



April 2, 2010

## The Hardcore DWI Offender: DWI Courts Driving Improvements, New Research

By David Wallace, [National Center for DWI Courts](#)

Estimates indicate that there are more than 2 million people on America's roadways with three or more DWI (Driving While Impaired) convictions, while every year, more than half of the alcohol-impaired traffic fatalities involve a person with a BAC of 0.15 or higher. Hardcore DWI offenders—defined as individuals who drive with a BAC of 0.15 or greater or who are arrested for or convicted of DWI after a prior DWI conviction—continue to inundate the criminal justice system, and traditional courts have struggled to make an impact on this population. The specific issue is the alcohol dependence, and punishment alone has generally proven to be an ineffective deterrent for the hardcore DWI offender.

### DWI Court Quick Facts

As of December 2009

- 172 Designated DWI Courts
- 354 Hybrid DWI/Drug Courts

*That's 526 courts—and counting—that specialize in dealing with hardcore DWI offenders*

In 1995 the DWI Court strategy began to emerge, and today, more than 500 are operational, with more DWI Courts in the planning phase. A DWI Court is an accountability court dedicated to changing the behavior of the hardcore offender arrested for drunk driving. The goal: To protect public safety and reduce repeat offenses by using a combination of accountability and long-term treatment to address the root cause of impaired driving—alcohol and other substance abuse.

While DWI Court is based on the very successful Drug Court model, there is an important difference. DWI Court operates within a post-conviction model. This was an essential issue for groups like Mothers Against Drunk Driving (MADD), which recommends that DWI Courts not be used to avoid a record of conviction and/or license sanctions.

### Accountability and the DWI Court Team

With the hardcore DWI offender as its primary target population, a DWI Court manages this high-risk group with intensive supervision. It is the rapid response to any violation that gets their attention. They quickly learn that when they do not follow any component of their program, there are consequences. Just as important, when they do something right, they are recognized for that behavior, as well. It is the combination of incentives and sanctions that helps change their behavior. Sanctions alone will not do it, nor will just incentives. Both have to be used. Join the incentives and sanctions with intensive supervision and long-term treatment and it is a formidable combination.

### The Intensive Supervision component includes:

- Both regular and random testing for alcohol and other drugs.
- Scheduled and unscheduled home and work visits.
- A quick appearance before the court for any positive test.
- Strict adherence to scheduled appointments—if an offender is late to any appointment, whether it is at the courthouse, treatment, or probation, the individual is quickly located and brought before the court for an appropriate response.
- Regular, frequent appearances before the DWI Court judge—starting at a weekly or biweekly basis—and adjusted based on what phase the person is in and the success, or lack of success, in the program.

### The long-term treatment component includes:

- An initial, clinical screening and assessment in order to develop a clinically sound treatment plan. This plan is reviewed and revised during the entire time they are supervised.

- Offenders are evaluated and treated for co-occurring mental health disorders, a common occurrence for individuals with alcohol dependence.
- Individualized, intensive treatment during supervision.

It is this combination of responses—the intensive supervision and the intensive, long-term treatment with the incentives and sanctions component—that provides the complete package and has proven to be the most effective combination for encouraging true behavior change.

### **The DWI Court Team**

Another significant difference between a DWI Court and a traditional court is the team component. A traditional court has the prosecutor and the defense attorney as combatants, with the judge as arbiter. Law enforcement officers are essentially bystanders, testifying in a courtroom on what they previously saw and heard, and treatment providers are not even at the table. DWI Courts brings everyone together to manage each offender with a team approach. The core team includes:

- The judge
- The prosecutor
- The defense attorney
- The probation officer
- Law enforcement
- Treatment providers
- Court coordinators
- Victim advocates

These individuals sit down together with one objective: Determine the best way to change an offender’s behavior so he is no longer a threat to the community. Each team member has a different perspective, and it is the inclusion and coordination of each perspective that helps ensure a complete response by the court.

### **Program Phases: Changing Course by Changing Behavior**

It is important to recognize that for a substance-dependent individual, change does not happen overnight. To successfully change a person’s behavior from alcohol-dependant to alcohol-free takes baby steps, and both Drug and DWI Court programs are specifically designed to make the most of this pattern. To encourage true change, DWI Court uses different levels or phases while a person is in the program in order to maximize the potential for behavior change at each step in the recovery process. For a new participant to enter a DWI Court program and be told that you have to be sober for the rest of your life is very daunting, and often sets the person up for immediate failure. While sobriety is the

### **In addition to MADD, the following organizations have passed resolutions in support of DWI Courts**

The Governor's Highway Safety Association

The Highway Safety Committee for the International Association of Chiefs of Police

The National Alcohol Beverage Control Association

The National District Attorneys Association

The National Sherriff's Association

long-term goal, short-term goals make the ultimate objective more attainable.

Each phase gives a participant visible and realistic steps to measure success. For example, it is not realistic to expect that an alcohol-dependent person remain alcohol-free in the beginning. An alcohol-dependent person will almost always attempt to “beat” the program and will invariably drink or use drugs. Again, that is the nature of the disease. It is realistic to expect that the person will show up to treatment and court sessions and be on time. This does **not** mean that a person is allowed to drink alcohol or use drugs in the beginning. There is a response to each and every violation; however, the response will vary depending on previous violations and on where the person is in the program.

