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DWI Courts:
The Newest Problem-Solving Courts

Victor E. Flango

Problem-solving courts—more accurately, specialized dockets—are established to deal with problems that may benefit from focused and sustained attention. These courts include a treatment component in an effort to reduce recidivism, which in turn reduces the number of future arrests, prosecutions, and court cases.

Specialized drug courts appeared in the late 1980s in response to the dramatic increase in drug offenses.[1] Some drug courts, often referred to as "drug-treatment courts," emphasize treatment as the way to reduce recidivism. Essential elements of drug courts include: (1) immediate intervention; (2) non-adversarial adjudication; (3) hands-on judicial involvement; (4) treatment programs with clear rules and structured goals; and (5) a team approach that brings together the judge, prosecutor, defense counsel, treatment provider, and correctional staff.[2] Although there are variations, the drug-treatment courts usually include judicial supervision of community-based treatment, timely referral to treatment, regular status hearings to monitor treatment progress, mandatory and periodic drug testing, and a system of graduated sanctions and rewards.[3]

The success of drug courts has renewed interest in other types of problem-solving courts, such as community courts, domestic-violence courts, and mental-health courts.[4] The newest such court to gain acceptance in many communities handles alcohol-impaired drivers.

DWI COURTS

The high incidence of crimes committed while under the influence of alcohol, including driving while impaired, has prompted several jurisdictions to develop sobriety or DWI (Driving While Impaired or Driving While Intoxicated) courts, most based on the drug-court model. Specialized DWI courts are reputed to be better equipped to handle DWI cases, which permits swifter resolutions, reduces backlog, and improves outcomes. Common characteristics of sobriety and DWI courts include intense alcohol-addiction treatment and heavy court supervision, with jail sentences as a last resort. Compliance with treatment and other court-mandated requirements is verified by frequent alcohol and drug testing, close community supervision, and interaction with the judge in non-adversarial court review hearings.

DWI courts were established to protect public safety and to reduce recidivism by attacking the root cause of impaired driving—impairment caused by alcohol and substance abuse. The mission of sobriety and DWI courts is "to make offenders accountable for their actions, bring about a behavioral change that ends recidivism, stop the abuse of alcohol, and protect the public; to treat the victims of DWI offenders in a fair and just way; and to educate the public as to the benefits of sobriety and DWI Courts for the communities they serve."[5]

In other words, the DWI courts treat the problem as well as punish the offender, because threats of punishment alone are not likely to be sufficient to change the behavior of individuals.

DWI courts allow experienced judges to use treatment resources and other sentencing options together, and thus to sanction or reward offenders with greater consistency.[6] Although the DWI offenders share some characteristics with drug offenders (for example, they each share substance-abuse problems that require treatment and a strong support system to succeed), they also have differences. DWI offenders tend to be male, employed, and slightly older than drug offenders; they are more often able to draw on emotional resources, including family, that are helpful to recovery.[7]

Unlike drug offenses, DWI offenses are *not* perceived as "victimless" crimes because public safety and community impact are more of an issue. Monitoring DWI offenders is more difficult than monitoring drug-court participants because alcohol goes through the body quickly and is more difficult to detect than drugs. Alcohol is also legal and easier to obtain than drugs.

HOW MANY DWI COURTS ARE THERE?

The National Association of Drug Court Professionals provided a list of 68 courts that were listed as specialized DWI courts operational in 2003, some in conjunction with drug courts.[8] All 68 were contacted in early 2004, and asked to provide information about the year they were established, the types of cases they heard, the volume of cases heard, and recidivism

Footnotes

1. Drug Cts. Program Office, U.S. Dep't of Justice, Defining Drug Courts: The Key Components 9 (1997).
2. Peggy F. Hora, et al., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 Notre Dame L. Rev. 439, 453 (1999).
3. Steven Belenko, *Research on Drug Courts: A Critical Review,* 1 Nat'l Drug Ct. Inst. Rev. 10, 14-15 (1998).
4. *See, e.g.,* Pamela M. Casey & David B. Rottman, Nat'l Ctr. for State Cts., Problem-Solving Courts: Models and Trends (2003).
5. Jeff Tauber & C. West Huddleston, Nat'l Drug Ct. Inst., DWI/Drug Courts: Defining a National Strategy 5 (1999).
6. Robyn D. Robertson & Herb M. Simpson, Traffic Inj. Res. Found., DWI System Improvements for Dealing with Hard Core Drinking Drivers: Adjudication and Sanctioning 19 (2002).
7. C. West Huddleston & Karen Freeman-Wilson, Nat'l Drug Ct. Inst., DWI/Drug Courts: Defining a National Strategy 5 (1999).
8. The author is grateful to Kristen Daugherty of the National Association of Drug Court Professionals for providing the initial list of DWI Courts and to Katherine Knorr, an intern at National Center for State Courts, for contacting each of the courts.

rates. Five of the courts turned out to be specialized courts, but not DWI courts, and are not included in the analysis.

