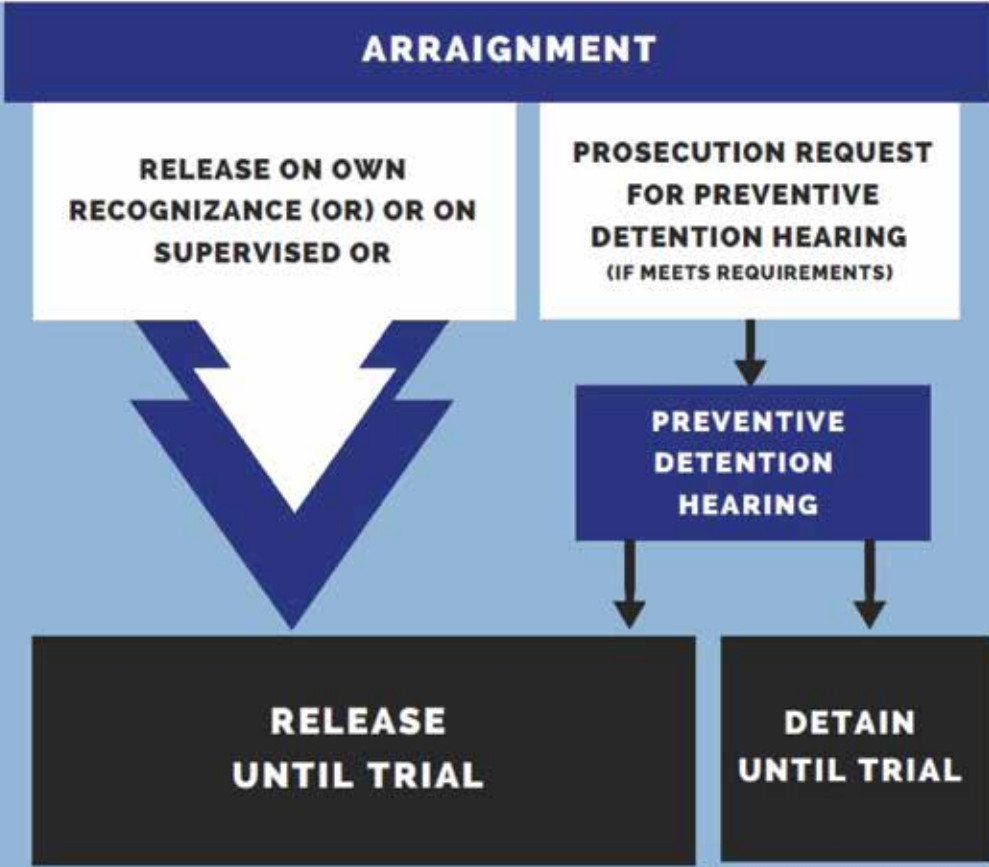
APPENDIX 0

California SB 10 Arraignment to Trial Process

Flow Chart

SB 10 PRETRIAL PROCESS: ARRAIGNMENT TO TRIAL

INCLUDING PREVENTIVE DETENTION HEARING



SB 10 PRETRIAL PROCESS: ARRAIGNMENT TO TRIAL

INCLUDING PREVENTIVE DETENTION HEARING

ARRAIGNMENT

IS THE COURT REQUIRED TO RELEASE EVERY DEFENDANT AT ARRAIGNMENT?

Yes, unless the prosecutor files a motion for a preventive detention hearing.

REQUEST FOR PREVENTIVE DETENTION

CAN THE PROSECUTOR REQUEST TO DETAIN ANY DEFENDANT?

No, the prosecutor can file a motion for preventive detention only if:

- The crime was committed with violence or threatened violence, or use of a deadly weapon, or inflicted great bodily injury; or
- The defendant is on postconviction supervision when arrested; or
- The defendant is pending trial or sentencing in a felony matter when arrested; or
- The defendant intimidated or threatened a witness or victim of the current crime; or
- There is substantial reason to believe that no supervision conditions will reasonably assure public safety or return to court.