Typically a court will set up four or five phases, with each phase initially lasting a certain length of time, such as 90 or 120 days. When establishing the phases in the beginning of the development of a DWI Court, a team will determine how long a phase will be, depending on what is expected of a person during that time frame. DWI Courts typically establish a minimum amount of time for each phase, and it is not unusual for a person to take longer than the minimum amount of time to complete a phase.

In each phase a court will have certain expectations that a person must meet. These expectations are comprised of Program requirements and Court requirements. Program requirements are those items that everyone in the program must do, such as attend treatment, attend court sessions, take drug tests, and remain crime-free. Court requirements are individualized expectations depending on where the person is in recovery, such as how much community service must be completed, how often the person has to attend treatment or court, or if the person is required to get a GED.

DWI Court tends to be a long, rigorous, structured program, generally lasting one to two years. By working through and accomplishing the small goals in order, the participant ultimately learns how to remain sober. These

small steps also allow the team to measure—somewhat objectively—how well the participant is progressing with the program requirements. For example:

- Is the person attending all treatment sessions?
- Is the person attending all court sessions, appearing in a timely fashion?
- If ordered, has the person complied with a curfew?
- If ordered, has the person completed community service?
- Are court-ordered fees paid? (If the person is able to pay the fees.)

When the answers to these types of questions are yes, and at least the minimum amount of time in that phase has passed, then the person can be promoted to the next phase.

It is also important to recognize that the program is individualized, and thus it is up to each person to determine how quickly they go through each phase. In addition, while participants work through the court phases, they also are going through treatment, which has different levels that each person must complete. The treatment levels and the court phases are not tied together; however, each DWI Court team member knows where each participant is at in terms of their progress based on both their treatment levels and the phase they're in with the court.

### **DWI Courts: The Research and the Challenges**

Numerous individual DWI Courts have conducted program studies, comparing rates of recidivism to a population of offenders sentenced through a traditional court model. These early studies show improvements in recidivism, as well as reductions in the costs to manage the offenders.

One detailed study was conducted by the Michigan State Court Administrative Office, with NPC Research, Inc. conducting an independent data analysis of the results. The three-county study spanned 2 years, and the evaluation compared outcomes of all participants who entered DWI Court programs and compared the results to offenders in the same counties who were sentenced via the traditional courts.

The Michigan study found that participants in DWI Courts were considerably less likely than DWI offenders sentenced in a traditional court to be arrested for a new DWI offense or for any new criminal offense within 2 years of entering the program. In addition:

- In an example from one DWI Court site, the comparison offenders from a traditional court were re-arrested nearly six times more often in the first year after starting probation for the DWI charge than the DWI Court participants.

- At another DWI Court site, in a 2-year period, traditional sentenced offenders in the comparison group were more than 3 times more likely to be re-arrested for any charge and were 19 times more likely to be re-arrested for a DWI charge than the DWI Court participants.
- The average waiting period between arrest and sentencing was significantly reduced in the DWI Court.
- The number of days spent in jail prior to program or probation start and the total time in jail for that DWI case was also significantly reduced, thus saving the criminal justice system time and money.

There have also been a few studies that questioned the success rate of DWI Courts, though notably, many of these studied programs that either did not follow the *10 Guiding Principles of DWI Courts* or allowed bleeding of conditions between the two populations. Bleeding of conditions occurs when the comparison group receives benefits that would normally be associated with a DWI Court, not a traditional court. There is no doubt that fidelity to the model is an important component of being a true DWI Court, as is the evaluation process itself.

According to an article authored by Marlowe, Festinger, and Arabia, et.al, "A Systematic Review of DWI Court Program Evaluations" (*Drug Court Review, Vol VI, Issue 2*, The National Drug Court Institute), even some studies that show a positive impact from DWI Courts were insufficiently detailed in documenting how they reached their conclusions. However, what should be noted is that no study has found that DWI Courts are worse than a traditional court and every study that has examined the issue found that DWI Courts save criminal justice funds when compared to a traditional court.

What everyone does agree on is that more studies need to be done to demonstrate the overall effectiveness of DWI Courts. These studies should include not only an evaluation of recidivism rates in comparison to traditional court programs, but also evaluations of the individual elements of these programs, including the method of treatment delivery, appropriate supervision services, and the effectiveness of different monitoring and testing protocols.

The DWI Court model is over 500 strong across the country, and these accountability courts continue to proliferate as programs continue to see and report positive results. With the proper training and support, DWI Courts are changing the behavior of hardcore DWI offenders and are helping to turn thousands of struggling, alcohol-dependent individuals into law-abiding citizens, making our communities a safer place.

*David Wallace is director of the National Center for DWI Courts (NCDC), which provides support, training, and education to DWI Court professionals throughout the U. S. [dwallace@nadcp.org](mailto:dwallace@nadcp.org)*