The table found at the end of this article presents this basic information on these 63 courts as a baseline from which the growth in specialized DWI courts can be monitored. It is clear that many new DWI courts were created recently, after this article was written and submitted for publication. Indeed, the latest information from the National Drug Court Institute suggests that 176 DWI courts were in operation by the end of 2004, and that is not counting "hybrid" DWI courts—drug courts that also accept DWI offenders.[9] Although the National Association of Drug Court Professionals is conscientious about conducting regular surveys of all drug-court-related specialty dockets, it is a daunting task to maintain an accurate, up-to-date catalog of problem-solving courts.

Most of the DWI courts appear to have been developed from drug courts, but there are exceptions. Of the 63 DWI courts, seven reported being established as separate courts. More than a third of adult drug courts in the United States are in California, New York, Missouri, or Florida.[10] Half of the family drug courts are in the large states of California, New York, and Florida and a third of the juvenile drug courts are found in these three states plus Ohio. A third of the DWI courts, however, are in Michigan (10), Idaho (6), and Indiana (6).[11] Thus, although DWI courts were created from drug courts, the states with the largest number of drug courts do not have the most DWI courts. DWI courts are also *not* more prevalent in states that have an unusually high number of alcohol-related fatalities.

All of the courts were established rather recently (after 1994), except for the Los Angeles Superior Court DUI Program and the Hancock County, Indiana, DWI Court, both established in 1971. Forty of the 63 were established in 2000 or later.

Most DWI courts (54 of 63) do not accept violent offenders into the program. A much smaller number do not accept juvenile offenders (14) or sex offenders (8) into their programs. Caseloads are, and perhaps need to be, small. The vast majority of DWI courts (49 of the 63) handle fewer than 100 cases per year.

DWI COURT ISSUES

Several issues that are not unique to DWI courts, but arise to varying degrees with all problem-solving courts, would benefit from further research as DWI courts mature.

Role of the Judge. Despite the use of problem-solving courts in many arenas, the concern persists that judges are more involved with defendants, so it is more difficult for them to remain impartial. Judges need to praise and sanction defendants, but must avoid getting so involved personally that their impartiality is at risk. As problem-solving courts proliferate, however, these concerns appear to be lessening as is the countervailing concern that DWI court sanctions may appear to be more coercive than those used in traditional courts. Use of sanctions that have judges telling a defendant where to live or where to work; that require defendants to use prescription drugs, such as Naltrexone and Antabuse; or that require invasive treatments, like acupuncture, may be perceived as going beyond the scope of traditional judicial authority.

Resources. Would non-specialized courts perform as well if given the same resources and access to treatment as specialized DWI courts? Critics may argue that specialized DWI courts are indeed more successful than other courts because they have so many more resources, which they require if they are to have frequent review hearings, frequent testing for alcohol use, progress reports from probation officers and addiction counselors, etc. To determine the appropriate workload levels for specialized DWI courts as well as for other courts having jurisdiction over DWI cases, workload assessments are necessary.[12]

A workload assessment measures more than just caseload; rather, it is a measure of the amount of judge time necessary to dispose of cases properly. The best way to assess the need for judges and court support staff is to do a full workload assessment, which takes into account the amount of time it takes to resolve the "mix" of cases each judge hears, both currently and ideally.[13] Doing so will measure not only the average amount of time it takes to dispose of DWI cases, but also the amount of time it takes to keep current with the entire docket.

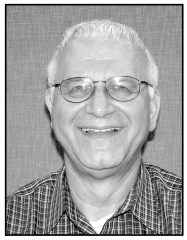
Another cost for some courts is the integrated information system required to track individuals through case-processing stages and to determine whether they have met the various screening, treatment, and other requirements imposed by the court.

Effectiveness. At a national conference of Mothers Against Drunk Driving, Dr. Jeffrey Runge announced that one of the three impaired-driving priorities for NHTSA was DWI adjudication and supervision.[14] Part of this priority is to establish DWI courts, expand drug courts, or apply the drug-court model to DWI cases.

