# MINUTES

## KANSAS DUI COMMISSION

October 1-2, 2009
Room 143-N—Statehouse

### Members Present

Senator Tim Owens, Chairperson
Representative Janice Pauls, Vice-chairperson
Senator David Haley (October 1)
Representative Lance Kinzer
Gregory Benefiel
Pete Bodyk
Mark Bruce
Honorable Jennifer Jones
Secretary Don Jordan
Wiley Kerr
Ken McGovern
Chris Mechler
Helen Pedigo
Marcy Ralston
Honorable Peter Ruddick
Dalyn Schmitt
Les Sperling
Ed Klumpp substituted for Police Chief Bob Story
Jeremy Thomas
Douglas Wells
Secretary Roger Werholtz
Karen Wittman
Deb Stithem substituted for Secretary Don Jordan
Dave Sim substituted for Wiley Kerr

### Members Absent

Mary Ann Khoury - excused

### Staff Present

Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Lauren Douglass, Kansas Legislative Research Department
Jason Thompson, Office of the Revisor of Statutes

Sean Ostrow, Office of the Revisor of Statutes
Karen Clowers, Committee Assistant

## Others Attending

See attached list.

### Monday, October 1
### Morning Session

The meeting was called to order by Chairperson Owens at 9:05 a.m.

The Chairman announced that Ed Klumpp has been appointed by Attorney General Six to replace Police Chief Bob Story. Police Chief Story resigned as Chief of Police of Junction City to work in the private sector in Iraq.

The Commission approved the September minutes with the following changes:

- Changing the word "heresy" to "hearsay" on the bottom of page 5 and anywhere else it appears;
- On page 2, paragraph 6, in the first sentence by inserting the word "with" after Commission; in the second sentence strike the word "several" and insert "in 103 counties" and change client based system to "client-server based system." Additionally, the Committee changed the third sentence to read: "The court data is stored at the client's server (*i.e.*, in each county) and provides court information to state agencies as provided by statute."
- On page 4, insert "for all DUI offenders" before "(Attachment 6)."
- On page 5, insert the word "current" before penalties in the first and second bullet.
- On page 6, under Les Sperling's subcommittee report, on the seventh bullet, strike ASAM and insert Alcohol and Drug Safety Action Program.

*Ed Klumpp moved, Greg Benefiel seconded, to approve the minutes of September 14-15, 2009 as corrected. Motion carried.*

Honorable Phil Journey, 18th Judicial District, addressed the Commission, providing his perspective concerning DUIs (driving under the influence) in Kansas as a judge of the District Court with respect to the use of ignition interlock systems (Attachment 1).

David Wallace, Director, National Center for DWI (Driving While Impaired) Courts, National Association of Drug Court Professionals, provided the Commission with an overview of DWI/DUI Courts (Attachment 2). Mr. Wallace provided background on the establishment of DWI Courts and the advantages specialized courts provide such as the development of a specialized treatment focus

and a manageable network of relevant and supportive community resources. Mr. Wallace reviewed the *10 Guiding Principles of DUI Courts* and studies of the programs established in Michigan and Georgia regarding success and recidivism.

Honorable Peggy Davis, Court Commissioner and DWI Court Facility Member for the National Drug Court Institute, addressed the Commission on the various aspects of the Greene County (Missouri) DWI Court (Attachment 3). The presentation covered the development and current performance of the DWI court.

The Commission recessed for lunch.

## Afternoon Session

The meeting reconvened at 1:00 p.m.

Steve Talpins, Chairman and CEO, National Partnership on Alcohol Misuse and Crime spoke on DUI Courts, the South Dakota 24/7 Sobriety Program and Hawaii's HOPE (Hawaii's Opportunity Program with Enforcement) (Attachment 4).

Honorable Peter Ruddick presented the Commission with a Judge's perspective on DUI in Kansas (Attachment 5). Comments included:

- Data on the number of filings, jail populations, work release admission in Johnson County;
- Effective local programming for pre-trial release, probation, and a successful hybrid work release program; and
- Suggestions on the increased felony DUI cases due to current statutes and recent Appellate Court decisions.

Gordon Lansford, Director, Kansas Criminal Justice Information System (KCJIS) spoke about KCJIS and the electronic submission of DUI records and information sharing (Attachment 6). Mr. Lansford provided a brief overview of the KCJIS system.

Stuart Little reviewed a letter from Claudia Larkin, Executive Director, Kansas Association of Addiction Professionals, endorsing the standing motion from September 15 on the licensing of addiction professionals (Attachment 7).

Chairman Owens opened the standing motion on the licensing og addiction professions for consideration. Following discussion Chris Mechler withdrew her motion from September 15. Roger Werholtz, the second, had no objection.

*Ed Klumpp moved, Major Mark Bruce seconded, for the Commission to support and encourage the Legislature to hold full hearings on a bill providing for the licensing process of addiction counselors and to pass such legislation provided it includes meeting the goals of assuring addiction counseling providers are qualified and accountable without jeopardizing availability of services, and that related administrative and regulatory support is adequately funded.*

*Following discussion Ed Klumpp made a substitute motion for the Commission to support and encourage the Legislature to hold full hearings on a bill providing for the licensing process of addiction counselors. Major Mark Bruce seconded the substitute motion. Motion carried.*

The meeting was adjourned at 4:15 p.m.

## Friday, October 2
## Morning Session

The meeting was called to order by Chairperson Owens at 9:10 a.m.

Athena Andaya, Kansas Legislative Research Department, briefed the Commission on rental company policies regarding rentals to individuals required to have an ignition interlock device (Attachment 8). She reported that rentals are made to individuals with a valid driver's license and installation or use of an ignition interlock device is not covered in their contracts. Ms. Andaya noted that the State of Illinois does have a statute requiring any person whose driving privilege is restricted by requiring an ignition interlock device shall notify any person intending to rent, lease, or loan a motor vehicle to them. The Illinois law also makes it a misdemeanor to knowingly rent, lease, or loan a motor vehicle to a person known to have his or her driving privilege restricted to having to drive a vehicle equipped with an ignition interlock device.

Jason Thompson, Office of the Revisor of Statutes, briefed the Commission on additional information regarding the New Mexico DWI law from questions raised during the September 15 meeting (Attachment 9).

Doug Wells addressed the Commission on DUI from the perspective of a defense attorney (Attachment 10). Mr. Wells agreed the goal is to protect the public by providing full and fair implementation of DUI statutes efficiently and with a focus on rehabilitation. His remarks included recent changes to the laws including elimination of the decay rate, expungements, problems facing rural areas, and the increased costs to taxpayers. Mr. Wells also suggested increased judicial discretion in sentencing, enhancements to driver's license restrictions, and the effects of metabolite drugs in a person's system.

Michael R. Clarke, attorney, provided his perspective on DUI defense stating the focus needs to be on stopping repeat offenders. He endorsed the use of ignition interlock devices indicating suspension of drivers' licenses is not working. It does not stop people from driving, most of the State is rural and it is nearly impossible to manage without driving. Mr. Clarke also stated his opinion that mandatory sentences are not effective, partially due to an uninformed public. The implied consent statute is confusing, and current law does not encourage a breath test.

Written comments on DUIs from a defense attorney's perspective were provided by Brian Leininger, Leininger Law Offices, Overland Park, Kansas (Attachment 11).

The Commission broke into subcommittees for discussion on their assigned topics.

The Commission reconvened at 2:06 p.m.

The Chairman indicated the Commission will review the subcommittee reports at the beginning of the next meeting in order to start formulating an interim report for the Legislature in January.

The meeting adjourned at 2:30 p.m.

The next scheduled meeting is November 5, 2009.

Prepared by Karen Clowers
Edited by Athena Andaya

Approved by Commission on:

November 5, 2009
(Date)

**PLEASE CONTINUE TO ROUTE TO NEXT GUEST**

DUI COMMISSION COMMITTEE GUEST LIST

DATE: Oct 1, 2009

| NAME | REPRESENTING |
|---|---|
| Matt Casey | GBA |
| MIKE LINDBLAD | GUARDIAN INTERLOCK |
| Donna Owens | OP Resident |
| Mark Boranyak | Capitol Strategies v Anheuser Busch |
| Stuart Little | Ks Assoc. of Addiction Professionals |
| Melissa Wangemann | Kansas Assoc of Counties |
| MARIAN DERNOVISH | KTP |
| Corey Kenney | City of Lenexa |
| Jerry Grant | Private Practice |
| Phil James | 18th Dist |
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**PLEASE CONTINUE TO ROUTE TO NEXT GUEST**

DUI COMMISSION COMMITTEE GUEST LIST

DATE: 10-2-09

| NAME | REPRESENTING |
|---|---|
| Whitney Jamra | KS Bar Assn |
| Corey Kennedy | City of Lenexa |
| DARIAN DERNOVISH | KHP |
| Kevin BARONE | KIIA. |
| SEAN MILLER | CAPITOL STRATEGIES |
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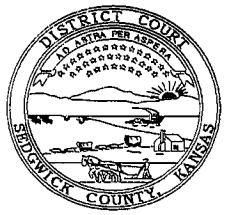
**PHILLIP B. JOURNEY**
JUDGE
Division 1

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http://www.dc18.org

# DISTRICT COURT
## EIGHTEENTH JUDICIAL DISTRICT
SEDGWICK COUNTY COURTHOUSE
525 NORTH MAIN, 5th FLOOR
**WICHITA, KANSAS 67203**

Testimony presented before the Kansas DUI Commission on October 1, 2009
By Judge Phillip B. Journey, 18th Judicial District Division 1

From 01/01/2004 to today there were 5,268 misdemeanor DUI TR cases and 2,149 felony CR cases with a DUI charge filed in Sedgwick County District Court. That is about 1 in 7 of the state wide total number of misdemeanor DUI's filed in District Courts. This is slightly less than Sedgwick County's proportion of the State's population. The traffic division of the 18th Judicial District has jurisdiction over 27,000 other traffic misdemeanor and infraction cases annually. These statistics do not include the cases in the dozen or so Municipal Courts in Sedgwick County. These cities include the largest city in the State - Wichita. As I am sure many of the commission members are aware, I played some role initiating this process with the creation of the Substance Abuse Policy Board. I would like to thank my former colleagues with the subsequent creation the DUI Commission.

