



NATIONAL PARTNERSHIP ON ALCOHOL MISUSE AND CRIME

Getting Smart About Justice

Four Innovative Model Programs



The National Partnership on Alcohol Misuse and Crime (NPAMC) is an inclusive public-private partnership committed to identifying, developing, and promoting justice programs that improve public safety, reduce recidivism, and change lives for offenders who misuse alcohol.

CEO MESSAGE

Dear NPAMC Participant:

Thank you for working with us to identify consensus based approaches to identifying and addressing offenders who misuse alcohol. Together, we have identified three cost-effective models that appear to dramatically reduce recidivism and, in partnership with the Institute for Behavior and Health (IBH), developed a fourth:



- South Dakota's 24/7 Sobriety Program
- Hawaii's Opportunity Probation with Enforcement (HOPE) Program
- Problem Solving Courts (particularly, DWI and Drug Courts)
- The IBH DUI model that combines these three programs

This document contains articles providing an overview of each of these programs and their successes. During the next quarter, we plan to publish a monograph detailing the nature and extent of the problem, our consensus and evidence based approach, and these models. We also will continue to provide technical assistance to those interested in learning more about or implementing them.

We look forward to working with you to develop these models further and promote them nationally.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen K. Talpins". The signature is fluid and cursive.

Stephen K. Talpins, JD
Chairman and Chief Executive Officer
National Partnership on Alcohol Misuse and Crime

For more information on any of the model programs in this document contact
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THE SOUTH DAKOTA 24/7 SOBRIETY PROJECT: A SUMMARY REPORT

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Overview

The 24/7 Sobriety Project is a court-based management program originally designed for repeat Driving Under the Influence (DUI) offenders. The program began in South Dakota, and new programs are now being initiated in other states. The 24/7 Sobriety Project sets the standard of no use of alcohol and no use of illegal drugs as a condition of continuing to drive and remaining in the community, rather than being incarcerated. This standard is enforced by intensive monitoring by law enforcement agencies, with alcohol and drug testing mandated for each participant. Violation of program rules leads to immediate and usually brief incarceration of the offender. This combination of a strictly monitored no-use standard with swift, certain, and meaningful—but usually not severe—consequences has been extremely successful.

Conceived and administered by former South Dakota Attorney General Larry Long, the 24/7 Sobriety Project has proven to:

- Reduce recidivism
- Improve public safety
- Serve as an alternative to incarceration that reduces the number of people in local jails and state prisons
- Allow offenders to remain in the community with their family and friends
- Permit offenders to maintain employment
- Save tax dollars because most monitoring costs are paid by the offenders and because offenders are being diverted from jail and prison where appropriate

24/7 Monitoring and Accountability

Participants in the 24/7 Sobriety Project have been arrested for DUI offenses on multiple occasions. The program utilizes a variety of mechanisms to ensure abstinence from alcohol and other drugs, including:

- Twice-daily breath testing for alcohol
- SCRAM® (Secure Continuous Remote Alcohol Monitor) ankle bracelets that continuously monitor wearers for alcohol consumption
- PharmChem drug patches that collect sweat samples for laboratory drug testing
- Random urine testing for drugs

Offenders are given breath and urine tests at their local sheriff's office. If they test positive, they *are taken into custody immediately and brought to court within 24 hours*. Judges typically give them escalating jail terms. A first violation generally results in incarceration of one or more nights in jail. Repeat violations of the no-use standard or missing test appointments leads to increased periods of incarceration and the revocation of any pretrial release. All sanctioning is swift and certain.

The 24/7 Sobriety Project as originally constituted does not incorporate any screening, assessments, or treatment. However, South Dakota state law requires DUI offenders to participate in treatment programs upon conviction. There is no requirement that these offenders undergo treatment pretrial. Currently, the treatment and justice systems operate in parallel but separate from one another.

Program Results

The program's results are impressive, particularly given the fact that almost half of the participants have been convicted three or more times for DUI offenses¹:

- As of March 15, 2009, almost 11,000 offenders participated in twice-daily alcohol breath testing. They took over 1.8 million tests, passing 99.6% of them. Over 66% of the offenders were totally compliant during their entire term of their participation.²
- As of March 25, 2009, 1,244 offenders wore the SCRAM ankle bracelet. Over 900 offenders completed the SCRAM program, 331 remain on the device. Offenders wore the device for an average of 105 days; compliant offenders averaged 96 days, non-compliant offenders averaged 130 days. Approximately 75% of offenders were totally compliant, over 95% were totally compliant or violated one or two times. The daily compliance rate is 95.5%.³
- Forty offenders wore drug patches, passing 92.8% of the tests.⁴
- Over 1,000 offenders took urine tests, passing 97.6% of the time.⁵

In addition, the large majority of participants who were surveyed about the program indicated that the program helped them stop using substances, improved their family functioning, and helped them maintain or improve their employment.⁶

Public Impact

While early skeptics of the 24/7 Sobriety Project model predicted that close monitoring with a strict no-use standard would fill the jails with offenders, the results of the program are exactly the opposite. The program has reduced incarceration rates leading to reductions in jail populations and jail costs.

At the time the program was introduced, South Dakota had one of the highest rates in

General Statistics for Monitoring Technologies Used in the South Dakota 24/7 Sobriety Project

Personal Breath Test

Participants	15,655
Number of Tests Administered	3,118,135
Tests Passed	3,096,340 (99.03%)
Tests Failed	10,955
No Show	10,840

*Prepared by the South Dakota Attorney Generals Office
June 2010*

Urinalysis (U/A)

Participants	1,364
Number of Tests Administered	29,691
Tests Passed	28,662 (96.53%)
Tests Failed	937
No Show	92

*Prepared by the South Dakota Attorney Generals Office
June 2010*

PharmChem Drug Path

Participants	72
Number of Tests Administered	821
Pass Rate	86.24%

*Prepared by the South Dakota Attorney Generals Office
June 2010*

Secure Continuous Remote Alcohol Monitor (SCRAM)

Participants	2,205
Number of Tests Administered	12,798,240
Days Monitored	301,720
Daily Compliance Rate	95.5%

*Prepared by Alcohol Monitoring Systems, Inc. (AMS)
June 2010*

the nation of adults ages 18 and older who reported driving under the influence of alcohol (21.6% in the previous year). Additionally, nearly three-fourths of those involved in fatal crashes in South Dakota had a Blood Alcohol Concentration (BAC) of 0.15 or higher. Since the program's inception, the number of people killed in alcohol-impaired crashes in the state has declined steadily.⁷ According to the National Highway Traffic Safety Administration, from 2006 to 2007, alcohol-impaired traffic deaths in South Dakota declined by 33%. In a year where the U.S. had a 4% decline in DUI fatalities, South Dakota outperformed every other state in its percentage reduction of DUI fatalities. Preliminary data indicates that the number fell another 45% from 2007 to 2008.⁸

It is important to note other important initiatives in South Dakota may have impacted the state's success in combating DUI offenses. In 2006, South Dakota repealed its implied consent law. Any person arrested for a DUI offense must provide a sample of their blood, breath, or urine to law enforcement. No longer is a defendant able to refuse to provide evidence of their intoxication. Law enforcement officers increased enforcement efforts through the use of checkpoints and saturation patrols. South Dakota substantially revised required classes for DUI first offenders, which has reduced recidivism. There has been a concerted effort to increase the use of media campaigns. Finally, South Dakota started a "Parents Matter" program to combat underage drinking. The combination of these programs should be considered when discussing South Dakota's success in combating DUI offenses. It is difficult to attribute the improvements to any one cause or causes; however, the 24/7 Sobriety Project is a contributing component.

In a year where the U.S. had a 4% decline in DUI fatalities, South Dakota outperformed every other state in its percentage reduction of DUI fatalities, dropping 33% from 2006 to 2007.