IS THERE A PRESUMPTION THAT CERTAIN CRIMINAL CHARGES OR FACTORS ARE MORE LIKELY TO BE THE BASIS FOR PRETRIAL DETENTION?

Yes, there is a presumption for pretrial detention for these criminal charges or factors:

- The current crime is a violent felony or a felony committed with violence or threatened violence, or use of a deadly weapon, or inflicted great bodily injury; or
- The defendant is assessed as "high risk" AND
 - The defendant was convicted of a serious or violent felony in past 5 years;
 - The defendant committed the current crime while pending sentencing for a serious or violent felony;
 - The defendant intimidated or threatened a witness or victim of the current crime; or
 - The defendant was on postconviction supervision at time of arrest.

BUT, a defendant can overcome the presumption at the hearing.

PREVENTIVE DETENTION HEARING

WHAT RIGHTS DOES THE DEFENDANT HAVE AT A PREVENTIVE DETENTION HEARING?

The right to be represented by counsel at the hearing.

The right to appointed counsel if the defendant cannot afford an attorney.

The right to testify at the hearing (make statements in court).

WHAT RIGHTS DOES THE VICTIM HAVE AT A PREVENTIVE DETENTION HEARING?

The right to be notified of the hearing.

The right to have comments submitted to the court by the prosecution.

The right to be heard at the hearing, upon request.

WHAT IS THE STANDARD FOR DETAINING A DEFENDANT IN CUSTODY UNTIL TRIAL?

The court must release the defendant on his or her own recognizance (OR) or on supervised OR with the least restrictive conditions, unless:

- **Detention is permitted under the US and CA constitutions, AND**
- **The court determines by clear and convincing evidence that NO conditions of pretrial supervision will reasonably assure public safety or the appearance of the defendant in court.**

The court must state the reasons for its detention decision on the record.

APPENDIX P

California SB 1046/611 Restriction Requirements

The following table indicates the restriction requirements for driving under the influence (DUI) and Administrative Per Se (APS) offenders under the provisions of Senate Bill (SB) 1046 (Hill, Ch. 783, Stats. 2016) and SB 611 (Hill, Ch. 485, Stats. 2017). Pursuant to Vehicle Code (VC) §§13352 and 13352.1, an administrative service fee (ASF) is specified for offenders who opt to install an ignition interlock device (IID) in order to reinstate early, or without serving any period of suspension or revocation (ASF #1). Pursuant to VC §23575.3, an additional

ASF is specified for offenders who are subject to the mandatory installation and maintenance of an IID (ASF #2). No ASFs are specified for offenders suspended under the APS provisions, or who opt to choose a restriction that would allow the offender to drive to/from/during their course of employment and to/from the DUI program pursuant to VC §§13352.4, 13352.5, 13353.6, and 13353.75. Lastly, all offenders must pay any restriction or reinstatement fees correlating to their original suspension or revocation in addition to the applicable ASF.

SUSPENSION/ REVOCATION AUTHORITY SECTION	RESTRICTION AUTHORITY SECTION	RESTRICTION ELIGIBILITY	LENGTH OF RESTRICTION	RESTRICTION REQUIREMENTS	IID INSTALLATION YES OR NO/ MANDATORY OR OPTIONAL	LENGTH OF IID INSTALLATION PER VC §23575.3
13353.2	13353.6	Immediately	Up to 4 months	<ul style="list-style-type: none"> DUI Program Enrollment or Completion (DL 107 or DL 101) Proof of Financial Responsibility (SR 22) Verification of Installation of Ignition Interlock Device (DL 920) 	Yes/Optional	
13353.2	13353.75	Immediately	Up to 12 months	<ul style="list-style-type: none"> DUI Program Enrollment or Completion (DL 107 or DL 101) Proof of Financial Responsibility (SR 22) Verification of Installation of Ignition Interlock Device (DL 920) 	Yes/Optional	