The DUI Commission is intended to be the foundation of evidence based policy. The past has primarily produced emotionally and anecdotally based legislation that had the potential to be counter productive to the goals of helping Kansans and their families deal with this difficult issue and of reducing the victimization of Kansans in the accidents that are the result of DUIs. In reviewing the minutes and testimony presented to the commission, I am sure you all have come to the same series of conclusions that I have.

- In many parts of Kansas there are vastly different resources and results;
- There are serious deficiencies in our current processes;
- With fundamental changes in how the Justice system deals with the crime of DUI we can reduce recidivism;
- A reduction in recidivism will reduce societal costs of this criminal activity; and
- These reductions will help victims, offenders and their families.

I am sure we all see that there are significant inequities in our current state laws and there application to individual cases.

Albert Einstein defined insanity as continuing to do what we know does not work and expecting a different result. Suspending driver licenses does not work. Many of the people who will abide by the suspensions are those who would not drink and drive again. The lack of alternatives to automobile transportation, cause many to intentionally break the law. Many attempts to pull over suspended drivers result in the offender trying to elude the officer with all too often tragic results. Impounding vehicles is simply impossible in any volume. Currently, I am using impoundment as the sanction of last resort. Realistically, there is no place to park 3,000 cars for 1 or 2 years in Sedgwick County. Perhaps some will advocate for the forfeiture and forced sale of offender vehicles to pay fines, court costs and restitution as the rational alternative to impoundment. Payment of these costs should be superior to all other liens against vehicles as the current storage liens are superior to lenders' liens. In just one docket, I researched 9 defendants and all of them had transferred their cars to others. Statutes should void all transfers of title after arrest for DUI, and mandatory bond conditions should prohibit disposal of vehicles. It was incredibly difficult to obtain access to vehicle ownership records by myself and my administrative

assistant. I sought this access to relieve the Sedgwick County Sheriff's staff of the burden of running the searches. Logistically, it was quite a burden to accomplish the requests.

However, offenders need to go to court, probation, school, work, treatment and all those other places we take for granted. Ignition interlock devices offer real deterrence to DUI. That deterrence is dependant upon the offender knowing that inevitable repercussions will occur if they attempt to operate a vehicle under the influence. They also provide a real reminder to the offender of the bad choice they made every time they start the vehicle.

Current Department of Revenue administrative rules require that data be downloaded from ignition interlocks bi-monthly. The data may contain the breath testing results, other relevant data and even the picture of the driver. When a driver blows into the ignition interlock device, and it detects alcohol, what happens? A temporary lock out. Who is told of the positive test besides the device provider? The Department of Revenue is told, and what do they do in response to this critical information? Does it simply go to file 13? To my knowledge, there are no sanctions provided by the law when an offender tests positive. Is any probation officer informed of the attempt to violate the law?

I am in the process now by court rule to determine which are appropriate interlock providers for court ordered interlocks as a condition of probation. Part of that requirement will be the daily delivery of information of the download data in an easily interpreted format and the commitment that interlock employees will testify as to the data downloaded for probation violation hearings. The defendant will be allowed to lease the least expensive units. Upon the first recorded failure, they will be required to upgrade to photo units to establish the identity of the individual who attempted to operate the vehicle with alcohol in their system. I will direct the 19 Court Services Probation Officers and 35 Intensive Supervision Officers in Sedgwick County Community Corrections to file probation violation warrants or orders to appear for subsequent failures. Hearings will be held, and sanctions will be imposed when appropriate.

Once these processes are established, I intend to order more interlock installations as a condition of probation and bond, regardless of their driver's license status. The frequency with which I see defendants being charged with new DUIs while on bond or probation is a very great concern. I hope the mandatory installation of an interlock as a condition of bond will reduce these tragic choices.

Respectfully Submitted

Phillip B. Journey
18th Judicial District

Table of case Filings Sedgwick County, 18th Judicial District

| Year | Traffic Cases Filed w/DUI | Criminal Cases Filed w/DUI |
|---|---|---|
| 2004 | 688 | 161 |
| 2005 | 1591 | 335 |
| 2006 | 991 | 271 |
| 2007 | 1193 | 757 |
| 2008 | 1107 | 482 |
| 2009 to date | 394 | 143 |
| Total | 5268 | 2149 |

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, TRAFFIC DEPARTMENT
SEDGWICK COUNTY, KANSAS

STATE OF KANSAS, Plaintiff

vs.

_____

_____ Case No. _____

**JOURNAL ENTRY—SENTENCING FOR FIRST OFFENSE**
**DRIVING UNDER THE INFLUENCE CONVICTION**

On _____, 20_____, the Defendant appears in person and by attorney _____ _____ ☐ waives counsel. Asst. District Attorney _____ appears for the State of Kansas.

After a ☐ plea of ☐ guilty ☐ no contest ☐ jury verdict of guilty ☐ Court finding of guilty, the Court adjudges the Defendant guilty of the following-described charges, finds the D.U.I. conviction to be the Defendant's 1st in the Defendant's lifetime and imposes sentence as follows:

| | (CHARGE) | (IMPRISONMENT FOR) | (FINE OF) |
|---|---|---|---|
| Count __: | _____ | : _____ | and $ _____ , |
| Count __: | _____ | : _____ | and $ _____ , |
| Count __: | _____ | : _____ | and $ _____ , |
| Count __: | _____ | : _____ | and $ _____ |
| Count __: | _____ | : _____ | and $ _____ |
| Count __: | _____ | : _____ | and $ _____ , |

For a CONTROLLING SENTENCE of _____ and TOTAL FINES OF $ _____ and costs.

☒ Fines are to be paid during the term of the probation, the assessments and costs within 90 days of this date.

☐ The Defendant shall receive credit on the fines imposed in an amount equal to $5 for each full hour of community service or trustee work performed by Defendant within one year hereof. Credit subject to verification by Defendant's Probation Officer and subsequent approval.

☐ The fine in the amount of $1,000.00 for Count___ shall be remitted to $500.00 if probation is completed successfully.

☐ The fine in the amount of $_____ for Count(s)____ shall be remitted to $_____ if probation is completed successfully.

☐ The fine in the amount of $_____ for Count(s)____ shall be remitted to $_____ if probation is completed successfully.

☐ The fine in the amount of $_____ for Count(s)____ shall be remitted to $_____ if probation is completed successfully.

☐ The Defendant shall begin serving a jail sentence of _____ days ☐ Forthwith ☐ as Scheduled
- ☐ 48 hours Wichita Intervention Program at the Defendant's expense
- ☐ followed by Work-Release for ____days.
- ☐ followed by House Arrest for ___ days

☒ UPON THE FOLLOWING CONDITIONS, Defendant shall be released pending service of the term of imprisonment specified above and on probation for a period of ☐ 1 year. ☐ other: _____

☒ Enroll in, attend, and successfully complete.
- ☐ The D.U.I. Victim Panel, pay the $50.00 fee, directly to the DUI Victims Center of Kansas Inc. and provide proof of attendance to their probation officer
- ☒ The alcohol/drug safety action education program ☐ by attending the Wichita Intervention Program
- ☐ An alcohol/drug treatment program ☐ In-patient ☐ Out-patient ☐ Intensive Out-patient and follow all aftercare recommendations of the treatment facility or agency.
- ☐ Sg. Co. Day Reporting Center Evaluation and follow recommendations
  ☐ Daily Reporting ☐Remote Alcohol Monitor
- ☐ Perform _____ hours community service
  ☐ within _____ months, ☐as directed by Probation Officer

☒ Pay Clerk: $88.00 court costs, $33.00 booking fee, $_____ of assessed fines, ☐$150.00 for the Reimbursement of Sedgwick County toward cost of appointed attorney, $_____ driver's license reinstatement fees, $25.00 Probation fee, $150.00 ADSAP fee ☐ ADSAP fee is waived, defendant is indigent. All payments are to be paid in monthly installments, in amount directed by Probation Officer, and paid in full before the end of the term of probation.

☐ Defendant shall pay restitution to the Clerk of the District Court in the amount of $400.00. The Clerk shall transmit funds received to the Sedgwick County Regional Forensic Center for lab fees.

☐ Pay restitution in the amount of $_____ ☐ to be determined within 30 days, payable to the clerk in monthly installments of at least $_____ per month ☐ in amount directed by Probation Officer, and payable in full before the end of the term of probation. The Clerk shall transmit funds received to _____ at _____

☐ All motor vehicles owned or leased by the defendant shall be impounded for 1 year. Defendant shall pay all towing, impoundment and storage fees. If any vehicle is leased, impoundment shall terminate when the lease is terminated. Defendant may retrieve any personal property in any of Defendant's vehicles impounded by this order.

☐ Order of vehicle impoundment is hereby stayed for the duration of the defendant's probation because;

☐ Impoundment is likely to result in the loss of employment by the Defendant or a member of their family.

☐ Impoundment would impair the defendant or a member of their family from attending school or obtaining necessary medical care.

