

## WHAT'S HAPPENING WITH DWI COURTS?\*

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*Nurtured by federal funding, DWI courts have sprung up at a rapid pace during the past five years. Although evolving as a branch of drug courts, specialized DWI courts have tended to take root and grow more rapidly in states not saturated with drug courts and states not suffering from the highest alcohol-related fatalities. The growth rate could be sustained with a more diversified funding base and the use of technology to reduce the cost of monitoring clients.*

DWI courts were established to protect public safety and to reduce recidivism by attacking the root cause of impaired driving—alcohol and substance abuse. The mission of sobriety and DWI courts is “to make offenders accountable for their actions, bringing about a behavioral change that ends recidivism, stops the abuse of alcohol, and protects 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 DWI Courts for the communities they serve.”<sup>1</sup>

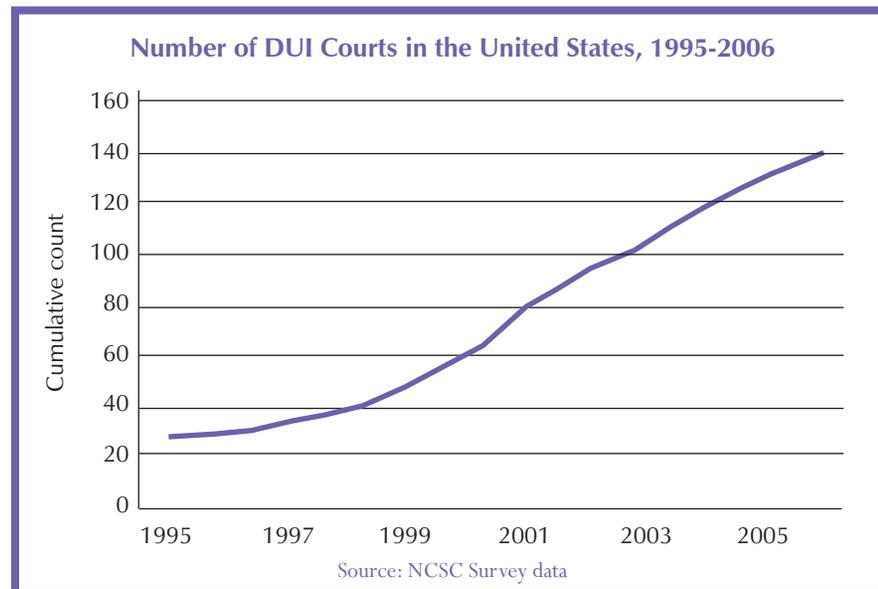
Proponents contend that specialized DWI courts, which are in effect specialized dockets, are better equipped to handle DWI cases, permitting swifter resolutions, reducing backlog, and improving outcomes. Judges also believe that DWI courts should be expanded, allowing experienced judges to use treatment resources and to sentence, sanction, or reward offenders with greater consistency.<sup>2</sup>

Common characteristics of 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.”<sup>3</sup>

The National Association of Drug Court Professionals (NADCP) reported 176 DWI courts in existence as of December 2004.<sup>4</sup> We report a total of 133 DWI courts as of 2005.<sup>5</sup> One obvious reason for the discrepancy is that this article considers only operational courts, not courts that are in the planning stages.

The primary reason for the difference, however, is a matter of definition. NADCP classified 90 of its 176 DWI courts as “designated DWI” courts and the other 86 as “hybrid DWI” courts. We classified 74 of the 133 courts as “hybrid” because they handle both substance-abuse and alcohol-abuse cases.<sup>6</sup> For us, however, the relative proportion of the docket that is composed of DWI cases determines the classification. On that basis, we would classify the 51 courts in New York as drug courts, although they do occasionally hear DWI cases as well. The same is true for 9 courts in Louisiana.

The missions of DWI courts, drug courts, and hybrids are similar in their emphasis on offender accountability and the goals of changing offender behavior, eliminating substance abuse, and reducing recidivism.<sup>7</sup> They differ in that drug courts work to make drug offenders productive members of society, whereas DWI offenders are often productive in spite of their alcohol abuse. Educating the public about alcohol abuse is more of a challenge. Although it is possible to consider some types of substance abuse as a victimless crime because it only hurts the offender, it is not possible to consider DWI offenses as victimless because public safety is



at risk. Monitoring DWI offenders is more difficult than monitoring drug-court participants because alcohol goes through the body quickly and is harder to detect than drugs. Alcohol is also legal and easier to obtain than drugs.