Conclusions

The 24/7 Sobriety Project is not just saving lives, it is reducing DUI recidivism and saving tax dollars. Jail populations have decreased in most counties across South Dakota, and in the two largest counties these populations have dropped by almost 100 people on any given day. With jail costs estimated at \$75 per day per person, the state is saving millions of dollars.⁹

The 24/7 Sobriety Project is also an important response to critics who erroneously claim that it is not possible to stop DUI offenders from drinking and/or using drugs because they believe relapse is inevitable. It also belies claims that efforts need to focus exclusively on preventing DUI offenders from driving. If efforts to prevent driving without stopping drinking and drugging were possible and successful, there would not be so many repeat DUI offenses. It is the repeat DUI offenders that the 24/7 Sobriety Project identifies and positively impacts changes in behaviors.

Beyond DUI: Applicability Throughout Criminal Justice

The 24/7 Sobriety Project is continuing to evolve, including plans to develop brief screening and intervention modules and formal links to additional treatment. The comprehensive monitoring and care management model under development for the 24/7 Sobriety Project has wide applicability within the criminal justice system, well beyond the DUI offense, because alcohol and illegal drug use are major contributors to crime and incarceration. This program demonstrates a

powerful ability to stop alcohol and drug use as well as the criminal behavior that alcohol and drug use often lead to among arrested offenders. The program has been extended to a wide range of criminal charges related to alcohol and drug use, including domestic violence and civil abuse and neglect cases. These changes show the broad applicability of the 24/7 Sobriety Project, far beyond the original focus on DUI offenders and alcohol use.

Although funding for the program was initially provided by the South Dakota Office of Highway Safety and then supported through legislative appropriations, it is anticipated that it will be a cost-neutral program since it is supported through offender fees. Other states have expressed interest in implementing a similar program. The North Dakota Attorney General's Office began a pilot of its own 24/7 Sobriety Project in January 2008 and, with legislative support, is in the process of expanding the program statewide.

The impressive, positive results of the 24/7 Sobriety Project reinforce the results of other related programs, including HOPE Probation¹⁰ (Hawaii's Opportunity Probation with Enforcement) in Honolulu,^{11, 12} and DUI/Drug Court programs. These programs have a zero tolerance standard for any use of alcohol or other drugs that is enforced by intensive monitoring and linked to meaningful and swiftly applied consequences. Each of these programs has produced results that set a new and far higher outcome standard for substance abuse among alcohol- and drug-dependent people. This unique and transferable model has applicability both in the criminal justice system and in substance abuse treatment.

The 24/7 Sobriety Project model holds the promise of reducing the serious problems caused by alcohol and other drug use while making substance abuse treatment and the criminal justice system far more successful in promoting both public safety and public health than they are today.

ENDNOTES

- 1 R. Loudenberg, "Analysis of South Dakota 24-7 Sobriety Program Data" at 3 (*Mountain Plains Evaluation, LLC January 2007*).
- 2 *South Dakota Office of the Attorney General 2009*.
- 3 *Alcohol Monitoring Systems, Inc., 2009*.
- 4 *South Dakota Office of the Attorney General 2009*.
- 5 *South Dakota Office of the Attorney General 2009*.
- 6 *South Dakota Office of the Attorney General 2009*.
- 7 NHTSA defines an alcohol-impaired crash as one where at least one driver had a blood or breath alcohol level at or above the 0.08 illegal limit.
- 8 *South Dakota Department of Public Safety 2009*.
- 9 *South Dakota Office of the Attorney General 2009*.
- 10 Hawken, A. & Kleiman, M. (January, 2009). *Research brief: Evaluation of HOPE probation*. Retrieved July 23, 2009, from http://www.state.hi.us/jud/pdf/Hope_Brief_Feb09.pdf.
- 11 McLellan, A. T., Skipper, G. E., Campbell, M. G. & DuPont, R. L. (2008). *Five year outcomes in a cohort study of physicians treated for substance use disorders in the United States*. *British Medical Journal*, 337:a2038.
- 12 DuPont, R. L., McLellan, A. T., Carr, G., Gendel, M & Skipper, G. E. (2009). *How are addicted physicians treated? A national survey of physician health programs*. *Journal of Substance Abuse Treatment*, 37, 1-7

A complete listing of the administrative rules, copies of forms, and program statistics can be found on the South Dakota Attorney General's website at:
www.state.sd.us/attorney/DUI247/index.htm



HOPE PROBATION: COORDINATING AGENCIES TO MAKE AN IMPACT

The Honorable Steven Alm

Judge, First Circuit Court of Hawaii, Criminal Division

Overview

Over the past several years, I've worked with dedicated public servants and private-sector service providers to develop the HOPE (Hawaii's Opportunity Probation With Enforcement) Program. I'm proud to report that, when compared with identical probationers under typical supervision, HOPE probationers are less than half as likely to be arrested for a new crime, use drugs, skip appointments with their supervisory officer or treatment provider, or be sent back to prison. It's important to understand that this is *not* a miracle or an anomaly. Any probation department in the country can create a HOPE-model program by utilizing the right leadership, strong management, appropriate resources, technical assistance, and rigorous performance tracking.

Probation Before the HOPE Program

- Hawaii has 12,000 offenders on felony probation or deferral
- Oahu has 8,200 of those
- There are 4,200 men and women in State Prison
- Probation officer caseloads: 180
- ½ of probationers were assessed as high-risk to reoffend on a validated risk instrument
- 40% of probationers had positive drug tests
- 15% of probationers missed appointments

Hawaii has 12,000 offenders on felony probation or deferral, and Oahu, where my courtroom is located, has about 8,200. We also have about 4,200 men and women in State prison. From my first week on this court calendar in June of 2004, I could tell that the current probation system was broken. Probation officers had caseloads of up to 180, and the dynamic was that offenders would repeatedly break the rules of supervision—using drugs, skipping probation appointments, and failing treatment—because there were no real consequences. After an offender racked up 20, 30, or even more violations, the probation officers would

eventually feel they had a “good” case for bringing a Motion for Revocation of Probation. The probation officer would spend hours working on the affidavit and motion, a warrant for the offender's arrest would be prepared, and the offender would eventually be arrested. Typically, ten weeks would pass before the offender was brought into my court for a Motion to Revoke Probation. The probation officer would typically deem the offender “not amenable to probation” and almost invariably recommend I sentence the offender to the underlying 5, 10, or 20 years in prison.

Working With the Stakeholders to Make the System More Effective

In June of 2004, the HOPE Program was born. Through a cooperative effort with a number of local stakeholders, including the Probation Department, the Prosecuting Attorney, the Public Defender, the U.S. Marshal Fugitive Task Force, and eventually the Honolulu Police Department, each organization agreed to:

- Work together to establish clear rules
- Do a better job of supervision
- Respond to misbehavior swiftly and certainly
- Track the results to see if it was working

The Seven Components of the HOPE Program

1. **Identification of HOPE Offenders.** The HOPE Program is about focusing our resources on the riskiest probationers who ultimately consume the most resources, have the highest recidivism rate, and are the highest risk population for the community. A recent evaluation found that barely one-third of HOPE probationers were sentenced on a drug charge. The majority of our clients have a history of property or violent offenses, they average 17 prior arrests, and nearly one-half were assessed as high-risk to reoffend on a validated risk instrument.

HOPE Program Participants

- Majority of HOPE clients have a history of property or violent offenses
- They averaged 17 prior arrests prior to the HOPE Program
- 1,500 Probationers at present in HOPE, including over 1,350 felons

According to a study conducted at Pepperdine University, HOPE Probationers:

- Are 72% less likely to test positive for drugs
- Are 68% less likely to miss an appointment with their probation officer
- Are 55% less likely to be arrested for a new crime
- Are 53% less likely to have their probation revoked
- Served 48% fewer days of incarceration than those in the conventional probation program
- Save Hawaii taxpayers between \$4,000 and \$8,000 per year in incarceration costs alone

2. **A Warning Step.** As we began the program, the public defender pointed out that the rules were the same, but since we were actually going to be enforcing them for the first time, the PD asked if we could warn the offenders about the new HOPE procedures. This made good sense, both from a due process and a practical point of view.
3. **Effective Monitoring for Compliance.** Next, we had to do a better job of monitoring behavior so that violations would be predictably detected. Probation established a call-in hotline, which probationers call EVERY WEEKDAY MORNING, and which randomly requires them to appear for a drug test THAT DAY between 7:45 a.m. and 2:00 p.m. This ensures that there is no window for drug use, and the probationers know it. We also test for alcohol and are currently working to improve our efforts in that regard.
4. **Immediate Response to a Violation.** The probation officers agreed to act immediately to arrest the offender each and every time the probation terms are violated. A positive drug test

means the offender gets arrested on the spot, taken to jail, and brought to my courtroom two business days later. A missed probation appointment or failure at drug treatment leads to the issuance of a bench warrant for the offender's arrest and a hearing soon after they are taken into custody.