☐ Order of vehicle impoundment is hereby stayed for the duration of the defendant's probation due to the following reason;_____

☐ May not operate a motor vehicle without an Ignition Interlock Device except if the vehicle is owned by the Defendant's employer and the operation of the employer's vehicle is in the course of the Defendant's employment and only if the Defendant is properly licensed and insured.

☒ Report to your probation officer within twenty-four hours:
(a) any change in your place of residence, employment, or telephone number;
(b) any contact with law enforcement;
(c) _____
(d) any change in the ownership or leasing of any motor vehicle

☒ Defendant may not possess, use, and consume alcohol or any drug, without a legal prescription, except over the counter products that do not contain alcohol. ☐ Except for possession of alcohol in the course of their employment.

☒ At the Defendant's expense, submit to random breath, blood, or urine testing as directed by any probation officer

☐ Submit to drug/alcohol evaluation as directed by Probation Officer and follow all recommendations of the evaluation

☐ Attend AA/NA/CA meetings as follows and furnish to Probation Officer documentation thereof:.
☐ As needed to assure sobriety. ☐ As Probation Officer directs.

☐ Be employed full time, a full-time student, or actively seeking employment and provide proof as Probation Officer directs, or if disabled provide proof of disability in the form of a Doctor's diagnosis or finding by a court of competent jurisdiction to Probation Officer. ☐ Defendant is to enroll in and successfully complete a General Education Development program.

☒ Obey the laws of the United States, the State of Kansas and any other jurisdiction to whose laws you may be subject.

☐ Remain within the area of ☐ Sedgwick County ☐ State of Kansas unless permission to leave is first obtained from probation officer or the court.

☐ Obey all directions of Probation Officer.

☐ Attend and complete Defensive Driving School by a Court approved provider.

☐ Defense counsel is withdrawn as the attorney of record with the knowledge of the Defendant as the case is fully resolved.

Approved:

_____
Attorney for the State of Kansas SCID#_____

_____
Attorney for the Defendant SCID#_____

_____
Defendant

_____
Honorable Phillip B. Journey
District Court Judge
18th Judicial District
Division 1

1-4

**IN THE EIGHTEENTH JUDICIAL DISTRICT**
**DISTRICT COURT, TRAFFIC DEPARTMENT**
**SEDGWICK COUNTY, KANSAS**

STATE OF KANSAS, Plaintiff Case No. _____ TR _____

vs.

_____

_____

## JOURNAL ENTRY—SENTENCING FOR SECOND OFFENSE DRIVING UNDER THE INFLUENCE CONVICTION

On _____, 20_____, the Defendant appears in person and by attorney _____
_____ ☐ waives counsel. Asst. District Attorney _____ appears for the State of Kansas.

After a ☐ plea of ☐ guilty ☐ no contest ☐ jury verdict of Guilty ☐ Court finding of guilty, the Court adjudges the Defendant guilty of the following-described charges, finds the D.U.I. conviction to be the Defendant's 2nd Driving Under the Influence conviction in his or her lifetime and imposes sentence as follows:

| | (CHARGE) | | (IMPRISONMENT FOR) | | (FINE OF) | |
|---|---|---|---|---|---|---|
| Count ___: | _____ | : | _____ | and $ | _____ | , |
| Count ___: | _____ | : | _____ | and $ | _____ | , |
| Count ___: | _____ | : | _____ | and $ | _____ | , |
| Count ___: | _____ | : | _____ | and $ | _____ | , |
| Count ___: | _____ | : | _____ | and $ | _____ | , |
| Count ___: | _____ | : | _____ | and $ | _____ | , |

For a CONTROLLING SENTENCE of _____ and TOTAL FINES OF $ _____ and costs.

☒ Fines are to be paid during the term of the probation, the assessments and costs shall be paid within 90 days of this date.

☐ The Defendant shall receive credit on the fines imposed in an amount equal to $5 for each full hour of community service or trustee work performed by Defendant within one year hereof. Credit subject to verification by Defendant's Probation Officer and subsequent approval.

☐ The fine in the amount of $1,500.00 for Count ____ shall be remitted to $1,000.00 if probation is completed successfully.

☐ The fine in the amount of $_____ for Count(s)____ shall be remitted to $_____ if probation is completed successfully.

☐ The fine in the amount of $_____ for Count(s)____ shall be remitted to $_____ if probation is completed successfully.

☐ The fine in the amount of $_____ for Count(s)____ shall be remitted to $_____ if probation is completed successfully.

☐ The Defendant shall begin serving jail sentence of _____ days ☐ Forthwith ☐ as Scheduled
- ☐ 48 hours Wichita Intervention Program at the Defendant's expense
- ☐ followed by Work-Release for ___ days
- ☐ followed by House Arrest for ___ days

☐ UPON THE FOLLOWING CONDITIONS, Defendant shall be released pending service of the term of imprisonment specified above and be placed on probation for a period of ☐ 1 year. ☐ other: _____

☒ The Defendant shall enroll in, attend, and successfully complete.
- ☐ The D.U.I. Victim Panel, Defendant shall pay the $50.00 fee, directly to the DUI Victims Center of Kansas Inc. and provide proof of attendance to their probation officer
- ☒ The alcohol/drug safety action education program ☐ by attending the Wichita Intervention Program
- ☒ An alcohol/drug treatment program ☐ In-patient ☐ Out-patient ☐ Intensive Out-patient
- ☒ Defendant shall follow all aftercare recommendations of the drug/alcohol treatment facility or agency.
- ☐ Sg. Co. Day Reporting Ctr. Evaluation and follow recommendations, ☐ Daily Reporting ☐ Remote Alcohol Monitor
- ☐ Perform _____ hours community service ☐ within _____ months, ☐ as directed by Probation Officer.

☒ Pay the Clerk of the District Court: $88.00 court costs, $33.00 booking fee, $_____ of assessed fines, ☐ $150.00 as Reimbursement of Sedgwick County toward cost of appointed attorney, $_____ driver's license reinstatement fees $25.00 Probation fee, $150.00 ADSAP fee ☐ ADSAP fee is waived, defendant is indigent. All to be paid in monthly installments, in amount directed by Probation Officer, and paid in full before the end of the term of Defendant's probation.

☐ Defendant shall pay restitution to the Clerk of the District Court in the amount of $400.00. The Clerk shall transmit funds received to the Sedgwick County Regional Forensic Center for lab fees.

☐ Pay restitution in the amount of $_____ ☐ to be determined within 30 days, payable to the clerk in monthly installments of at least $_____ per month ☐ in amount directed by Probation Officer, and payable in full before the end of the term of probation. The Clerk shall transmit funds received to _____ at _____

☒ All motor vehicles owned or leased by the defendant shall be impounded for 2 years. Defendant shall pay all towing, impoundment and storage fees. If any vehicle is leased impoundment shall terminate when the lease is terminated. Defendant may retrieve any personal property in any of Defendant's vehicles impounded by this order.

☐ Order of vehicle impoundment is hereby stayed. The Defendant shall have the Ignition Interlock Device installed within 7 days of release from custody in every vehicle owned or leased by the Defendant for 2 years. Defendant may not operate a motor vehicle without an Ignition Interlock Device unless the vehicle is owned by the Defendant's employer; the operation of the employer's vehicle is in the course of the Defendant's employment; and the Defendant is properly licensed, insured and does not own or control the employer's business. K.S.A. 8-1017 provides that violation of this restriction is a class A misdemeanor.

☒ Report to your probation officer within twenty-four hours:

(a) any change in your place of residence, employment, or telephone number;
(b) any contact with law enforcement;
(c) _____
(d) any change in the ownership or leasing of any motor vehicle

☒ Defendant may not possess, use, and consume alcohol or any drug, without a legal prescription, except over the counter products that do not contain alcohol. ☐ Except for possession of alcohol in the course of Defendant's employment.

☐ At Defendant's expense, submit to random breath, blood, or urine testing as directed by their probation officer

☐ Submit to drug/alcohol evaluation as directed by Probation Officer and follow all recommendations of the evaluation

☐ Attend AA/NA/CA meetings as follows and furnish to Probation Officer documentation thereof:.
☐ As needed to assure sobriety. ☐ As Probation Officer directs.

☒ Be employed full time, a full-time student, or actively seeking employment and provide proof as Probation Officer directs, or if disabled provide proof of disability in the form of a Doctor's diagnosis or finding by a court of competent jurisdiction to Probation Officer. ☐ Defendant is to enroll in and successfully complete a General Education Development program.

☒ Obey the laws of the United States, the State of Kansas and any other jurisdiction to whose laws you may be subject.

☐ Remain within the area of ☐ Sedgwick County ☐ State of Kansas unless permission to leave is first obtained from probation officer or the court.

☒ Obey all directions of Probation Officer.

☐ Attend and complete Defensive Driving School by a Court approved provider.

☐ Defense counsel is withdrawn as the attorney of record with the knowledge of the Defendant as the case is fully resolved.

☐ _____
_____
_____

Approved:

_____
Attorney for the State of Kansas SCID#_____

_____
Attorney for the Defendant SCID#_____

_____
Defendant

_____
Hon. Phillip B. Journey
District Court Judge
18th Judicial District
Division 1

1-6

IE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, TRAFFIC DEPARTMENT
SEDGWICK COUNTY, KANSAS

**STATE OF KANSAS, Plaintiff**

vs.

_____

_____ Case No. _____

## JOURNAL ENTRY—PROBATION VIOLATION HEARING

NOW on this _____ day of _____, 20___the matter of a probation violation alleged to have occurred on:
The _____ day of _____, _____ by reason of the: ☐ Order to appear ☐ Warrant
The _____ day of _____, _____ by reason of the: ☐ Order to appear ☐ Warrant
The _____ day of _____, _____ by reason of the: ☐ Order to appear ☐ Warrant
comes on for hearing.