SUSPENSION/ REVOCATION AUTHORITY SECTION	RESTRICTION AUTHORITY SECTION	RESTRICTION ELIGIBILITY	LENGTH OF RESTRICTION	RESTRICTION REQUIREMENTS	IID INSTALLATION YES OR NO/ MANDATORY OR OPTIONAL	LENGTH OF IID INSTALLATION PER VC §23575.3
FIRST OFFENDERS (VC §§13352A1 & 13352.1)						
13352a1	13352a1	Immediately	6 months	<ul style="list-style-type: none"> • DUI Program Enrollment or Completion (DL 107 or DL 101) • Proof of Financial Responsibility (SR 22) • Verification of Installation of Ignition Interlock Device (DL 920) • Administrative Service Fee #1 	Yes/Optional	Up to 6 months
13352.1	13352.1	Immediately	Until completion of reinstatement requirements	<ul style="list-style-type: none"> • DUI Program Enrollment or Completion (DL 107 or DL 101) • Proof of Financial Responsibility (SR 22) • Verification of Installation of Ignition Interlock Device (DL 920) • Administrative Service Fee #1 	Yes/Optional	
13352a1 & 13352.1	13352.4	Immediately	12 months	<ul style="list-style-type: none"> • DUI Program Enrollment or Completion (DL 107 or DL 101) • Proof of Financial Responsibility (SR 22) • Restriction limited to driving to and from employment, during course of employment, and to driving to and from DUI treatment program 	No	

SUSPENSION/ REVOCATION AUTHORITY SECTION	RESTRICTION AUTHORITY SECTION	RESTRICTION ELIGIBILITY	LENGTH OF RESTRICTION	RESTRICTION REQUIREMENTS	IID INSTALLATION YES OR NO/ MANDATORY OR OPTIONAL	LENGTH OF IID INSTALLATION PER VC §23575.3
FIRST OFFENDERS WITH INJURY (VC §13352A2) ALCOHOL – VC §23153A, B, D, E, OR G						
13352a2	13352a2	Immediately	Until completion of reinstatement requirements	<ul style="list-style-type: none"> • DUI Program Enrollment or Completion (DL 107 or DL 101) • Proof of Financial Responsibility (SR 22) • Verification of Installation of Ignition Interlock Device (DL 920) • Administrative Service Fee #1 and #2 	Yes/Mandatory	12 months
SECOND OFFENDERS (VC §13352A3) ALCOHOL – VC §23152A, B, D, E, OR G						
13352a3	13352a3	Immediately	Until completion of reinstatement requirements	<ul style="list-style-type: none"> • DUI Program Enrollment or Completion (DL 107 or DL 101) • Proof of Financial Responsibility (SR 22) • Verification of Installation of Ignition Interlock Device (DL 920) • Administrative Service Fee #1 and #2 	Yes/Mandatory	12 months
13352a3	13352.5	After completion of 12 months of suspension term	Until completion of reinstatement requirements	<ul style="list-style-type: none"> • DUI Program Enrollment or Completion (DL 107 or DL 101) • Proof of Financial Responsibility (SR 22) • Restriction limited to driving to and from employment, during course of employment, and to driving to and from DUI treatment program 	No	