## Trends

***DWI Courts Will Need to Stabilize Funding for Continued Growth.*** The growth in DWI courts has been dramatic, with nearly as many new courts (22) being established in 2005 and after than were established in the years before 2000 (29). A Spanish-language court was added in Maricopa County in 2002 and won an achievement award for an innovative county program in 2005.<sup>8</sup>

As a result of drug courts and DWI courts being heavily dependent on federal funding (especially the Byrne Justice Assistance Grant [JAG] program, formerly called Byrne Formula Grants), their growth is influenced by federal funding. The very existence of many drug and DWI courts was threatened when the Byrne JAG program was eliminated in the president's 2007 budget proposal. However, the House of Representatives' FY 2007 Commerce-Justice-Science spending bill (HR 5672) allocated \$634 million to the Byrne JAG program.<sup>9</sup>

Over the longer term, DWI courts may need to consider finding a firmer financial footing by supplementing, and perhaps replacing, federal support with state funding or increases in fines and fees. Michigan, for example, has created a Justice System Fund to preserve their large number of specialty courts. All fines and fees collected by Michigan courts are placed into the fund and redistributed to the courts according to need. The Drug Court Treatment Fund, which includes DWI courts as well, receives a 2.85 percent share of the Justice System Fund, and that supports between 40 and 75 percent of the costs of DWI courts.<sup>10</sup>

***DWI Courts Tend to Evolve from Drug Courts, But Take Root in Different States.*** Michigan (25), Missouri (17), Georgia (10), and Idaho (10) are the states with the largest numbers of DWI courts. DWI courts are not most prevalent in states that have the highest number of alcohol-related fatalities (California, Florida, and Texas). And even though most DWI courts evolved from the drug courts, the states with the largest number of adult drug courts, e.g., California, New York, and Florida, do not have the largest number of DWI courts (the exception is Missouri, which has 17 hybrid courts). Although most drug courts handle the occasional DWI

case, and more than half of the DWI courts are “hybrids” with a mixed docket, most dockets emphasize either drug cases or DWI cases.

***DWI Courts Need a Stable Case Volume to Be Effective.*** The vast majority of DWI courts handle fewer than 100 cases (of the 77 DWI courts who reported case volume, only 20 had more than 100 cases per year, and only 7 had more than 200 per year). Most offenders have had two or more DWI convictions in the past.

***DWI Courts Are Not for Violent Offenders.*** Although 44 percent of the DWI courts (51 of the 114 courts reporting data by case type) had jurisdiction over felonies, DWI courts, like drug courts, do not accept violent offenders, perhaps because there is a fear that they would pose a threat to treatment providers.<sup>11</sup> In addition, the most restrictive programs do not admit sex offenders, first-time offenders, or people with mental illnesses. However, some drug courts are considering admitting violent offenders. If this experiment works, it could very well spread to DWI courts.

***DWI Courts Need to Report Recidivism Rates.*** Although reported recidivism rates from DWI courts that track them are impressive, only 30 courts were able to report recidivism rates—a primary indicator of effectiveness. Nearly a third (37) of the DWI courts were established after 2004—too recent to develop a track record. A court must be operating for at least a year to provide an opportunity for the first clients to graduate, and then have another year pass after graduation to calculate a recidivism rate. As time passes, it will be necessary to obtain rates of recidivism from DWI courts and to compare them with those of non-specialized courts. (At that time, the finer points of calculating recidivism will need to be addressed to ensure that comparisons are fair. For example, are people who drop out of the program still counted in the denominator? Are the rates of recidivism for dropouts lower than for people who did not enroll at all?) Recidivism rates can also help to guide policy; e.g., are DWI courts most successful with their targeted populations of “hard-core” offenders who are less likely to deny that they have a drinking problem?