5. **Serving Warrants.** Traditionally, warrant service is not always a high priority for overtaxed law enforcement agencies. But I was able to present HOPE to the federal authorities, and ultimately, the United States Marshal agreed to have their local Fugitive Task Force serve the HOPE bench warrants for my courtroom. Hawaii's High Intensity Drug Trafficking Area, or HIDTA, agreed to pay any task force overtime.
6. **Rapid Processing of Sanctions.** All of our work would be for naught if we couldn't process the sanction quickly. Accordingly, both the prosecution and the defense agreed to be ready for more frequent hearings, typically in two days' time. The jail was briefed and agreed to look at their intake procedures to accommodate the new program parameters. And new probation forms were designed to reduce paperwork.
7. **Program Evaluation.** Every organization agreed that effective evaluation of our progress was essential, comparing HOPE probationers to stats for non-HOPE probationers. The goal was to evaluate recidivism rates long-term, as well as probation violation rates and the rate of probation revocations. We also set out to conduct a cost-analysis to determine how the costs of HOPE compared to non-HOPE probationers and evaluate the economic impact throughout the justice system.

HOPE Today: Research and Evaluation

On October 1, 2004, we had a HOPE warning/notification hearing for the first 34 HOPE offenders in my courtroom. Given the track record of non-compliance (40% of probationers pre-HOPE tested positive for drugs and had a 15% missed appointment rate), we braced for a large number of violations. Instead, we had only five violations in

the first two weeks of the program. The anticipated flood of violations and hearings never occurred. And, the longer offenders are in HOPE, the more compliant they generally become. If they have problems with compliance, we find out immediately and address them.

HOPE has grown from those 34 offenders to more than 1,500 probationers today, including over 1,350 of the 8,200 felons on probation on Oahu. Since the inception, the Honolulu Police Department has joined our program, and they now serve 90% of the warrants on an expedited basis. The Federal Fugitive Task Force still serves the remainder.

Dr. Angela Hawken from Pepperdine University, with support from the National Institute of Justice (NIJ), conducted a randomized control trial study of 500 probationers. Two-thirds were placed in HOPE and one-third in the control group of probation-as-usual. Dr. Hawken's analysis showed that HOPE probationers:

- Are 72% less likely to test positive for drugs
- Are 68% less likely to miss an appointment with their probation officer
- Are 55% less likely to be arrested for a new crime
- Are 53% less likely to have their probation revoked
- Were sentenced to or served 48% fewer days of incarceration than those in conventional probation

The cost-saving implications of reduced prison stays are enormous. Dr. Hawken appeared before the Hawaii Legislature's House Finance Committee in March 2010. She testified that each HOPE probationer is saving Hawaii taxpayers between \$4,000 and \$8,000 per year in incarceration costs. That's between \$6 million and \$12 million in savings in just the first five years of the program.

Each HOPE probationer is saving Hawaii taxpayers between \$4,000 and \$8,000 per year in incarceration costs.

Today the HOPE model is gaining momentum in a number of other states. A HOPE-inspired program in Nevada was launched in January of 2010, and Oregon started a program in March. Virginia, Alaska, and Arizona are getting organized, and I've received calls from across the country and even worldwide. And Federal legislation has also been introduced to set up 20 HOPE pilot sites around the country.

Alcohol: Our Next Target

We now have to make HOPE even more effective, and that includes addressing the issue of alcohol. Alcohol use and misuse remain a huge problem in Hawaii, as well as the rest of the country. We are currently testing for it but need to do a better job of monitoring and detecting alcohol use among our offenders. We are looking at other jurisdictions, such as South Dakota's 24/7 Sobriety Project, which is effectively tackling the DUI issue in their state, for inspiration.

HOPE is that rarest of strategies in the criminal justice system. HOPE reduces crime and victimization, it helps offenders and their families by keeping them employed and out of prison, and it saves the taxpayers of our state millions of dollars. We have struck the balance between more effectively protecting the public while reducing the jail and prison population and the accompanying costs.

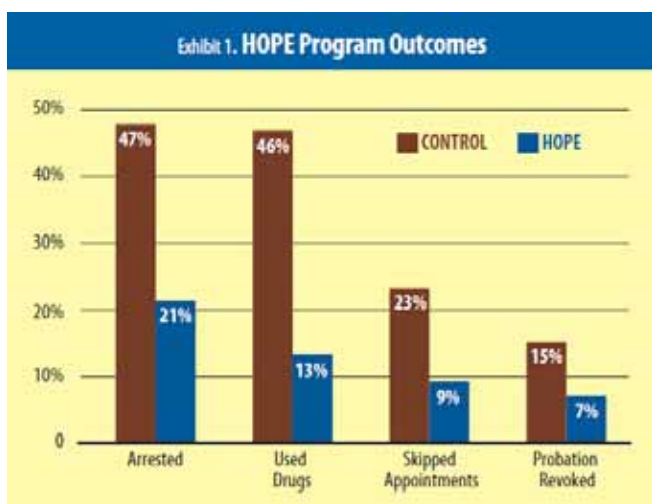


THE IMPACT OF HAWAII'S HOPE PROGRAM ON DRUG USE, CRIME AND RECIDIVISM

*Published with the permission of The PEW Center on the States
and the National Institute of Justice
January 2010*

The HOPE Program

Launched in 2004, Hawaii's Opportunity Probation with Enforcement (HOPE) program aims to reduce crime and drug use among criminal offenders. HOPE identifies probationers who are likely to violate their conditions of community supervision; notifies them that detected violations will have consequences; conducts frequent and random drug tests; responds to detected violations (including failed drug tests and skipped probation meetings) with swift, certain and short terms of incarceration; responds to absconding probationers with warrant service and sanctions; and mandates drug treatment upon request or for those probationers who do not abstain from drug use while on the testing and sanctions regimen.



By 2009, more than 1,500 probationers (one in every six felony probationers in Oahu) were enrolled in HOPE. The Public Safety Performance Project of the Pew Center on the States and the National Institute of Justice of the U.S. Department of Justice collaborated to produce this summary of an evaluation conducted to assess HOPE's effectiveness.

Results

In a one-year, randomized controlled trial, HOPE probationers were 55 percent less likely to be arrested for a new crime, 72 percent less likely to use drugs, 61 percent less likely to skip appointments with their supervisory

officer and 53 percent less likely to have their probation revoked. As a result, they also served or were sentenced to, on average, 48 percent fewer days of incarceration than the control group (Exhibit 1).¹

Evaluation Structure

Adult probation officers in Honolulu identified 507 men and women on probation who showed an elevated risk of violating probation conditions based on a widely used risk assessment instrument and prior behavior while under supervision. Office supervisors deemed 493 of these probationers eligible.² In October 2007, random assignment by computer placed 330 probationers (two-thirds of the eligible group) into HOPE (the "treatment group") while 163 remained on probation-as-usual (the "control group"). This randomized controlled trial followed an intent-to-treat design: all probationers assigned to the treatment group were included in the evaluation regardless of what occurred after assignment. Due to randomization, the treatment and control groups were not statistically different in terms of age, sex, race or ethnicity, assessed risk level and criminal history (Exhibit 2).³

The evaluation was conducted by Dr. Angela Hawken of Pepperdine University, with funding from the National Institute of Justice. The full evaluation report is available online at <http://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf>.