9. C. West Huddleston III, et al., Nat'l Drug Ct. Inst., Painting the Current Picture: A National Report Card on Drug Courts and Other Problem Solving Court Programs in the United States (2005) Table VI, p. 16. Note that the National Association of Drug Court Professionals includes in their totals DWI courts that are planned, but not yet operational. DWI courts not in operation are *not* counted in this study.
10. *See*, e.g., C. West Huddleston III et al., Nat'l Drug Ct. Inst., Painting the Current Picture: A National Report Card on Drug Courts and Other Problem Solving Court Programs in the United States (2004).
11. Since this article was written, the number of DWI courts in Michigan has increased to 16 and the number of DWI courts in Idaho has reached 10. California now has at least 10 DWI courts, Georgia 7, and Pennsylvania 5. An up-to-date list of operational DWI courts is being kept on the National Center for State Courts website. Please view this list online http://www.ncsconline.org/D_KIS/DWI/index.html and report any additions or corrections to gflango@ncsc.dni.us.
12. *See generally* Victor E. Flango, & Brian J. Ostrom, Nat'l Center for St. Cts., Assessing the Need for Judges and Court Support Staff (1996) (discussion of workload assessments).
13. See generally Brian J. Ostrom et at., Nat'l Center for St. Cts., Minnesota Judicial Workload Assessment, 2002 (2003), and Brian J. Ostrom, et at., Minnesota Court Staff Workload Assessment, 2004 (2004) (excellent examples of both a judicial and a court staff workload assessment).
14. Nat'l Highway Traffic Safety Admin., *Impaired Driving Update* (2003).

Do DWI courts differ from other courts in DWI recidivism rates? Is there a difference in recidivism between DWI cases resolved in special DWI courts as compared with DWI cases handled in more general drug courts? What decrease in recidivism would be necessary to justify the additional resources needed by a specialized docket? What resources and treatment options would a traditional court require to produce the same results as a specialized DWI court?

All DWI courts use particular criteria to screen offenders eligible for drug court. It appears that DWI courts are most successful with more habitual offenders rather than with first-time offenders, who may deny that they have an alcohol problem. How do screening criteria affect the success rates of DWI courts? Are DWI courts most effective with nonviolent offenders? Non-sex offenders? Felons or misdemeanants?[15] An impartial evaluation of special DWI courts is needed to determine just how effective they are in reducing recidivism over time and the practices that most contribute to the decrease in recidivism.



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SPECIALIZED DWI COURTS, 2003

	STATE	COURT	YEAR STARTED	CASE TYPE	CASELOAD	REPORTED RECIDIVISM RATE
DWI Courts. No stated restrictions on clients						
1	AZ	Maricopa County DUI Court	1998	Both	20	25%
2	ID	Power County DUI/Drug Court	2000	Both	34	25%****
3	IN	Hancock County DWI Court	1971	Both	600	N/A
4	MI	43rd District Court - Ferndale Division**	2003	Misdemeanor	126	N/A
5	NH	Merrimack District DUI Court	2004	Misdemeanor	280-300	N/A
6	OH	Richland County Substance Abuse Treatment Court	1995	Felony	12	15%
7	TN	Shelby County DUI Court	2002	Misdemeanor	48	N/A
8	VA	Fredricksburg Regional DUI Court	1999	Both	N/A	0%
9	WA	Clark County Drug Court	1995	Both	15	N/A
DWI Courts. Do not accept violent offenders						
10 10	AK	Wellness Court	2004	Both	35	12%
11	CA	Los Angeles Superior Court - Metropolitan Courthouse DUI Program	1971	Both	N/A (estimate several hundred in program)	N/A
12	CA	Butte County Superior Court DUI Program	1996	Both	77	8%
13	CO	7th Judicial District DUI/Drug Court	2004	Misdemeanor	12	N/A
14	GA	Athens/Clarke County DUI/Drug Court	2003	Misdemeanor	100	N/A
15	GA	Chatham County DUI Court	2003	Misdemeanor	140	N/A
16	GA	Hall County DUI Court	2003	Misdemeanor	119	N/A
17	ID	Misdemeanor/DUI Drug Court (Madison County)	2000	Both	30	N/A
18	IN	Vigo County OVWI/DUI Court	2000	Both	16	0%, none rearrested in county
19	ME	56A District DUI Court*	1997M/2000F	Both	35	14%
20	MI	46th District DUI Court	2003	Misdemeanor	6	N/A
21	MI	55th District Court Mason OUIL**	2004	Misdemeanor	N/A (anticipate several hundred)	N/A
22	MI	67th District DUI Court	2004	Both	40-50	N/A
23	MI	86th District DUI Court	2001	Misdemeanor	100	N/A

15. This debate is parallel to the debate over a strategy to reduce alcohol- or drug-related crashes. Is it better to focus on the relatively small proportion of the driving population responsible for a large percentage of alcohol/drug-related crashes, *i.e.*, the hard-core offenders, or on the much larger number of moderate-drinking drivers whose very numbers contribute significantly to the problem, although their individual risk of crashes is relatively low?