The Defendant appears in person and ☐ by attorney _____
☐ waives counsel after being advised of his/her right to have one appointed.

The State of Kansas appears by _____a duly appointed assistant district attorney.

The Defendant after being advised of his/her right to an evidentiary hearing:

☐ Waives that right to hearing and admits the alleged violation. The Defendant's probation is hereby revoked.

☐ Waives that right to hearing choosing not to contest the allegations of the alleged violation. The Defendant's probation is hereby revoked.

☐ Requests evidentiary hearing. This matter is continued to _____, 20___, at _____ for evidentiary hearing.

The ☐ Defendant ☐ State requests this hearing be continued to _____, 20___, at _____ .

☐ After hearing all the evidence and statements of counsel, the Court finds that said probation violation:

- ☐ Was **not** proven by a preponderance of the evidence. Defendant's probation shall continue as previously ordered.
- ☐ Was proven by a preponderance of the evidence. The Defendant's probation is hereby revoked.

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☐ The Defendant shall serve the following sentence:

- ☐ The sentence originally imposed at sentencing on the _____ day of_____, _____.
- ☐ The controlling sentence for this case is modified to _____ and a fine of _____. The modified sentence is hereby imposed.
- ☐ Defendant is to serve _____ days in jail,
- ☐ followed by Work-Release for _____ days.
- ☐ followed by House Arrest for _____ days.

☐ A review hearing is ordered to be set on the _____ day of _____, 20___, at _____, a.m./p.m.

☐ The Defendant to receive credit for time served on this case only, to be established by the Sedgwick County Sheriff or the Kansas Department of Corrections subject to court review.

☐ The sentence order to be served in this case is to be served consecutive to _____ County Case No. _____.

☐ The previously ordered remittance of any fines due is hereby rescinded.

☐ The Defendant may not operate any motor vehicle whether licensed to do so or not until further order of the Court.

☐ The stay of the impoundment order of all motor vehicles owned by the Defendant is hereby lifted and the Sedgwick County Sheriff is hereby ordered to determine what vehicles, if any, are owned or leased by Defendant and impound said vehicles forthwith. Impoundment of Defendant's vehicles shall be for ☐ 1 year ☐ 2 years from the date of sentencing. If such vehicle is leased, said impoundment shall terminate at the end of the term of the lease if less than the term of the impoundment.

Defendant shall pay all costs associated with towing, impoundment and storage of said vehicle(s). Any personal property in the impounded vehicle may be retrieved prior to or during such impoundment by Defendant. Defendant is hereby placed on notice that should Defendant fail or refuse to pay all fees assessed as a result of this ordered impoundment said vehicle or vehicles may be sold to pay such fees and costs pursuant to K.S.A. 8-1021.

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☐ Defendant's probation is reinstated under the same terms and conditions as previously imposed.

☐ Defendant is ordered to serve _____ in custody as a sanction for the Parole Violation.
☐ Work Release is authorized. ☐ House Arrest is authorized.

☐ Defendant's probation is extended for a term of ☐ six months ☐ 1 year from its original date of termination.

☐ In addition to the previously ordered conditions of probation, the Defendant shall:

☐ Report to the Sedgwick County Day Reporting Center and follow recommendations.

☐ Obtain a drug/alcohol abuse evaluation and follow recommendations.

☐ Daily Reporting with random blood, breath and urine testing at Defendant's expense.

☐ Perform _____ hours of community service.

☐ May not operate a motor vehicle without an Ignition Interlock Device. The Defendant shall have the Ignition Interlock Device installed within 7 days of this hearing or Defendant's release from custody in every vehicle owned or leased by the Defendant for the duration of probation. Defendant may not operate a motor vehicle without an Ignition Interlock Device unless the vehicle is owned by the Defendant's employer; the operation of the employer's vehicle is in the course of the Defendant's employment; and the Defendant is properly licensed, insured and does not own or control the employer's business. K.S.A. 8-1017 provides that violation of this restriction is a class A misdemeanor.

☐ Provide proof of attendance of AA/NA/CA meetings as directed by Sedgwick County Day Reporting Center or Probation Officer. ☐ Defendant to attend _____ meetings per week while on probation.
☐ As Probation Officer directs.

☐ Shall pay the Clerk of the District Court _____ as reimbursement to Sedgwick County in costs for the services provided by Defendant's court appointed attorney in this action.

☐ The Defendant shall receive credit on the fines imposed in an amount equal to $5 for each full hour of community service or trustee work performed by Defendant within one year hereof. Credit subject to verification by Defendant's Probation Officer and subsequent approval

☐ The attorney for Defendant is withdrawn as the attorney of record with the knowledge of the Defendant as the case is fully resolved.

☐ _____

_____

☐ _____

_____

_____

_____

Approved:

_____
Attorney for the State of Kansas SCID#_____

_____
Attorney for the Defendant SCID#_____

_____
Defendant

_____
Hon. Phillip B. Journey, Division 1
District Court Judge
18th Judicial District

1-8

**IN THE EIGHTEENTH JUDICIAL DISTRICT**
**DISTRICT COURT, TRAFFIC DEPARTMENT**
**SEDGWICK COUNTY, KANSAS**

**STATE OF KANSAS, Plaintiff**

vs.

_____

_____ Case No. _____

## JOURNAL ENTRY—MISDEMEANOR CASE
## ORDER NUNC PRO TUNC

To correct the sentencing Journal Entry filed on the ____ day of _____, _____. The following Order is entered.

☒ All motor vehicles owned or leased by the defendant shall be impounded for 2 years. Defendant shall pay all towing, impoundment and storage fees. If any vehicle is leased impoundment shall terminate when the lease is terminated. Defendant may retrieve any personal property in any of Defendant's vehicles impounded by this order.

☐ Order of vehicle impoundment is hereby stayed. The Defendant shall have the Ignition Interlock Device installed within 7 days of release from custody in every vehicle owned or leased by the Defendant for 2 years. Defendant may not operate a motor vehicle without an Ignition Interlock Device unless the vehicle is owned by the Defendant's employer; the operation of the employer's vehicle is in the course of the Defendant's employment; and the Defendant is properly licensed, insured and does not own or control the employer's business. K.S.A. 8-1017 provides that violation of this restriction is a class A misdemeanor.

☒ Report to your probation officer within twenty-four hours:

(a) any change in your place of residence, employment, or telephone number;
(b) any contact with law enforcement;
(c) _____
(d) any change in the ownership or leasing of any motor vehicle

☐ _____
_____
_____

Approved:

_____
Attorney for the State of Kansas SCID#_____

_____
Attorney for the Defendant SCID#_____

_____
Defendant

_____
Hon. Phillip B. Journey
District Court Judge
18th Judicial District
Division 1

1-9

# Written Statement for the Record of

David J. Wallace
Director
National Center for DWI Courts
*A professional services division of*
The National Association of Drug Court Professionals

Before the Kansas DUI Commission
Room 143-N – Statehouse
October 1, 2009

My name is David J. Wallace, and I am the director of the National Center for DWI Courts (NCDC), a professional services division of the National Association of Drug Court Professionals (NADCP). I have been involved with the criminal justice system all of my professional career, first as an assistant prosecutor in a rural community near Lansing, Michigan, and later in Battle Creek, Michigan. After 16 years in the courtroom trying every case from DWI[1] to murder, I became the Traffic Safety Resource Prosecutor (TSRP) for the state of Michigan. A TSRP trains prosecutors and law enforcement on DWI issues, such as trial techniques and procedures, arrest issues, and anything else dealing with DWI and DWI causing death. After 7 years in that position, I became the director for the NCDC, starting February of last year.

In preparing for my testimony, I found that this commission was created, in part, because of the tragic circumstances of Claudia Mijares and her daughter Gisele; killed by Gary Hammitt, an impaired driver who had 4 prior DUI convictions. It is that kind of tragedy that DWI Courts try to prevent.

To date, it has been left to the traditional courts and criminal justice system to deal with DWI cases, and it has become clear that the traditional process is not working for the hardcore offenders, those individuals that have a high BAC and/or prior DWI convictions. It is these individuals that have demonstrated they are dependent on alcohol. Punishment, unaccompanied by treatment and accountability, is an ineffective deterrent for the hardcore DWI offender. The outcome for the offender is continued dependence on alcohol; for the community, continued peril. DWI Courts hold the hardcore offender at the highest level of accountability while receiving long-term, intensive treatment and compliance monitoring.

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[1] For purposes of this testimony, DWI is the same as DUI and OWI. The terms will be used interchangeably.

## What is a DWI Court?

A DWI Court is a distinct court system dedicated to changing the behavior of the alcohol/drug dependant offenders arrested for Driving While Impaired (DWI). The goal of DWI Court is to protect public safety by addressing the root cause of impaired driving, alcohol and other substance abuse. With the hardcore DWI offender as its primary target population, DWI Courts follow the Ten Key Components of Drug Courts and the Ten Guiding Principles of DWI Courts, as established by the National Association of Drug Court Professionals.

DWI Courts operate within a post-conviction model. In a supported resolution by National Mothers Against Drunk Driving, "MADD recommends that DUI/DWI Courts should not be used to avoid a record of conviction and/or license sanctions."

DWI Courts utilize all criminal justice stakeholders (judges, prosecutors, defense attorneys, probation, law enforcement, and others) coupled with alcohol or drug treatment professionals. This group of professionals comprises a "DWI Court Team," and uses a cooperative approach to systematically change offender behavior. This approach includes identification and referral of participants early in the legal process to a full continuum of drug or alcohol treatment and other rehabilitative services. Compliance with treatment and other court-mandated requirements is verified by frequent alcohol/drug testing, close community supervision and ongoing judicial supervision in non-adversarial court review hearing. During review hearings, the judge employs a science-based response to participant compliance (or non-compliance) in an effort to further the team's goal to encourage pro-social, sober behaviors that will prevent future DWI recidivism.