Additional research could focus on which program components are most important, what types of offenders respond best, and whether the outcomes are sustained after probation supervision ends.

Launched in 2006, the Public Safety Performance Project seeks to help states advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable and control corrections costs.

The Pew Center on the States is a division of The Pew Charitable Trusts that identifies and advances effective solutions to critical issues facing states. Pew is a nonprofit organization that applies a rigorous, analytical approach to improve public policy, inform the public and stimulate civic life. www.pewcenteronthestates.org

NIJ is the research, development and evaluation agency of the U.S. Department of Justice and is dedicated to researching crime control and justice issues.

Exhibit 2. HOPE Program Demographics ³		
	HOPE	Control
Average age (median)	36.1 (35.2)	35.4 (34.4)
Male	75%	71%
Asian/Polynesian	65%	64%
Caucasian	16%	14%
Black	5%	3%
Portuguese	1%	2%
Puerto Rican	1%	1%
Other or Unknown	11%	14%
Percent assessed high risk	46.7%	44.1%
Average prior arrests (median)	17 (13)	16.4 (12)
Most serious prior charge: drug	35%	33%
Most serious prior charge: property	30%	34%
Most serious prior charge: violent	22%	22%
Most serious prior charge: other	14%	11%

ENDNOTES

- 1 1 All reported differences across groups are significant at the .01 level. To determine the rate of skipped appointments, the evaluator calculated the percent of skipped appointments for each probationer and then averaged those percentages. The same method—giving equal weight to each probationer—was used for rate of detected drug use. Using another method, she also calculated the rates for total skipped appointments divided by total appointments (control group = 18 percent, HOPE = 5 percent) and total positive drug screens divided by total drug screens (control group = 41 percent, HOPE = 9 percent). Because of the one-year observation period, figures for days incarcerated include both served and sentenced days in both jail and prison. If not all sentenced days are served, then the percentages may change for both HOPE and control probationers.
- 2 2 The 14 excluded probationers included 10 who had been transferred or were preparing to transfer to another unit; two who were pending deportation; one who was deceased; and one who was pending transfer to drug court.
- 3 3 Baseline HOPE and control group statistics are not significantly different at the .05 level.



ALL RISE: TREATING ALCOHOL AND DRUG ABUSE AND DEPENDENCE IN THE COURTROOM

C. West Huddleston

Chief Executive Officer, National Association of Drug Court Professionals

Christopher Deutsch

Associate Director of Communications, National Association of Drug Court Professionals

In 2003, Mark was arrested for and plead guilty to Driving While Impaired (DWI) and subsequently lost his driver's license. One year later, immediately following the reinstatement of his license, Mark was again arrested for DWI. "It was obvious that I hadn't yet learned my lesson," Mark says, "and in 2006 I was arrested for my third DWI. Not more than two weeks after getting off probation for my 2003 conviction, I was charged with my fourth DWI."

What makes Mark's story unique is not his propensity for impaired driving or the fact that his first three convictions, and all that entails, failed to stop his dangerous behavior. Unfortunately, there are two million people in the U.S. like Mark, each with three or more DWI convictions and a staggering 400,000 with five or more.¹ Mark's story is unique because following his fourth arrest and conviction he was admitted to DWI Court and given the opportunity to address the underlying cause of his criminal behavior: alcoholism. DWI Court gave him the structure and treatment he needed to achieve sobriety. In doing so, DWI Court saved his life, and possibly the life of an innocent child, a mother, a grandparent or a police officer living in the community.

This article will provide an in-depth look at how special court dockets are effectively addressing the primary force behind 80 percent of crime in America: substance abuse and dependence. The impact of alcohol will be the primary focus of this article.

Drug Courts

Today there are 2,459 adult, juvenile, family, reentry, and tribal Drug Courts located in every U.S. state and territory; including 354 Hybrid DWI/Drug Courts, 172 Designated DWI Courts and 30 Veterans Treatment Courts.² The Drug Court model continues to prove adaptable to populations across differing justice-involved populations with treatment needs.

Twenty-one years ago in the cocaine-saturated city of Miami, Florida, the nation's first Drug Court opened its doors to a skeptical criminal justice system. The public believed that "nothing works" for addicted people, and that punishment, namely prison, was the only solution. Despite the extensive planning that preceded the launch of the Miami-Dade County Drug Court, the concept was quite simple:

- Create a system in which the judge actively and consistently intervenes in an offender's life to break the cycle of addiction and crime through treatment and monitoring
- Restore the offender to a drug-free, healthy, law-abiding, and contributing member of the community

From those humble beginnings, Drug Courts grew, recognizing that facilitating change in the life of an "alcoholic" or "addict" requires significant treatment, accountability, and patience delivered through a coordinated, team approach. In Drug Courts, judges, prosecutors, public defenders, and the police work together to identify citizens within the criminal justice system who are in need of substance abuse treatment. Pre-trial and/or probation officers and treatment specialists work together to address clinical needs and ensure that Drug Court participants are effectively monitored. All members of the Drug Court team meet before "status hearings" weekly to

Today, Drug Courts are the most researched criminal justice program in the United States.

"staff" each individual case. Drug Court participants must undergo random and frequent alcohol and drug testing and attend regular status hearings in court, during which a specially trained judge reviews and responds to their behavior and progress in treatment.³

While there is no longer any doubt that treatment for drug and alcohol dependence works, research has demonstrated that the best outcomes stem from longer periods in treatment—generally a year or more. Through the authority of the bench, judges require participants to remain actively engaged in treatment by offering positive reinforcement for doing well and sanctions for not living up to their obligations. By meting out immediate rewards and sanctions and ensuring compliance in treatment, the Drug Court judge becomes the central figure in a team effort that focuses on sobriety and long-term recovery.

The Verdict Is In: Drug Courts Work

Today, Drug Courts are the most researched criminal justice program in the United States. In fact, most medications have less evidence. No less than five meta-analyses (the most rigorous research tool available to scientists) have been performed on Drug Courts, with results concluding that Drug Courts significantly reduce recidivism and do so at less expense than any other justice strategy.⁴ The U.S. Government Accountability Office confirmed that Drug Courts significantly reduce substance abuse and crime and save money for taxpayers by offsetting the costs of law enforcement, court case processing, and victimization resulting from future criminal activity.⁵

Drug Courts provide an astounding return on investment, in part because research demonstrates that nationwide, 70% of the approximately 120,000 seriously addicted individuals who voluntarily enter Drug Court complete the program a year or more later, and 75% of them remain arrest-free.⁶ A Drug Court participant is over twice as likely to stay clean and remain arrest-free as a newly released state inmate. And research also concludes that Drug Courts reduce drug abuse and improve employment and family functioning. These effects are not short-lived. The longest study on Drug Court to-date shows these outcomes last as long as 14 years.⁷

Recently, a meta-analysis of the cost-benefits of Drug Courts was released with staggering results. Drug Courts

produced between \$2.21 and \$3.36 in direct benefits to the criminal justice system for every \$1.00 invested.⁸ When other community cost-offsets were taken into account, such as reduced foster care placements, emergency room episodes, and other healthcare service utilization, the economic benefits increase to as much as \$12.00 for every \$1.00 invested in Drug Court. Put another way, instead of costing taxpayers and the criminal justice system exorbitant amounts of money, Drug Court participants save communities from \$3,000 up to \$13,000 per participant.

Target Population

Now consider that the more serious the offender's addiction and length of criminal record, the better Drug Courts work. Drug Courts are not for the first-time or non-addicted offender. Those individuals do just as well when effectively managed through drug/alcohol testing and swift and certain punishment or diverted to a disposition that leads to a valuable reward upon successful completion of court conditions, such as dismissal of the charge and/or record expungement.

Drug Courts are most appropriate for “high-value” offenders. Those are the offenders who have the highest need for treatment and other ancillary services and who have the highest risk of failing out of those services without ongoing judicial oversight and other significant support and structure.

This is why the Drug Court Model has meaningful impact on serious DWI Offenders like Mark..