	STATE	COURT	YEAR STARTED	CASE TYPE	CASELOAD	REPORTED RECIDIVISM RATE
24	MI	Livingston County Adult Drug**	1999	Felony	25	2%
25	NC	Mecklenberg County DWI Treatment Court	2000	Both	123	11%
26	NC	25th District DWI Treatment Court	1995	Misdemeanor	25	2%
27	NC	26th Superior Court District DWI Drug Treatment Court	2000	Both	123	11%
28	ND	South Central Judicial District DUI Court	2001	Both	N/A	N/A
29	NM	Municipal Court of Santa Fe DUI Court	1998	Misdemeanor	N/A	N/A
30	NY	Otsego County Drug Treatment	2000	Both	34	14%
31	NY	North Tonawanda City Court	1995	Both	100	10%
32	NY	Washington County Superior Court - DUI Court	2003	Both	25	N/A
33	OK	Muskogee Nation DUI/Drug Court	1981	Both	3	N/A
34	OR	Ninth Judicial District DUI Court	2001	Both	6	N/A
35	UT	City of Taylorsville Municipal Justice Substance Abuse Court	1998	Misdemeanor	N/A	16/17
36	WY	Lincoln County Circuit Court DUI/Drug Court	2000	Both	12	N/A
DWI Courts. Do not accept violent offenders or sex offenders						
37	AL	34th Judicial DUI Court	2001	Felony	5	N/A
38	ID	Kootenai County DUI Court	2001	Misdemeanor	40	5%
39	IN	Clark County OVWI/DUI Court	N/A	Both	5	N/A
40	IN	Dearborn/Ohio County OVWI/DUI Court	2002	Felony	12	N/A
41	NY	Fulton County Drug Court	1998	First Felony	25-30	5%
DWI Courts. Do not accept violent offenders or juvenile offenders						
42	AZ	Coconino County DUI/Drug Court	2004	Both	55	7%
43	IN	Johnson County/Greenwood City OVWI/DUI Court	1999	Both	50 (estimate)	N/A
44	IN	Monroe County DUI Court	1999	Felony	27	5%
45	MI	35th District Court Plymouth Sobriety Court**	2004	Misdemeanor	8	N/A
46	MI	51st District DUI Court**	2001	Misdemeanor	600	17%
47	MI	52-1 District Sobriety Court**	2001	Misdemeanor	88	3%
48	MI	52-4 District Drug Therapy Court	2001	Misdemeanor	40	14%
49	MO	St. Charles County DWI Court	2000	Felony	60-70	4%
50	MS	14th District DUI Court	2002	Felony	15	N/A
51	NM	Las Cruces Municipal DWI Court	1994	Misdemeanor	500-600	N/A
52	NM	Bernalillo County DWI Court	1997	Misdemeanor	95	8%
53	NM	11th Judicial Circuit DWI Court	1995	Misdemeanor	50	2%
54	OK	Creek County DUI/Drug Court	1997	Both	75	35%
55	PA	Berks County DUI Court	2003	Misdemeanor	N/A	N/A
56	PA	Lackawanna County DUI Court	2002	Misdemeanor	30-40	N/A
57	TN	Unicoi-Washington County Alcohol and Drug Court	2001	Misdemeanor	30	5%
DWI Courts. Do not accept violent offenders, mental-illness cases, or clients previously receiving treatment						
58	ID	7th Judicial District Juvenile DUI/Drug Court	2000	Juvenile	10	N/A
59	ID	7th Judicial District Misdemeanor DUI/Drug Court (Bingham Bonneville)	2000	Misdemeanor	17	5%
60	ID	7th Judicial District Felony DUI/Drug Court	2000	Felony	15	7%
DWI Courts. Do not accept violent offenders, sex offenders, or mental-illness cases						
61	AK	Bethel Therapeutic Court	2001	Misdemeanor	35	N/A
62	TN	23rd Judicial District DWI Court	2001	Felony*	12	0%
DWI Courts. Do not accept violent offenders, sex offenders, or juvenile cases						
63	ME	Isabella County DUI Court	2004	Both	9	N/A

Both = Felonies and Misdemeanors

* Court has jurisdiction over felonies and misdemeanors, but DWI Court serves only people accused of felonies.

** Indicates a court that began independently from a drug court.

*** Does not accept clients who had previous treatment.

**** Rate reported for misdemeanors; recidivism rate for felons 0%, but 20% of those eligible did not participate.