DWI courts follow the proven Drug Court model. The major difference from traditional Drug Court is that in the designated DWI Courts or hybrid DWI/Drug Courts, the offenders come to the court as a direct result of an impaired driving arrest and a documented history of impaired driving. In contrast, in the more traditional Drug Court docket the targeted offenders are those who have engaged in non-traffic related criminal behavior (as opposed to illegal driving behavior) as a result of their use of illegal substances. Experience has shown, however, that the participants in these two treatment court environments are far more similar than different. Although wholeheartedly endorsing the use of either of the above-noted applications of the Drug Court model, there are several advantages to operating designated DWI Courts, most notably because they allow for development of a more specialized treatment focus and a more case manageable network of relevant and supportive community resources. DWI Courts shine a spotlight on the triggers and consequences of non-responsible alcohol intake. They embrace the community of victims of DWI episodes and encourage the fair and sensitive inclusion of victim

advocates in the treatment process. Most importantly perhaps, they serve as a potential unifying hub for the myriad of agencies and organizations that have been part of piecemeal attempts to plug the gaps in the drunk driver control system. DWI Courts can and should serve as a unifying venue of accountability for the hardcore DWI offender. By partnering with the Kansas' department of motor vehicles, Governor's highway safety commission, State Police, local law enforcement, MADD, and other accident prevention and victim support groups, DWI Courts can add teeth to the justice system's response to repeat drunk driving.

A DWI Court's coercive power is the key to admitting DWI offenders into treatment quickly and for a period of time that is long enough to make a difference. This proposition is unequivocally supported by the empirical data on substance abuse treatment programs. Studies consistently show that treatment, when completed, is effective. However, most addicts and alcoholics, given a choice, will not enter a treatment program voluntarily. Those who do enter programs rarely complete them. About half drop out in the first three months, and 80 to 90 percent have left by the end of the first year. Among such dropouts, relapse within a year is the norm.

These studies on treatment determined a number of things to be true, but there were two critical determinations. As noted, first and foremost, that treatment worked. There was a significant reduction in drug usage after treatment. But an important factor was the amount of time spent in treatment. In other words, beyond a ninety-day threshold, treatment outcomes improved in a direct relationship to the length of time spent in treatment, with one year generally found to be the minimum effective duration of treatment.

Accordingly, if treatment is to fulfill its considerable promise as a key component of DWI reduction policy, DWI offenders not only must enter treatment but must remain in long-term treatment and complete the program. If they are to do so, most will need incentives that may be characterized as "coercive." In the context of treatment, the term coercion - used more or less interchangeably with "compulsory treatment," "mandated treatment," "involuntary treatment," "legal pressure into treatment"- refers to an array of strategies that shape behavior by responding to specific actions with external pressure and predictable consequences. Moreover, evidence shows that substance abusers who get treatment through court orders or employer mandates benefit as much as, and sometimes more than, their counterparts who enter treatment.

DWI is the best vehicle within the criminal justice system to expedite the time interval between arrest and entry into treatment, and provide the necessary structure to ensure that a DWI offender stays in treatment long enough for treatment benefits to be realized.

## DWI Court Outcome Statistics

Evaluation studies are vital in sustaining DWI Court programs. Courts conduct outcome evaluation studies to demonstrate the dramatic effect of DWI/Drug Courts on the community, to assess relative costs, and to maintain or seek funding.

As noted, DWI Courts are based on the proven Drug Court model. Drug Courts have been rigorously examined and found to be an effective method for reducing recidivism and drug addition. DWI Court is a recent innovation to change a hardcore DWI offender's behavior.

An evaluation done of three separate DWI Courts in Michigan determined that participants in the DWI Courts were substantially less likely to be arrested for a new DWI offense or any new criminal offense than individuals sentenced in a traditional court within 2 years of entering the DWI Court. For example, in one court system, persons that did not go through the program were 3 times more likely to be rearrested for a new criminal offense and 19 times more likely to be rearrested for a DWI charge. In other words, the recidivism rate was significantly lower for the DWI Court participants.

The study also determined that DWI Courts cost less than traditional courts using fewer resources to achieve a better result. The executive summary of the evaluation concluded with the following statement:

"Overall, these results demonstrate that the [DWI] Court is effective in reducing recidivism and reducing drug and alcohol use while using less criminal system resources to accomplish these goals." Executive Summary, pg. V.

## Who Supports DWI Courts?

DWI Courts are showing results. It is because of the impact being seen, that DWI Courts are endorsed by:

- The Governor's Highway Safety Association
- International Association of Chiefs of Police
- Mothers Against Drunk Driving
- National Alcohol Beverage Control Association
- National District Attorneys Association
- National Sherriff's Association

DWI Courts have also been listed as a promising sentencing practice in ***Strategies for Addressing the DWI Offender: 10 Promising Sentencing Practices.*** (March, 2005), as well as ***Countermeasures that Work: A Highway Safety***

***Countermeasure Guide for State Highway Safety Offices, 2007,*** and the Third and Fourth Editions of the Countermeasures Guide, 2008 and 2009 respectively. These documents are printed by the National Highway Traffic Safety Administration, a division of the U.S. Department of Transportation.

In 2004, there were 176 DWI courts–86 designated DWI, and 90 "hybrid" courts. (Hybrid DWI/Drug Courts are courts that started as a Drug Court which then added a DWI offender tract to the Drug Court program.) As of December 31, 2008, there were 144 designated DWI Courts, and 382 "hybrid" DWI/Drug Courts for a total of 526. However, Kansas does not have any of these courts currently.

I understand that the Kansas Supreme Court has recently issued a rule in support of "Therapeutic or Problem-Solving Courts." This is a good step forward; however, more can be done. More should be done. DWI Courts are saving lives, and making our communities safer. This commission has the great opportunity to make a significant impact with the hardcore DWI offender. With their rapid expansion and proven effectiveness, DWI Courts are changing the mindset of criminal justice professionals and effecting how DWI hardcore offenders are handled. Treatment with intensive supervision works with this population – and promises better long-term outcomes, through decreased recidivism. I believe that with DWI Courts in Kansas, and more across the country, the horrific tragedies such as what happened with Gisele and her mother Ms. Mijares can be averted.

I am honored for this opportunity to speak before the commission.

# The Guiding Principles of DWI Courts

DWI Courts follow the Ten Key Components of Drug Courts and the **Guiding Principles of DWI Courts**, as established by the National Association of Drug Court Professionals. It is these 10 Principles that set out the criteria for DWI Courts.

**GUIDING PRINCIPLE #1: Determine the Population**

Targeting is the process of identifying a subset of the DWI offender population for inclusion in the DWI court program. This is a complex task given that DWI courts, in comparison to traditional drug court programs, accept only one type of offender: the high risk impaired driver. The DWI court target population, therefore, must be clearly defined, with eligibility criteria clearly documented.

**GUIDING PRINCIPLE #2: Perform a Clinical Assessment**

A clinically competent and objective assessment of the impaired-driving offender must address a number of bio-psychosocial domains including alcohol use severity and drug involvement, the level of needed care, medical and mental health status, extent of social support systems, and individual motivation to change. Without clearly identifying a client's needs, strengths, and resources along each of these important bio-psychosocial domains, the clinician will have considerable difficulty in developing a clinically sound treatment plan.

**GUIDING PRINCIPLE #3: Develop the Treatment Plan**

Substance dependence is a chronic, relapsing condition that can be effectively treated with the right type and length of treatment regimen. In addition to having a substance abuse problem, a significant proportion of the DWI population also suffers from a variety of co-occurring mental health disorders. Therefore, DWI courts must carefully select and implement treatment strategies demonstrated through research to be effective with the hard-core impaired driver who w to ensure long-term success.

**GUIDING PRINCIPLE #4: Supervise the Offender**

Driving while impaired presents a significant danger to the public. Increased supervision and monitoring by the court, probation department, and treatment provider must occur as part of a coordinated strategy to intervene with high-risk DWI offenders and to protect against future impaired driving.

**GUIDING PRINCIPLE #5: Forge Agency, Organization, and Community Partnerships**

Partnerships are an essential component of the DWI court model as they enhance credibility, bolster support, and broaden available resources. Because the DWI court model is built on and dependent upon a strong team approach, both within the court and beyond, the court should solicit the cooperation of other agencies, as well as

community organizations to form a partnership in support of the goals of the DWI court program.

**GUIDING PRINCIPLE #6: Take a Judicial Leadership Role**

Judges are a vital part of the DWI court team. As leader of this team, the judge's role is paramount to the success of the DWI court program. The judge must be committed to the sobriety of program participants, possess exceptional knowledge and skill in behavioral science, own recognizable leadership skills as well as the capability to motivate team members and elicit buy-in from various stakeholders. The selection of the judge to lead the DWI court team, therefore, is of utmost importance.

**GUIDING PRINCIPLE #7: Develop Case Management Strategies**

Case management, the series of inter-related functions that provides for a coordinated team strategy and seamless collaboration across the treatment and justice systems, is essential for an integrated and effective DWI court program.

**GUIDING PRINCIPLE #8: Address Transportation Issues**

Though nearly every state revokes or suspends a person's driving license upon conviction for an impaired driving offense, the loss of driving privileges poses a significant issue for those individuals involved in a DWI court program. In many cases, the participant and court team can solve the transportation problem created by the loss of their driver's license through a number of strategies. The court must hold participants accountable and detect those who attempt to drive without a license and/or insurance.