Applying the Drug Court Model to Alcohol-Specific Crimes

Many Drug Court participants abuse alcohol. A 2007 national survey found that 9% of urban Drug Court clients prefer alcohol to drugs. This number jumps to 23% percent among suburban Drug Court clients and 26% among rural Drug Court clients.⁹

Because a growing number of judges and prosecutors had seen such radical changes in the lives of alcohol- and drug-dependant offenders in Drug Court, they bravely pioneered a Drug Court-like docket targeting recidivist and/or high BAC DWI offenders who were not responding to traditional sentences.

Every year, more than one-half of the alcohol-impaired traffic fatalities involve a high-risk DWI offender.¹⁰ These individuals are by definition problem-drinkers, many of whom are alcohol-dependant. Punishment, unaccompanied by treatment and accountability, is an ineffective deterrent for this population. Too often, the outcome of traditional sentencing dispositions among hard-core DWI offenders results in continued dependence on alcohol and peril for their community.

DWI Courts

These DWI-specific dockets, known as DWI Courts (aka DWI/Drug Courts, DUI Courts, Accountability Courts, and Sobriety Courts) possess the extraordinary potential to be as impactful and possibly even more common than Drug Courts.

DWI Courts protect public safety by addressing the root cause of alcohol-impaired driving: alcohol abuse and dependence. Like Drug Courts, DWI Courts employ the cooperative effort of a unified team consisting of all criminal justice stakeholders (judge, prosecutor, defense attorney, probation, law enforcement, etc.), as well as treatment professionals. The approach includes identification and referral of participants as early in the legal process as possible. DWI Courts, like Drug Courts, manage a high-risk and high-need population with intense supervision and long-term treatment requirements. DWI Courts employ scheduled and unscheduled home and work visits by probation and police officers, regular and random drug testing and, due to the difficulty of effectively detecting alcohol use, the

DWI Courts are having a significant positive impact on impaired driving and should be expanded to serve every hard-core drunk driver in the nation.

use of court-validated continuous alcohol monitoring tools like SCRAM to test for alcohol over extended time periods. DWI Court participants are initially required to appear weekly and then monthly before the judge to be held accountable for their compliance with treatment, testing, and other court requirements. During review hearings, the judge employs science-based responses to a participant's compliance or non-compliance, furthering the long-term goal of pro-social behavior and sobriety that will ensure permanent behavior change and prevent DWI recidivism.

DWI Court participants come to the court as a direct result of an impaired driving arrest and a documented history of impaired driving. Therefore, DWI Courts operate within a post-conviction model, where participants do not avoid a record of conviction even if they successfully complete the program. Incentive to enter and complete DWI Court may be a reduction in jail-time or quicker access to a restricted driver's license, but only after a substantial track record of compliance and sobriety.

DWI Courts also embrace victims of DWI and encourage the use of victim impact panels as well as the inclusion of victim advocates in the courtroom. DWI Courts are endorsed by the National Highway Traffic Safety Administration (NHTSA) at the U.S. Department of Transportation, the National District Attorney's Association (NDAA), and the National Board of Mother's Against Drunk Driving (MADD), and are strongly supported by the National Partnership on Alcohol Misuse and Crime (NPAMC). DWI Courts partner with state departments of motor vehicles, governor's highway safety offices and commissions, highway patrol, local law enforcement, state

and local MADD chapters, and other community groups. Such critical support comes from the acknowledgement that DWI Courts add “teeth and accountability” to the justice system’s response to drunk driving while effectively treating the person behind the wheel.

Are DWI Courts Effective?

The most comprehensive and rigorous study on DWI Courts to-date compared outcomes of all participants who entered DWI Court programs in three Michigan counties with comparable DWI offenders in the same counties who received traditional sentences. The 2007 study found that DWI Court participants are 19 times less likely to be re-arrested for a DWI charge than those who have been through traditional sentencing. The study also found that DWI Courts saved the criminal justice system time and money by getting the impaired driver into treatment and under accountability quicker and by using sanctions such as jail more strategically. Finally, the study found that the total time in jail for each DWI case was significantly reduced, saving the criminal justice system valuable time and money.¹¹

Numerous program evaluations confirm the findings of the Michigan study. The Athens DWI/Drug Court program in Clark County, Georgia, has had a recidivism rate of 3%, while the Kootenai County DUI Court in Idaho was found to have a recidivism rate of only 4%.¹² Researchers continue to measure the effectiveness of DWI Courts and closely examine individual elements of these programs, including method of treatment delivery, supervision services, and the



effectiveness of different monitoring and testing protocols. The evidence already released is clear: DWI Courts are having a significant positive impact on impaired driving and should be expanded to serve every hard-core drunk driver in the nation.

The evaluation literature on DWI Courts has also been marked by inconsistent findings. For the most part, the mixed results can be attributed to wide variability in the integrity of the DWI Court programs themselves, as well as to variability in the quality of the research designs. Positive outcomes for DWI Courts have been reliably reported when at least three conditions were met:

1. The researchers first conducted a process evaluation to ensure the programs were in compliance with the Ten Guiding Principles of DWI Courts¹³
2. The participants were followed for a sufficient interval of time (typically 2 years or more) to allow for recidivism events to occur and be detected by law enforcement authorities
3. The sample sizes were sufficiently large to provide adequate statistical power for the data analyses.¹⁴

In contrast, when there was good reason to question whether the programs were engaged in evidence-based practices, the results have been predictably lackluster. For example, when programs have been evaluated immediately after beginning their operations, without allowing sufficient time to pilot-test and modify their procedures, outcomes have been understandably poor. A frequently cited example of this is the evaluation of the Rio Hondo DWI Court in Los Angeles County.¹⁵ This “experimental” program was created solely for the purposes of the research study and ceased operations immediately after the study was ended. Not surprisingly, it did not perform very well, given that no effort went into ensuring its fidelity to the DWI Court model or to evidence-based practices. Similarly, when DWI offenders have simply been placed into traditional Drug Court programs, without any specialized programming to meet their

particular needs, their outcomes have been considerably poorer than the other Drug Court participants.¹⁶

A recent evaluation of two DWI Courts in New York State found no differences in re-arrest rates between DWI Court participants and matched probationers at 6 months (2% vs. 4%) or 12 months (5% vs. 8%) post-entry.¹⁷ However, the short follow-up window might not have allowed sufficient time for recidivism events to occur and be detected. Given the low re-arrest rates for both groups over this short period of time, it would be exceedingly difficult to detect significant differences even if they did exist, due to what is called a “statistical floor effect.”

Finally, some evaluations have involved small numbers of participants, which for mathematical reasons, also makes it very difficult to detect significant differences. One commonly cited example is the randomized experimental study of the Las Cruces (NM) DWI Court.¹⁸ Because of the small numbers of subjects in the DWI Court (n = 39) and comparison (n = 36) conditions, there was only enough statistical power to detect large effects, whereas the true effects appear to have been in the moderate, but still clinically meaningful, range.¹⁹

Taken as a whole, the evaluation literature reveals that quality DWI Courts have been shown to significantly reduce recidivism when they were fairly and appropriately examined by skilled evaluators. The onus is now on the DWI Court field to improve the quality of program evaluations and ensure fidelity to the model in day-to-day practice.

Justice-Involved Veterans

Just as DWI Courts adapted the Drug Court model to best serve a population with specific legal status and particular treatment needs, Veterans Treatments Courts are rapidly

Of the five meta-analyses performed on Drug Courts, the results concluded that Drug Courts are significantly reducing recidivism and are doing so at less expense than any other justice strategy.⁴

emerging as a viable solution to the unique needs of justice-involved veterans. The first Veterans Treatment Court launched in Buffalo, New York, in early 2008 after an influx of veterans appeared before the Buffalo City Court to face charges stemming mainly from alcohol abuse/dependence and/or mental illness. To-date, over 30 Veterans Treatment Courts have started with dozens more in the planning stages.²⁰

It is important to keep in mind that the one constant among all branches of our military is the sense of honor, duty, and leadership instilled in those who choose to serve. This is evident in the millions of veterans who have returned home to their communities as productive citizens, strengthened by their military and combat experience. But some veterans struggle to reengage with their communities following their service in the military. One in six veterans from Operations Enduring Freedom and Iraqi Freedom suffers from a substance abuse challenge.²¹ One in five has symptoms of a mental disorder, such as Post Traumatic Stress Disorder, or cognitive impairment, such as Traumatic Brain Injury.²² Research continues to draw a link between substance abuse and combat-related mental illness.²³ Combat exposure or injury and/or repeated deployments have also been implicated in domestic or other interpersonal conflict and alcohol and drug abuse resulting in behavior that triggers a law enforcement response.²⁴

What Makes Veterans Treatment Courts Unique?