***DWI Courts Can Use Technology-Based Monitoring to Reduce Costs.*** Although data on recidivism and effectiveness of sanctions is limited, the National Highway Traffic Safety Administration finds the following sanctions to be most effective in general: licensing sanctions (including suspension or revocation of licenses),

## The SCRAM System



Secure Continuous Remote Alcohol Monitoring (SCRAM) System

vehicle sanctions (including impoundment or forfeiture), and assessment and rehabilitation.<sup>12</sup> Some innovative sentencing practices used in some communities, but not yet fully evaluated, include home confinement with electronic monitoring, fines based upon cost of public services or offender's daily income, publishing of offenders' names in newspapers, and court-ordered visits to emergency departments and physical-rehabilitation facilities.<sup>13</sup>

DWI courts require close, frequent contact with the judges and frequent testing, which increase the cost of operating DWI courts. One way to reduce the cost of monitoring is to employ technology. For example, 36 states are using "SCRAM Bracelets" for 24-hour-a-day monitoring. A SCRAM (Secure Continuous Remote Alcohol Monitoring) Bracelet is tamper and water resistant and uses an electrochemical sensor that is attached to the offender to capture transdermal alcohol readings from continuous samples of perspiration collected from the air above the skin.<sup>14</sup> Costs include installation (\$50.00-100.00) and daily monitoring fees (\$10.00-12.00)—less than the cost of remote electronic alcohol monitoring and certainly less expensive than incarceration. Funding arrangements are generally offender-pay and often include some accommodation of indigent offenders.

## ENDNOTES

\*The authors would like to express their appreciation to Benjamin Wise and Whitney Myers, who helped with the research, compiled the survey results, and made follow-up telephone calls to the DWI courts.

<sup>1</sup> J. Tauber and C. W. Huddleston, *DUI/Drug Courts: Defining a National Strategy* (Washington, DC: National Drug Court Institute, 1999), p. 5.

<sup>2</sup> R. D. Robertson and H. M. Simpson, *DWI System Improvements for Dealing with Hard Core Drinking Drivers: Sanctioning* (Ottawa, Ontario: Traffic Injury Research Foundation, 2002).

<sup>3</sup> William Brunson and Pat Knighten, eds., *Strategies for Addressing the DWI Offender: 10 Promising Sentencing Practices* (Washington, DC: National Highway Traffic Safety Administration, 2004), p. 11.

<sup>4</sup> C. West Huddleston III, Judge Karen Freeman-Wilson, Douglas B. Marlowe, and Aaron Rousell, *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem Solving Court Programs in the United States* (Washington DC: National Drug Court Institute, 2005).

<sup>5</sup> A list of DWI courts is being maintained at [http://www.ncsconline.org/D\\_KIS/DWI/index.html](http://www.ncsconline.org/D_KIS/DWI/index.html). Readers are encouraged to review the table for accuracy and contact the authors with corrections and suggestions, so that the list can be kept current.

<sup>6</sup> An earlier *Trends* article attempted to focus on designated DWI courts, but also included some "hybrid" courts that handled substance-abuse cases along with the alcohol-abuse cases. Victor E. Flango, "DWI Courts: The Newest Problem-Solving Courts," *Future Trends in State Courts 2004* (Williamsburg, VA: National Center for State Courts, 2004).

<sup>7</sup> Tauber and Huddleston, 1999.

<sup>8</sup> "Spanish-Language DUI Court Receives Award," *Arizona Business Gazette* (September 15, 2005) at [www.azcentral.com/abnews/articles/0915lawrail15.html](http://www.azcentral.com/abnews/articles/0915lawrail15.html).

<sup>9</sup> National Center for State Courts, *Washington Update* 13, no. 6 (August 2006). The Senate Appropriations Committee approved its version of HR 5672 at a funding level of \$555.1, but the full Senate has not approved the bill at the time of this writing.

<sup>10</sup> R. Mack, State Court Administrative Office, telephone interview, September 13, 2006.

<sup>11</sup> The prohibition stems from a requirement under section 2201 of the Omnibus Crime Bill, which covers funding distributed under the Drug Court Discretionary Grant Office (and was distributed by the Drug Courts Program Office). This prohibition does not apply to all federal funding for drug courts. So, drug courts or DWI courts that are not using funds under that particular funding stream

are not required to exclude violent offenders. Many drug courts, which do not receive funding under this provision, still choose to exclude violent offenders due to local concerns, and some states may also have statutes that define broad eligibility requirements for drug courts. The authors are grateful to Carson Fox, a Fellow at the National Drug Court Institute, for this clarification.

<sup>12</sup> National Highway Traffic Safety Administration, *A Guide to Sentencing DWI Offenders* (Washington, DC: National Highway Traffic Safety Administration, 2005), p. i.

<sup>13</sup> *Ibid.*, 14.

<sup>14</sup> R. Robertson, W. Vanlaar, and H. Simpson, *Continuous Transdermal Alcohol Monitoring: A Primer for Criminal Justice Professionals* (Ottawa, Canada: Traffic Injury Research Foundation, September 2006).