SUSPENSION/ REVOCATION AUTHORITY SECTION	RESTRICTION AUTHORITY SECTION	RESTRICTION ELIGIBILITY	LENGTH OF RESTRICTION	RESTRICTION REQUIREMENTS	IID INSTALLATION YES OR NO/ MANDATORY OR OPTIONAL	LENGTH OF IID INSTALLATION PER VC §23575.3
SECOND OFFENDERS (VC §13352A3) DRUGS – VC §23152C OR F						
13352a3	13352a3	After completion of 12 months of suspension term	Until completion of reinstatement requirements	<ul style="list-style-type: none"> • DUI Program Enrollment or Completion (DL 107 or DL 101) • Proof of Financial Responsibility (SR 22) • Verification of Installation of Ignition Interlock Device (DL 920) • Administrative Service Fee #1 	Yes/Optional	
SECOND OFFENDERS WITH INJURY (VC §13352A4) ALCOHOL – VC §23153A, B, D, E, OR G						
13352a4	13352a4	Immediately	Until completion of reinstatement requirements	<ul style="list-style-type: none"> • DUI Program Enrollment or Completion (DL 107 or DL 101) • Proof of Financial Responsibility (SR 22) • Verification of Installation of Ignition Interlock Device (DL 920) • Administrative Service Fee #1 and #2 	Yes/Mandatory	24 months
SECOND OFFENDERS WITH INJURY (VC §13352A4) DRUGS – VC §23153F						
13352a4	13352a4	After completion of 12 months of suspension term	Until completion of reinstatement requirements	<ul style="list-style-type: none"> • DUI Program Enrollment or Completion (DL 107 or DL 101) • Proof of Financial Responsibility (SR 22) • Verification of Installation of Ignition Interlock Device (DL 920) • Administrative Service Fee #1 	Yes/Optional	

SUSPENSION/ REVOCATION AUTHORITY SECTION	RESTRICTION AUTHORITY SECTION	RESTRICTION ELIGIBILITY	LENGTH OF RESTRICTION	RESTRICTION REQUIREMENTS	IID INSTALLATION YES OR NO/ MANDATORY OR OPTIONAL	LENGTH OF IID INSTALLATION PER VC §23575.3
THIRD OFFENDERS (VC §13352A5) ALCOHOL – VC§23152A, B, D, E, OR G						
13352a5	13352a5	Immediately	Until completion of reinstatement requirements	<ul style="list-style-type: none"> • DUI Program Enrollment or Completion (DL 107 or DL 101) • Proof of Financial Responsibility (SR 22) • Verification of Installation of Ignition Interlock Device (DL 920) • Administrative Service Fee #1 and #2 	Yes/Mandatory	24 months
THIRD OFFENDERS (VC §13352A5) DRUGS – VC §23152C OR F						
13352a5	13352a5	After completion of 12 months of suspension term	Until completion of reinstatement requirements	<ul style="list-style-type: none"> • DUI Program Enrollment or Completion (DL 107 or DL 101) • Proof of Financial Responsibility (SR 22) • Verification of Installation of Ignition Interlock Device (DL 920) • Administrative Service Fee #1 	Yes/Optional	
THIRD AND SUBSEQUENT OFFENDERS WITH INJURY OR OFFENDERS WITH INJURY & PRIOR FELONY (VC §13352A6) ALCOHOL – VC §23153A, B, D, E, OR G						
13352a6	13352a6	Immediately	Until completion of reinstatement requirements	<ul style="list-style-type: none"> • DUI Program Enrollment or Completion (DL 107 or DL 101) • Proof of Financial Responsibility (SR 22) • Verification of Installation of Ignition Interlock Device (DL 920) • Administrative Service Fee #1 and #2 	Yes/Mandatory	48 months