Research demonstrates that traditional community services may not be adequately suited to meet the needs of veterans. Veterans Treatment Courts cluster justice-involved veterans into a specific court docket, significantly expediting access to veteran-specific resources, including benefits and treatment earned through military service. Many veterans have access to economic benefits and health services through the U.S. Department of Veterans Affairs, State Departments of Veterans Affairs, County Departments of Veterans Affairs, and a variety of additional programs for veterans operated at federal, state, and local levels. Traditionally, justice-involved veterans have had difficulty connecting with these resources and, in many cases, have been unaware that they are eligible. In Veterans Treatment Court, a representative from the Veterans Benefits Administration immediately determines the benefits status of every participant, initiating the process of determining, reinstating, or upgrading benefits. In addition, a Veteran Justice Outreach Specialist from the local VA medical center is able to immediately notify the Veterans Treatment Court team of available VA treatment services as well as facilitate participants' access to treatment.

Veterans deeply value their military experience and share an inimitable bond among their peers, and Veterans Treatment Courts build upon this camaraderie. Assisting in this effort is the inclusion of volunteer veteran mentors. Most Veterans Treatment Courts make community veterans organizations an additional resource, establishing mentor programs for participants to meet regularly with fellow veterans in a non-clinical but supportive manner. Mentors not only assist participants through the treatment court process but also assist with housing, employment, transportation, and a vast number of community resources available exclusively to veterans.

Researchers have begun to study Veterans Treatment Courts, but it is too early to document success. The Buffalo Veterans Treatment Court, which has not had a single veteran reoffend following completion of the program, suggests a promising approach to the justice-involved veteran fueled by alcohol and drug abuse/dependence and/or suffering with a mental illness.

Veterans Treatment Courts promote sobriety, stability, and recovery through the same coordinated and collaborative court response that has made Drug Courts and DWI Courts the nation's most successful, cost-effective, and scientifically validated tool available to address alcohol and drug abuse/dependence in the criminal justice system.

Summary

For over two decades the Drug Court model has been an instrumental force for institutional change within the criminal justice system and lifestyle change for over a million alcohol and drug-involved offenders. At the heart of these amazing court programs remains the promise that recovery from addiction is probable. Whether it's the alcoholic with multiple DWIs or the veteran desperately struggling to manage the physical and psychological wounds of war, we can offer them a solution. Perhaps Mark, the gentleman who could not find a way out of a hopeless spiral, put it best at his recent graduation from DWI Court:

On the day of my fourth arrest, I received the greatest gift of my life. I was offered an opportunity to participate in DWI Court. Without the help of the judge and the entire DWI Court team I would not be here today with 18 months of sobriety, the tools to stay sober, and a solid plan for my life in the future.


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For more information on DWI Courts, Drug Courts, and

Veterans Treatment Courts, visit www.AllRise.org.





A NATIONAL MODEL FOR MANAGING IMPAIRED DRIVERS

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Introduction

Within the criminal justice system, the methods for handling DWI offenders have emerged over half a century, and today's programs have been cobbled together from state legislation, court case law, and innovative court-sponsored monitoring programs. Thus, unlike the basic impaired-driving laws, such as the .08 BAC (Blood Alcohol Concentration) limit that applies across nearly all states and produces a relatively standardized enforcement system throughout the country, DWI sanctions, monitoring systems, and treatment programs vary widely both in the extent of their application to varying levels of offenders and in their quality, content, and effectiveness among and within the 50 states. Given that 1.4 million people are arrested each year for impaired driving, that almost 12,000 people are killed in alcohol-impaired crashes each year, and that the extraordinary rate of recidivism for drunk drivers has remained steady for decades, the objective of IBH is to give more attention to why the programs we've implemented to prevent DWI offender recidivism are not more effective.¹

This document will outline the first-ever model program that combines the benefits of traditional measures (such as interlock and jail), DUI courts, 24/7 alcohol monitoring, and drug testing like that found in the HOPE Program. This model takes advantage of the strengths of each of these programs while using additional methods to overcome weaknesses.

Background

DWI Convictions Are Predictors for High-Risk Drivers

Fatal crash records indicate that about 1,000 highway fatalities occur each year that are attributable to drivers convicted of an alcohol-related offense within the last 3 years.¹ One-third to one-half of the 1.4 million DWI offenders arrested each year has a chronic, diagnosable drinking problem.^{2,3} And a driver convicted of DWI has seven times the likelihood of committing a DWI offense in the future than does the average driver.⁴ Thus, a DWI

offense can be used to identify high-risk drivers and warrants giving criminal justice the authority to impose remedies to protect the public and to assist offenders in recovering from the drinking problems associated with their enhanced crash risk. Better management of our country's DWI offenders promises to achieve three important goals:

- Improve highway safety
- Identify and treat substance abuse
- Reduce the costs of incarceration

High Cost of Jail Motivates Search for Alternatives

For the last several decades, the enforcement of laws against drug abuse has emphasized incarceration. Twenty years ago, the exorbitant costs of the growing prison population caused by drug abuse cases motivated the development of Drug Courts, which focus on coerced treatment and abstinence monitoring.⁵ In Drug Courts, offenders avoid jail terms by successful participation in the program, but they are subject to short-term jail sentences for failure to maintain abstinence or attend treatment. The success of Drug Courts has led to the application of this program model to convicted drinking drivers, known as DWI Courts.^{6,7}

This trend toward developing alternatives to jail appears to be stimulated by the current economic downturn, as indicated by the front page article in *The Washington Post*, "States Seek Less Costly Substitutes for Prison" (July 13, 2009). Although DWI Courts are less costly than lengthy jail sentences for repeat offenders, additional costs for multiple hearings are required. Thus, some policymakers are developing even less expensive community corrections programs, such as the South Dakota 24/7 Sobriety Project,^{8,9} which focus more on BAC monitoring (combined with drug monitoring to detect substitution) and are paid for by the offender. The 24/7 Sobriety Project requires offenders to visit a sheriff's department and be tested for alcohol twice a day

or wear continuous transdermal alcohol bracelets. Offenders are also subject to random urinalysis or must wear sweat drug patches to detect drug use. Failure to appear or a positive test are met with immediate, short-term periods in jail. Treatment is available but is not part of the program.

The threat of brief periods in jail is the motivating sanction, in Drug Courts, the HOPE Program, and in the 24/7 Sobriety Project, where failure to pass alcohol- or drug-monitoring requirements results in incarceration. It would be expected that offenders with alcohol- or drug-use disorders would have difficulty maintaining abstinence. However, experience indicates that even dependent drug users can meet the requirement of sobriety enforced by monitoring most of the time.⁹ Experience has shown that the combination of tight monitoring and swift and certain, but not severe, jail sanctions reduce alcohol and other drug use and recidivism while in the program.^{8, 9} Relatively inexpensive programs like the South Dakota 24/7 Sobriety Project may be attractive to policy makers, particularly in tight economic conditions, because of their low cost to the state and because they are scalable to the entire DWI population.