**GUIDING PRINCIPLE #9: Evaluate the Program**

To convince stakeholders about the power and efficacy of DWI court, program planners must design a DWI court evaluation model capable of documenting behavioral change and linking that change to the program's existence. A credible evaluation is the only mechanism for mapping the road to program success or failure. To prove whether a program is efficient and effective requires the assistance of a competent evaluator, an understanding of and control over all relevant variables that can systematically contribute to behavioral change, and a commitment from the DWI court team to rigorously abide by the rules of the evaluation design.

**GUIDING PRINCIPLE #10: Ensure a Sustainable Program**

The foundation for sustainability is laid, to a considerable degree, by careful and strategic planning. Such planning includes considerations of structure and scale, organization and participation and, of course, funding. Becoming an integral and proven approach to the DWI problem in the community however is the ultimate key to sustainability.

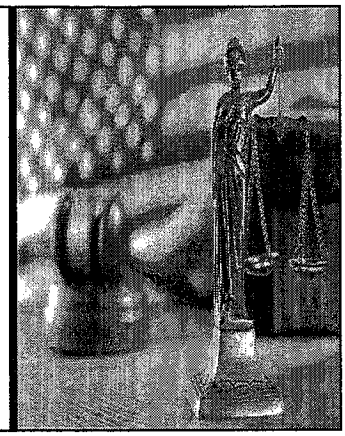
# DWI Courts

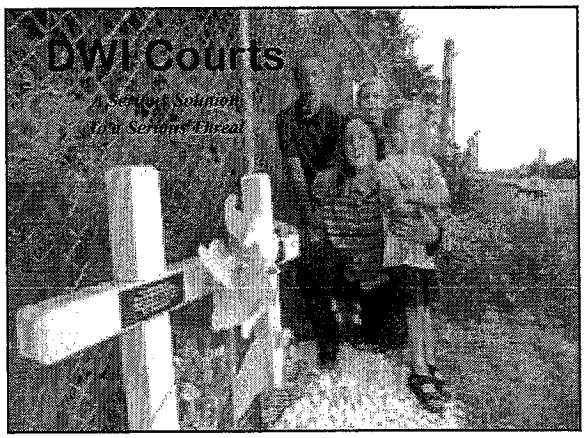
David Wallace

Director

NCDC

National Center for DWI Courts






## How Do We Protect Our Communities?

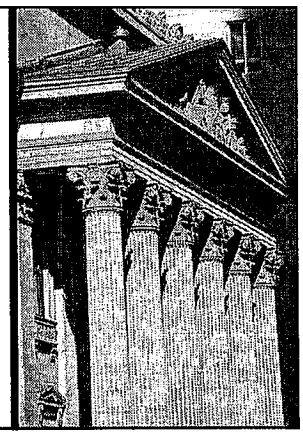
Punishment

or

Rehabilitation

## What is the NCDC?

The purpose of the National Center for DWI Courts is to raise awareness about the success of DWI Courts, provide training, technical assistance and research to DWI Courts, and establish new DWI Courts nationwide.



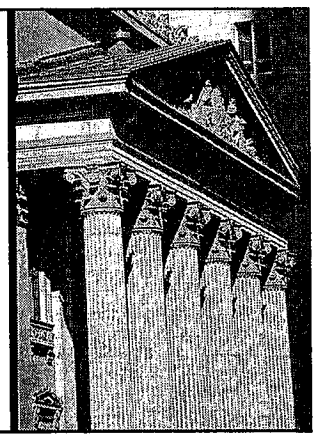
## What is a DWI Court?

**Post-Conviction**

**Hardcore**

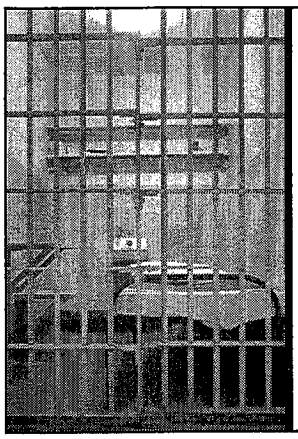
**Quick Accountability**

**Intensive**



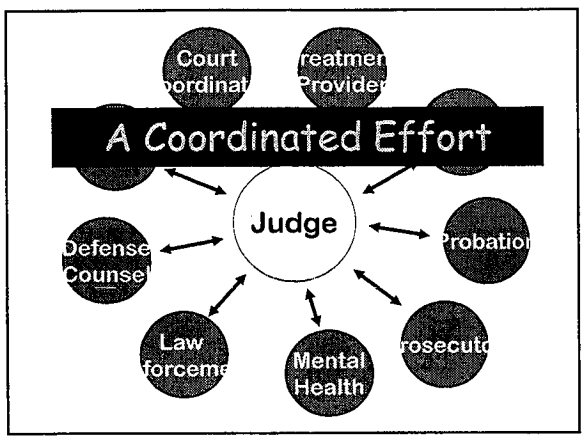
## DWI Courts are Accountability Courts

**Public Safety**



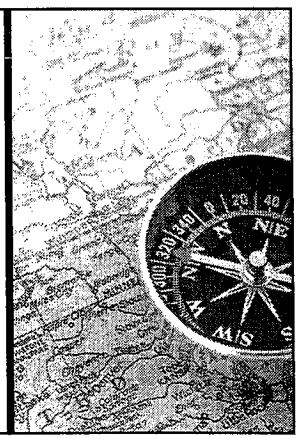
A well designed supervision program can help ensure no one re-offends.

But it is no guarantee




## DWI Courts:

The 10 Guiding Principles



## Guiding Principle #1

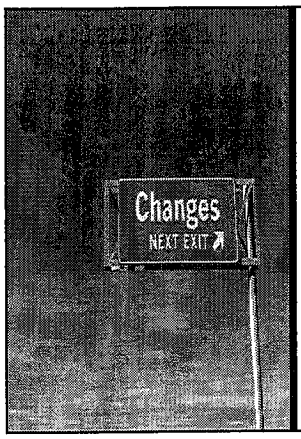
Determine the Population

## Guiding Principle #2

Perform a Clinical Assessment

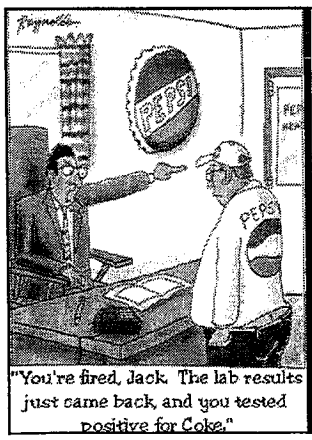

## Guiding Principle #3

Develop the Treatment Plan




**Why Can't People Just Change?**

**Treatment can work . . . BUT**




"You're fired, Jack. The lab results just came back, and you tested positive for Coke."

Guiding Principle #4

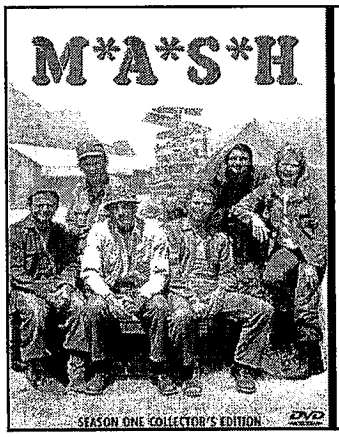
Supervise the Offender

Guiding Principle #5

Forge Agency, Organization, and Community Partnerships

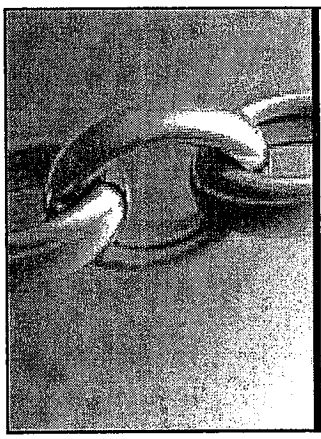
Guiding Principle #6

Take a Judicial Leadership Role



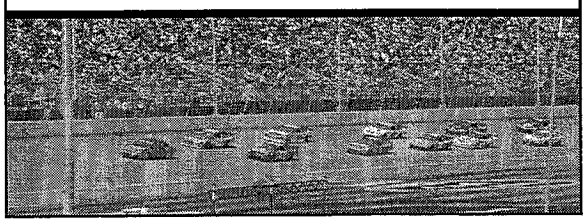

Guiding Principle #7

Develop Case Management Strategies



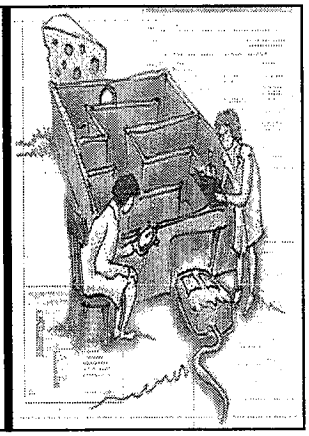
## Guiding Principle #8

Address Transportation Issues



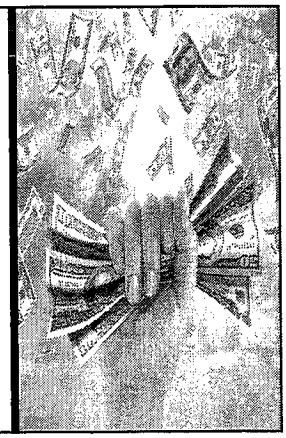
## Guiding Principle #9

Evaluate the Program

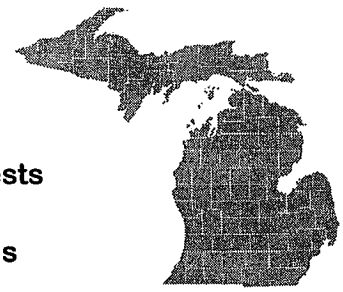


## Guiding Principle #10

Ensure a Sustainable Program



## Michigan Study

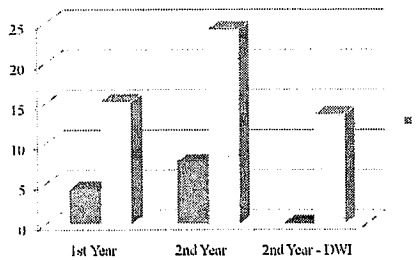


**Reduced recidivism**

**Fewer re-arrests**

**Cost savings**

## Michigan Study - Percentage of Re-Arrests




## Georgia Study

**Preliminary Numbers:**

**9% vs. 25%**

**Between 47-112**

GHSA

## Approved GHSA Resolution

"GHSA supports DWI courts and urges states to work with their state criminal justice agency counterparts to implement them where appropriate. GHSA also recommends that NHTSA evaluate DWI courts to determine their effectiveness"

INTERNATIONAL ASSOCIATION of CHIEFS OF POLICE

*global leadership in policing*

**RESOLVED**, that Highway Safety Committee of the IACP supports the DWI/DUI courts concept as promoted by the National Highway Traffic Safety Administration.