SUSPENSION/ REVOCATION AUTHORITY SECTION	RESTRICTION AUTHORITY SECTION	RESTRICTION ELIGIBILITY	LENGTH OF RESTRICTION	RESTRICTION REQUIREMENTS	IID INSTALLATION YES OR NO/ MANDATORY OR OPTIONAL	LENGTH OF IID INSTALLATION PER VC §23575.3
THIRD AND SUBSEQUENT OFFENDERS WITH INJURY OR OFFENDERS WITH INJURY & PRIOR FELONY (VC §13352A6) DRUGS – VC §23153F						
13352a6	13352a6	After completion of 12 months of suspension term	Until completion of reinstatement requirements	<ul style="list-style-type: none"> • DUI Program Enrollment or Completion (DL 107 or DL 101) • Proof of Financial Responsibility (SR 22) • Verification of Installation of Ignition Interlock Device (DL 920) • Administrative Service Fee #1 	Yes/Optional	
FOURTH AND SUBSEQUENT OFFENDERS OR OFFENDERS WITH PRIOR FELONY (VC §13352A7) ALCOHOL – VC §23152A, B, D, E, OR G						
13352a7	13352a7	Immediately	Until completion of reinstatement requirements	<ul style="list-style-type: none"> • DUI Program Enrollment or Completion (DL 107 or DL 101) • Proof of Financial Responsibility (SR 22) • Verification of Installation of Ignition Interlock Device (DL 920) • Administrative Service Fee #1 	Yes/Mandatory	36 months
FOURTH AND SUBSEQUENT OFFENDERS OR OFFENDERS WITH PRIOR FELONY (VC §13352A7) DRUGS – VC §23152A, B, D, E, OR G						
13352a7	13352a7	After completion of 12 months of suspension term	Until completion of reinstatement requirements	<ul style="list-style-type: none"> • DUI Program Enrollment or Completion (DL 107 or DL 101) • Proof of Financial Responsibility (SR 22) • Verification of Installation of Ignition Interlock Device (DL 920) • Administrative Service Fee #1 	Yes/Optional	

APPENDIX Q
El Paso Pretrial
SMART PRACTICES

EL PASO PRETRIAL SMART PRAXIS Version 1 (SMART = Supervision Matrix Assessment & Recommendation Tool)

Risk Assessment Level of Risk ↓	OFFENSE LEVEL CATEGORY				
	1	2	3	4	5
	Felony Crimes of Violence	Misdemeanor Crimes of Violence, Terroristic Threats, VPO, and Other Sex Crimes	Drug Crimes Manufacture & Delivery; POM over 50 pounds & Controlled substance over 4 gms	Drug Crimes POM under 50 pounds & controlled substance under 4 grams	Other Non-Violent Felony Crimes & Other Misdemeanors (See below for DWI Guidelines)
Lower Risk	Enhanced	Standard	Administrative	Administrative	Administrative
Below Avg. Risk	Intensive	Standard	Standard	Administrative	Administrative
Average Risk	Intensive	Intensive	Standard	Standard	Administrative
Above Avg. Risk	Intensive	Intensive	Intensive	Enhanced	Standard
Higher Risk	Intensive	Intensive	Intensive	Intensive	Enhanced

PRETRIAL SUPERVISION LEVELS				
Pretrial Supervision Description	Admin	Standard	Enhanced	Intensive
Risk Assessment	✓	✓	✓	✓
Criminal History & Background Information	✓	✓	✓	✓
Documentation of Residence and Contact Information	✓	✓	✓	✓
Court Reminders before each Pretrial Court Date	✓	✓	✓	✓
Intake advisement within 24 hours of receiving bond	✓	✓	✓	✓
Orientation with Intake Staff		✓	✓	✓
Notification of New Arrest	✓	✓	✓	✓
Check-in the Day Before Court by phone or email	✓	✓	✓	✓
Treatment evaluation by court order or client request		✓	✓	✓
Orientation with Pretrial Staff			✓	✓
Call-in to Pretrial Office minimum of 1x p/month		✓		
Physical Check-in to Pretrial Office minimum of 1x p/month			✓	
Physical Check-in to Pretrial Office minimum of 2x p/month				✓
Client Meetings as Needed Only		✓		
*Minimum of one Client Meeting p/Month			✓	
*Minimum of two Client Meetings p/Month				✓