Current Challenges Provide Special Opportunity

The following factors suggest that there is a unique opportunity to substantially restructure the DWI sanction/treatment system:

- a. The economy dictates that incarceration must be used more efficiently to control costs so that the dwindling jail space can be used for more serious offenders
- b. Current programs demonstrate that even dependent drug and alcohol users can comply with abstinence monitoring
- c. Programs that use monitoring, such as drug courts, appear to be effective in promoting rehabilitation
- d. The success of abstinence monitoring and interlocks,

initially limited to multiple offenders, is leading to their extension to at least some first offenders

- e. States have been passing laws that apply penalties formerly reserved for multiple offenders to high-BAC (.15+ BAC) first offenders
- f. Advances in technology are providing effective, low-cost monitoring methods
- g. The effectiveness of the traditional system for controlling DWI offenders is compromised by the high volumes of traffic and the limited police resources

The Goals of a National Model

The National Model for Managing Impaired Drivers is based on these trends. This model is designed to inform state legislatures and courts and to increase uniformity and effectiveness in handling impaired-driver programs. It should also stimulate research by highlighting current limitations in offender screening, monitoring, and treatment programs. By presenting a clear set of objectives, the National Model should provide an improved basis for evaluating the effectiveness of current programs.

The objective of the National Model for Managing Impaired Drivers is to develop a program that states and courts can adopt that leads to substantial reduction through in the risk presented by DWI to the driving public and to the rehabilitation of alcohol- and drug-impaired drivers. Using proven, best-practice, evidence-based models and tactics, the National Model is designed to take advantage of emerging technologies and the current best monitoring, assessment, and treatment practices. Further, the model is intended to be applied to all levels of alcohol - and drug-impaired-driving offenders. It should minimize jail costs for the government while limiting the economic effect on offenders and their families.

The National Model

Specifically the proposed National Model would be based on five elements:

1. It would encompass both alcohol- and drug-impaired drivers.
2. It would use current program experience and new, recently developed monitoring technologies to create a framework for managing all levels of DWIs, from first to multiple offenders.
3. It would emphasize close monitoring of alcohol consumption, drug consumption, and driving, backed by modest jail penalties. This is in place of the current system, which tends to impose substantial jail sentences on multiple offenders while releasing lesser offenders back into the community with relatively little supervision.
4. It would replace fixed sentences with sanctions of variable severity and length, depending on a behavioral triage system based on offender conformance to program requirements
5. Treatment programs that integrate into the monitoring system to support offenders in meeting the monitoring requirements.

1. Combining alcohol- and drug-impaired sanction programs.

Currently the apprehension and conviction of drug-using drivers is closely tied to the procedures for detecting and arresting alcohol-impaired operators. Prosecution procedures, including plea bargaining in drug cases, have been derived from procedures developed for handling drinking drivers. While the special needs of drug-impaired drivers are recognized, the extent of the comorbidity with alcohol problems has required court treatment providers to include substance abuse in their curricula. Thus, sanction programs can be similar for both.

2. Providing a range of sanctions for measuring different levels of offenders.

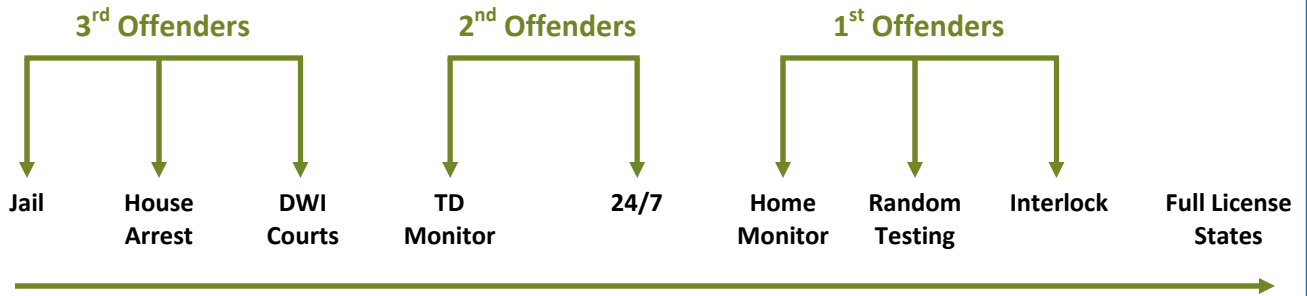
Compared to the past, when options for controlling an offender's impaired-driving behavior were primarily limited

to probation, jail, or license suspension, the variety of new control programs based on BAC measurement technology has greatly increased program options available to the court for managing impaired drivers. In Figure 1, the current options are arranged according to their punitive characteristics, or the extent to which they intrude on the privacy of the offender. Together they define a sanctioning system with decreasing severity as represented by lower-intensity/less-intrusive monitoring systems moving from left to right. The system can accommodate drivers convicted of offenses of varying levels of seriousness. The number of prior DWI offenses and the seriousness of the offense (e.g., aggravated or felony offenses) would determine the offender's entry point into the system and the length of time the individual would be required to serve within the system before being released. For example, multiple offenders might be initially sentenced to jail or house arrest and to court probation for 3 years. Second offenders might be placed on an alcohol/drug use monitoring system such as the transdermal monitoring system or a 24/7-type program and placed on probation for 2 years. A first offender might be required to be on a home portable electronic BAC monitoring system, a required daily call-in random-test program such as the 24/7 program, or to install an interlock and serve 1 year on probation.

3. Employing tight monitoring with moderate sanctions.

Current programs for managing DWIs tend to place emphasis on jailing multiple offenders while limiting supervision for lesser offenders to license suspension or informal probation, where the supervising officer has little contact with the offender. Such offenders are returned to the community, where they are immersed among the thousands of other drivers using the roadways. The detection of continued impaired driving offenses is low—on the order of 1 in 300 impaired trips per arrest. The low probability of detection limits both the level of deterrence and the motivation to change behavior. However, if apprehended, the sanctions for repeat offenses are severe, involving jail time with substantial impact on the offender's quality of

Figure 1: Comprehensive sanction model which accommodates all levels of offenders¹



¹TD Monitor—Transdermal Sensor; Secure Continuous Remote Alcohol Monitor (SCRAM) unit produced by Alcohol Monitoring Systems—a leg bracelet worn 24/7 that monitors BAC. 24/7—a program that requires reporting to police twice a day for breath testing. Home Monitor—IN-HOM is a portable automatic breath-test device with photographic verification of the user produced by Smart Start, Inc. Random testing—offenders call in daily to determine whether they must come in for a breath test.

life, as well as incarceration expense (approximately \$30,000 per year to the community). In contrast to the low probability of detection once the offender is released back into the driving community, recent technological developments such as SCRAM and demonstrated court monitoring procedures such as South Dakota’s 24/7 Sobriety Project appear to provide monitoring systems that, while not perfect, will detect problem behaviors 80% to 90% of the time. In this context, penalties for failure to meet court requirements can be set relatively low—a few days in jail or an extension of time in the monitoring program. Relying on the use of close monitoring in place of dependence on non-court agencies such as the police to enforce court sanctions (a process that is already underway) would represent a radical departure from current practice.

4. Reducing fixed sentences and replacing them by behavioral triage

A central feature of the criminal justice model program would be the imposition of sanctions based initially on the offender’s record and, once in the program, on the offender’s performance. The concept of behavioral triage should be used to motivate compliance with the monitoring system, meaning that the system will respond to the behavior of the offenders while they are being monitored. Those offenders who meet compliance requirements would move to lower levels of supervision that use less-intrusive sensing systems. Those who fail to comply would be subject

to more intensive monitoring programs. This evolving concept would make use of multiple types of BAC and/or driver (interlock) monitoring, combined with drug monitoring, to create a system of steps toward a return to normal driving or abstinence.

Offenders would move to lower, less-intensive monitoring based on earning the less-intrusive program status through demonstrated compliance with the higher-monitoring levels. In addition to reducing the intensity of monitoring, the total period on probation could be reduced based on demonstrated ability to control drinking and impaired driving. For example, some states currently require 6 months of no-lockout performance on the interlock before authorizing the removal of the device from an offender’s vehicle. Failure to conform to the monitoring requirements would be penalized by extended periods at the higher-monitoring levels or by increases in sanction severity, such as short-term (overnight or weekend) jail sentences. As in DWI and drug courts, incarceration would lie at the base of the system for motivating compliance but would be used sparingly, and the extent of the reduction in jail time would be a major positive factor in evaluating program effectiveness.