Approved IACP Resolution

## Approved MADD Resolution

MADD Mothers Against Drunk Driving

"MADD supports the use of post-adjudication DUI/DWI courts that employ the strategies of close supervision, frequent alcohol and other drug testing, and ongoing judicial interaction to integrate alcohol and other drug treatment services with the justice system. MADD recommends that DUI/DWI courts should not be used to avoid a record of conviction and/or license sanctions."

MADD National Board of Directors

## National Alcohol Beverage Control Association

NOW, THEREFORE BE IT RESOLVED, that NABCA does hereby support the continued development and study of DWI Courts to eliminate repeat DWI/DUI Offenses.

## National District Attorneys Association

The National District Attorneys Association endorses the establishment and funding of DWI Courts and programs for alcohol abusing offenders as an effective and cost effective means of reducing crime and enhancing public safety.

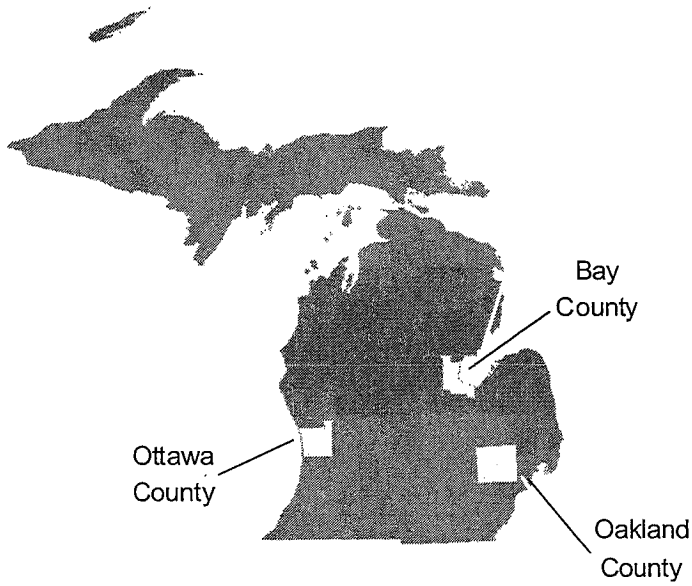
## National Sheriff's Association

**RESOLVED,** that the National Sheriffs' Association support DWI Courts as promoted by the National Highway Traffic Safety Administration, and be it;

**FURTHER RESOLVED,** that the National Sheriffs' Association urges states to implement DWI Courts where appropriate.

# Michigan DUI Courts Outcome Evaluation

## *Final Report*




**Michigan Supreme Court,**
**State Court Administrative Office**

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October 2007

# Michigan DUI Courts Outcome Evaluation

*Final Report*

## Michigan Supreme Court, State Court Administrative Office

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**October 2007**


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*Informing Policy, Improving Programs*

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**In Bay County**

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- Thank you also to Holly Averill for pulling all of the probation files while we were screening records for eligibility and for answering questions
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# EXECUTIVE SUMMARY

## Background

In the past 18 years, one of the most dramatic developments in the movement to reduce substance abuse among the U.S. criminal justice population has been the implementation of drug courts across the country. The first drug court was established in Florida in 1989. There are now well over 1,500 drug courts operating in all 50 states, the District of Columbia, Puerto Rico and Guam. The purpose of drug courts is to guide offenders identified as drug-addicted into treatment that reduces drug dependence and improves the quality of life for offenders and their families. In the typical drug court program, participants are closely supervised by a judge who is supported by a team of agency representatives that operate outside of their traditional adversarial roles. Addiction treatment providers, prosecuting attorneys, public defenders, law enforcement officers, and parole and probation officers work together to provide needed services to drug court participants.

The Michigan Community Corrections Act was enacted in 1988 to investigate and develop alternatives to incarceration. Four years later, in June 1992, the first female drug treatment court in the nation was established in Kalamazoo, Michigan. Since then, Michigan has implemented 75 drug courts, including expanding into further specialized courts (also called "problem solving courts") for adults, juveniles, family dependency, and DUI offenders.

## Study Design and Methods

In FY2004, 12 courts in Michigan identified as DUI courts. Of these, 10 were operational and 2 courts were in the early planning phase. SCAO assisted in funding 9 of these courts. At the time this study was proposed, comprehensive outcome evaluation with comparison groups and longitudinal analyses had not been conducted for Michigan DUI courts. Consequently, little was known about the relative effectiveness of these courts in reducing drunk driving or the characteristics that affect client outcomes. SCAO proposed to conduct an outcome evaluation of DUI courts. The evaluation was designed as a longitudinal study that included tracking and collecting data on DUI court participants for a minimum of one year following either program completion or termination from DUI Court and a comparison group of offenders who were eligible for DUI court in the year prior to DUI court implementation. Data were abstracted from several sources including site visits, the Criminal History Records (CHR) database maintained by the Michigan State Police and the Michigan Judicial Warehouse (JDW). All of these data were entered into a database created in Microsoft Access.

In 2007, SCAO contracted with NPC Research to perform the data analysis and report writing for three of the DUI courts that participated in this study, Ottawa and Bay County and Clarkston DUI courts.

The evaluation was guided by five research questions which were answered by a careful analysis of the data by NPC Research. These questions were:

1. What is the impact of participation in a DUI court on recidivism (re-arrests) compared to traditional court processing?
2. Does participation in DUI court reduce levels of alcohol and other substance abuse?
3. How successful is the program in bringing program participants to completion and graduation within the expected time frame?



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4. What participant characteristics predict successful outcomes (program completion, decreased recidivism)?
5. How does the use of resources differ between DUI treatment court versus traditional probation?

# Results

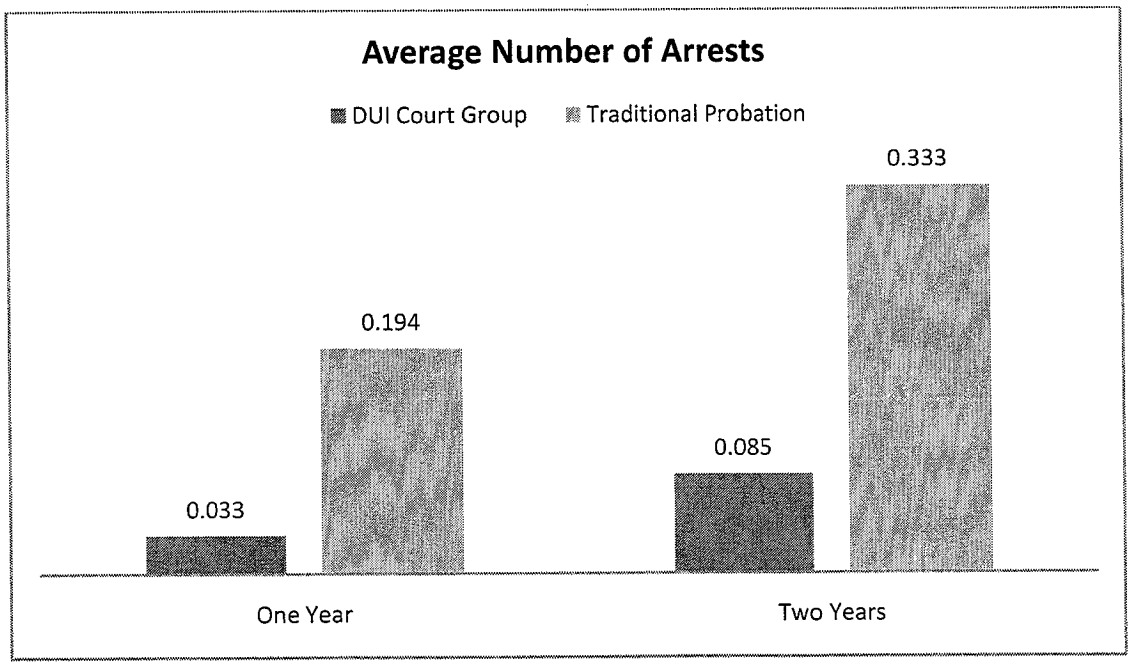
The results shown in this summary are examples provided from each of the three sites that participated in the study that best illustrate the main answer to each evaluation question.

## Research Question #1: What is the Impact of Participation in a DUI Court on Recidivism (Re-Arrests) Compared to Traditional Court Processing?