**Client meetings may count as a check-in*

DWI GUIDELINES (includes arrests in lifetime)	
All DWI clients will receive court reminder calls in addition to the following services.	
Non-Aggravated DWIs: First DWI arrest and BAC under 0.15	In-office breathalyzers once per month. No client meetings required until supervision non-compliance. Court will be notified after second positive or missed test.
1st DWI over 0.15	Alcohol monitoring unit at the discretion of the court. Otherwise, In-office breathalyzers twice per week. No client meetings required until supervision non-compliance. Court will be notified after second positive or missed test.
DWI Subsequent or with Child	Mandatory INTERLOCK unit OR if mobile breathalyzer ordered then a minimum of daily random tests. Client meetings once per month. Court will be notified after first positive or missed test.
DWI 3rd or more	Mandatory INTERLOCK unit OR if mobile breathalyzer ordered then a minimum of two daily tests. Officer may increase. Client meetings twice per month. Court will be notified after the first positive or missed test.
DWI Drugs	One urine screen and breathalyzer per month. Client meetings once per month. Court will be notified after second positive or missed test.







SMART PRAXIS – ADDITIONAL INFORMATION

ADDITIONAL COURT ORDERED SUPERVISION SERVICES	
These additional supervision services will only be monitored by the CJC if specifically ordered by the court.	
Electronic Monitoring Devices (EHM)	Electronic Monitoring devices will be tested and piloted in 2018 and 2019 to determine feasibility and efficacy. GPS monitoring is going to be piloted in Judge Trejo's courtroom in 2018 to evaluate the potential to make this an available Pretrial Service in 2019. Currently, the only electronic monitoring devices available to all courts are interlock and mobile alcohol devices. Smartphone monitoring is currently being evaluated as a potential pretrial service as well.
Substance Monitoring	<p>If the court desires substance testing, the CJC will only monitor cases as specifically ordered by the court. Defendants without a specific order for substance testing will not be monitored.</p> <p>Pretrial Services may utilize the following methods: Urine Screens, In-Office Breathalyzers, and Electronic Devices (Alcohol Ankle Monitors, In-Home Breathalyzers, Smart Phone technology, etc.).</p> <p>Unless otherwise ordered by the court, the CJC Pretrial Services will decide the method and frequency of the substance monitoring, which will be no less than one time per month, and no more than three times per week. This excludes DWI supervision levels, which are specified in the DWI supervision guidelines.</p>
Defendants Supervised by El Paso County CSCD (Probation)	<p>Any defendants who are also on supervised Probation will not be required to have meetings with pretrial staff, except as needed. Substance testing for adult Probation may count toward required Pretrial testing if it fulfills the requirements of the court order.</p> <p>The CJC will remain responsible for any bond violations of these defendants and communication must be maintained between the CJC and Probation regarding defendant compliance.</p> <p>If a defendant is supervised on Pretrial Diversion by Probation, then the CJC will maintain responsibility to monitor and report on bond condition compliance.</p>

OTHER INFORMATION

Adjustment of Supervision Levels	With the exception of Intensive, if a defendant is compliant for at least two months, Pretrial Services may adjust supervision and substance testing levels down based on performance. Increased supervision levels may only come from a specific court order. Defendants who are re-arrested during the supervision period are excluded from eligibility for supervision reductions.
Treatment Referrals	Pretrial Services may refer defendants for evaluations for treatment based on a court order or voluntary participation. The evaluations may include substance abuse, mental health, domestic violence, etc. Voluntary participation in treatment may help defendants avoid violations of their bond.
Response to Violations	Violation responses will be in accordance with the El Paso Pretrial Response to Violations Guide.

***STATEMENT OF COLLABORATION:** These guidelines were developed collaboratively with input from El Paso Justice Stakeholders, including Judges from both District and County courts, the District Attorney's Office, the Public Defender's Office, the El Paso County Sheriff's Department and the Criminal Justice Coordination Department. This group of stakeholders agrees to the implementation of these guidelines, as well as an objective review and evaluation of these guidelines to ensure that they accomplish the goals that have been established by our stakeholders. These Guidelines may be implemented on September 1, 2018.*

 Admin Judge for COJ Date	 District Court Admin Judge Date	 District Attorney Date
 Public Defender Date	 CJC Director (acting) Date	 El Paso County Sheriff Date