5. Integrating assessment and treatment into the control system.

Currently, with the exception of DWI and Drug Courts, mandated treatment programs for DWI offenders tend to

operate outside the sanctioning system, with court involvement occurring only where offenders fail to attend the treatment program. More intensive monitoring focused on enforcing abstinence should increase

the relevance of court treatment programs to offenders and probation departments. Most offenders have little or no intrinsic motivation to participate in mandated treatment. However, some offenders faced with close monitoring to control their drinking may be more likely to actively embrace the support offered by court-sponsored treatment. Contingency planning will be needed for offenders who cannot meet required standards even with maximum support, so as to avoid excessive sanction levels.

The use of alcohol and drug monitoring to control impaired driving offenders may require that, beyond the current standard treatment modalities (inpatient, outpatient group therapy, and alcohol education), individual counseling be available to assist offenders who are failing to meet court-monitoring requirements. Treatment providers will need to have access to the alcohol- and drug-use data collected by the monitoring program and will need to establish intervention procedures responsive to the offender's problems in meeting the requirements of the monitoring process. Potentially, once-a-month meetings with a therapist or participation in a support group may be required to assist offenders in an alcohol-monitoring program. Florida has such a support program for offenders on interlocks.

The drinking- and drug-use status of the offenders is a key factor in determining treatment needs. Assessment would become even more significant in a future system built on alcohol- and drug-use monitoring to identify early those who are likely to have trouble meeting monitoring requirements and assigning them to supportive services. Currently, the level of treatment to which an impaired-driving offender is assigned is determined by prior offenses, the arrest BAC, and screening tests/interviews. Each of

More intensive monitoring focused on enforcing abstinence should increase the relevance of court treatment programs to offenders and probation departments.

these has limitations for determining the offender's substance use status. The official number of prior offenses is determined by the look-back period, which differs across states. Arrest BAC only marginally correlates with future recidivism.¹⁰ Screening tests depend on self-reported information that may be relatively accurate in clinical settings but is problematic in criminal justice settings where the offenders may fear unpleasant consequences for being candid.¹¹

This limited information would be substantially augmented by data flowing from an emerging offender control system that monitors drinking and drug use or from the vehicle interlock breath-test data. Both methods produce a large amount of relatively objective behavioral (BAC) data that can be used to assess the offender's drinking status and treatment progress. Although these data are not available at the time of sentencing unless monitoring occurs as a condition of bond, they accumulate during probation and can be used to augment the original assessment. These data should influence the ultimate severity of the sentence based on the offender's demonstrated ability to control drinking and drug-use behavior. In successful programs, adding the drinking behavior during monitoring to the traditional assessment information should provide a method for monitoring progress in treatment. Alcohol-monitoring data (interlock breath-test records) as well as biomarker data from blood test programs (measuring CDT, GDT, and PETH) have been shown to be predictive of future recidivism.¹² It is expected that data from these programs that monitor drinking can have similar predictive value. Such data can be used to monitor progress in treatment and where the standard treatment program has been completed,

to detect relapse. It should also provide an objective method of determining when offenders can be released from probation.

Drug-Impaired Drivers

New research from the U.S. Department of Transportation and elsewhere has shown that the prevalence of drivers using legal and illegal psychoactive drugs equals (or even exceeds) the use of alcohol by drivers.¹³ The problem presented by drug-impaired drivers needs to be addressed in its own right, as does the co-use problem exhibited by many alcohol offenders. The model program could be designed to accommodate both problems. Offenders convicted of driving under the influence of drugs (DUID) should be assigned to intensive drug-use supervision. It will also be appropriate for them to participate in an alcohol-monitoring program to ensure they do not substitute drinking for drug use while participating in the drug-monitoring program. Frequency of drug testing would depend on the number of positive tests, but as with drivers impaired by alcohol, it may be possible to reduce testing frequency over time.

Both the Drug Courts and the DWI/Drug Courts that combine monitoring with treatment are excellent innovations to be encouraged. They are effective in promoting rehabilitation of drug users, and the evidence for their effectiveness with multiple DWI offenders is growing.^{6,7} However, the use of frequent court hearings and mandatory treatment for all participants makes them more expensive to operate than less-intensive programs; thus, they need to be used primarily with the most serious substance abusers. It is also important to adopt the new principles of offender management through the monitoring and treatment that DWI/Drug Courts have pioneered for use with all DWI offenders. It may be most cost-effective for repeat offenders to enter 24/7 type programs initially. If they fail to comply with the monitoring program, then they can go to Drug Courts with mandatory treatment. This combined system holds promise for reducing overall costs while reserving treatment for those who need it most.

Additionally, many of the methods addressed in this paper can be built into DWI Courts to strengthen them further.

Length of Probation Periods

The period following conviction during which courts maintain authority over offenders varies with state legislation. Because remediation of alcohol- and drug-use disorders requires considerable time, courts must have the authority to impose a probation period that covers the necessary monitoring time. In the past, motor vehicle departments have managed relatively long license suspensions through their administrative records. Currently, first DWI offenders typically are placed in interlock programs for 6 to 12 months, and multiple offenders may be placed in programs for up to 3 years or more. For non-felony DWI cases, however, the court's authority to maintain probation monitoring may need to be extended so that BAC monitoring can encompass time spans similar to those involved in license suspension programs

The periods established for monitoring offenders should be based on performance standards that define objectively the requirements for "graduating" from the monitoring program with eligibility to return to full-driving status.

Program Funding

Because offender funding for monitoring is a central feature of this proposal and because monitoring will increase the need for treatment services that must also be supported by the offender, a provision needs to be made for funding the monitoring of indigent DWI offenders who cannot pay for this service. Primary emphasis would be placed on offender funding for monitoring and treatment services using low-cost technology. Service providers, as they do now, would be expected to create a pricing structure that permits them to cover indigent offenders. Given the potentially large group of offenders who may need assistance in meeting program costs, states should establish indigent funds (such as New Mexico's fund) based on contributions from fine revenue.

Summary of the Program's Features

The principal objective of the National Model for Managing Impaired Drivers is to assist legislators and judges in implementing effective laws and programs that are consistent within and across states and are based on currently established laws and sanction policies. The National Model should assist in identifying weak links in the program, stimulate research on existing program elements that have not been fully evaluated, and assist in the development of novel monitoring and treatment procedures. The goal is also to ensure that the National Model is clear and easier for the public to understand, making it more effective as a general deterrent.

The key features of the National Model for Managing Impaired Drivers are:

- It is applicable to drivers convicted of both alcohol- and drug-impaired driving.
- It covers both first and multiple offenders.
- It provides for varying levels of monitoring dependent on conformance to program requirements. Movement from one level to another is dependent on offender performance.
- Alcohol-only monitoring programs are accompanied by drug testing to prevent substitution of drug use.
- Program lengths are determined by performance.
- Programs are designed to minimize the burden on government resources and place primary responsibility for funding on the offender.
- Treatment providers receive all monitoring data and are integrated into program decision making as they are in DWI/drug courts.
- License suspension would be superseded in most cases by a special (but unrestricted) license valid during enrollment in an interlock or a BAC monitoring program.

- Fines would be increased and directed to a special fund to support indigent offenders in an interlock program or in a BAC-/drug-monitoring program
- Jail would be used only for short-term (overnight or weekend) periods as a penalty for positive BAC and drug tests.

An important motivation for developing a program standard is its potential for drawing attention to our nation's limited capability to deal with the needs of impaired-driving offenders and to protect the public from the risk they present. Because many of the factors leading to the concepts described in this paper involve the application of new technologies and program concepts that have not yet been fully evaluated, it will be important for the government to support research on the programs described that, in most cases, are already being applied to hundreds if not thousands of offenders. It is not possible to hold up innovation until evaluation is complete, but that places the responsibility on researchers and program developers to evaluate ongoing programs.

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