*1a. Does participation in DUI Court reduce recidivism (the number of re-arrests)?*

**Yes.** DUI court participants were re-arrested significantly less often than comparison group offenders who were sentenced to traditional probation. In the example from one DUI court site shown in Figure A, the comparison offenders on traditional probation were re-arrested nearly six times more often in the first year after starting probation for the DUI charge than the DUI court participants and were re-arrested four times more often in the second year.

**Figure A. Average Number of Re-Arrests - DUI Court Participants and Comparison Group**



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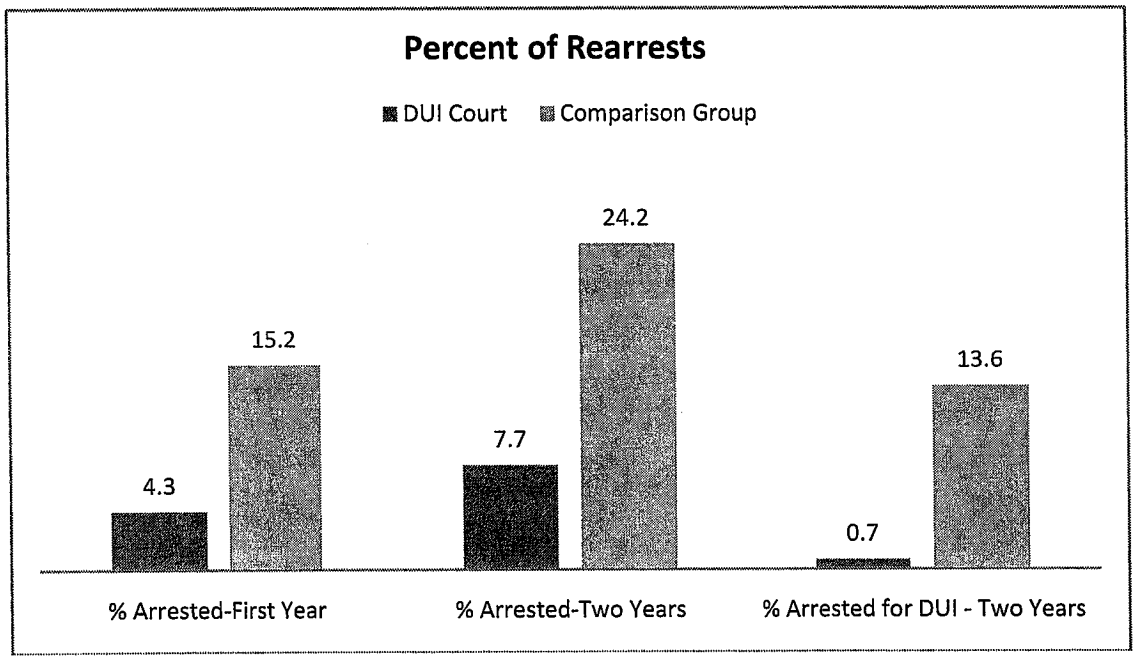
*1b. Does participation in DUI court lead to a lower recidivism rate (the number of participants who are re-arrested) compared to traditional court?*

**YES.** Figure B shows that significantly more comparison offenders were re-arrested than DUI court participants. In this example, in a 2-year period, traditional probation offenders in the comparison group were more than three (3) times more likely to be re-arrested for any charge and were nineteen (19) times more likely to be re-arrested for a DUI charge than the DUI court participants.

**Figure B. Percent of Individuals Rearrested: DUI Court and Comparison Group**




*1c. Does participation in the DUI court program lead to more time to the first re-arrest compared to traditional court?*

**Yes.** A survival analysis examined the time to re-arrest after participants were admitted into DUI court or traditional probation (offenders who went through "business as usual" probation processing.). For example, in one program the comparison group offenders were re-arrested two-times sooner after starting probation (for the DUI court eligible offense) than the DUI court participants ($p = .012$). The percentage of those arrested was also significantly higher for the comparison group. At the endpoint, 7.7% of DUI cases and 24.4% of comparison cases had been arrested ($p < .001$).



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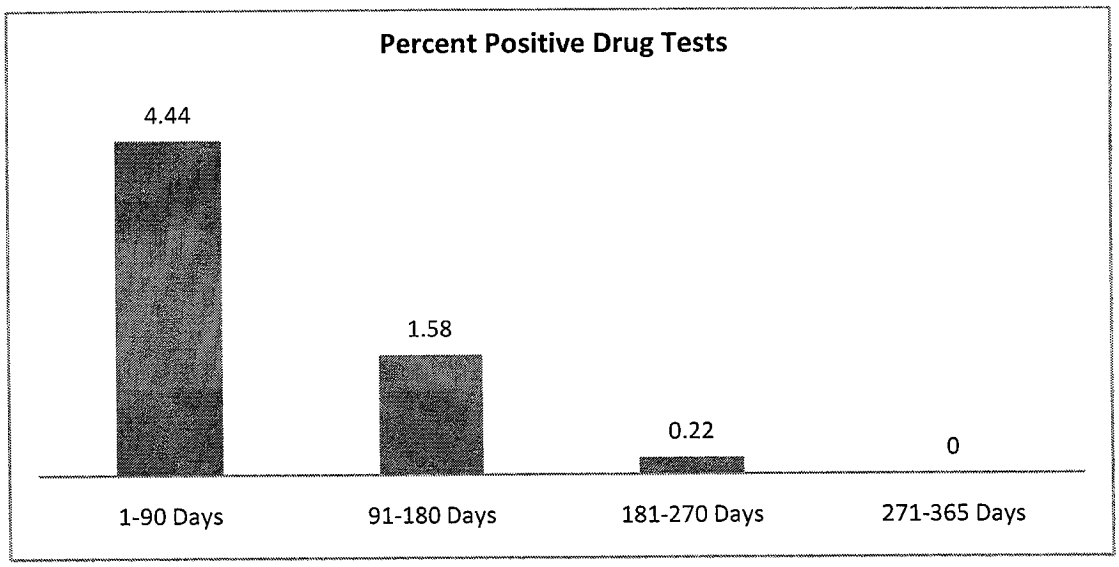
## RESEARCH QUESTION #2: DOES PARTICIPATION IN DRUG COURT REDUCE LEVELS OF SUBSTANCE ABUSE?

**YES.** The percent of positive drug tests was measured in three month intervals for DUI court participants. The example in Figure C shows that participants in the DUI Court significantly decreased the percent of positive drug tests over time ($F = 5.340$; $p = .001$). This provides support that the DUI Court was instrumental in reducing the amount of illegal drug use during the first year participants spend in the program.

**Figure C. Percent of Positive Drug Tests over One Year for the DUI Court Participants**




However, results showed that DUI court was instrumental in reducing drug use but did not show a clear reduction in positive breathalyzer tests. The percent of positive breathalyzer tests varied in the three month intervals. This is most likely due to the extremely small number of positive alcohol tests, which is in itself a positive finding for DUI court.

## RESEARCH QUESTION #3: ARE THE PROGRAMS SUCCESSFUL IN BRINGING PROGRAM PARTICIPANTS TO COMPLETION AND GRADUATION WITHIN THE EXPECTED TIME FRAME?

**YES.** Findings in all three DUI courts showed that the rates for DUI court graduation and retention ranged from 54% to 84%. The program retention and completion rates are comparable or higher than the rates for programs following the drug court model in the nation. For example, a study of nine drug courts in California showed an average retention rate of 56% (Carey et al., 2005).[1]

In addition, in all three DUI courts, graduates completed the program within or sooner than the intended time frame for their programs.

[1] There is currently no national study of DUI courts, therefore comparisons are made to national adult drug court programs that include other drug use besides alcohol. The higher completion rates may be due to the difference in type of drug.



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## Research Question #4: What Participant Characteristics Predict Program Graduation and Decreased Recidivism?

**For Program Success (Graduation)**: Results showed that illegal drug use at the time of the arrest for the DUI offense, greater number of days spent in jail post-program start, a higher number of positive alcohol tests, greater numbers of sanctions imposed and a shorter stay in the program were all associated with lower graduation rates.

**For Participant Recidivism**: Data for all of the participants in the DUI Court program were examined to determine what characteristics predicted recidivism. Results showed that those with fewer dependents, lower numbers of previous misdemeanors and felonies, fewer days in treatment, higher number of jail days prior to program start, a higher number of sanctions and being male were more likely to be re-arrested.

## Research Question #5: Does the Use of Resources Differ Between DUI Treatment Court Versus Traditional Probation?

**YES.** Results show that DUI court participants spent considerably more time in treatment than those on traditional probation (supporting the goals of the program of getting and keeping addicted offenders in treatment). Further, the average waiting period between arrest and sentencing (to probation or program entry) was significantly reduced in the DUI court. The number of days spent in jail prior to program or probation start and the total time in jail for that DUI case was also significantly reduced, thus saving the criminal justice system time and money. Time enrolled in the program was higher for DUI court participants compared to time spent on probation in the comparison group. Longer time spent in the program predicts success both in completing the program and in reducing recidivism.

Overall, these results demonstrate that the DUI court is effective in reducing recidivism and reducing drug and alcohol use while using less criminal justice system resources to accomplish these goals.

# GREENE COUNTY

# DWI COURT

# POLICIES AND PROCEDURES MANUAL

**PEGGY DAVIS**
**DWI COURT COMMISSIONER**

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# MISSION STATEMENT

The mission of the Greene County DWI Court is to promote public safety by expediting the time interval to get felony DWI offenders into accountability and treatment QUICKLY and to keep the felony DWI offender engaged in treatment LONG ENOUGH to receive treatment benefits.

# BACKGROUND

The Department of Mental Health, Division of Alcohol and Drug Abuse (ADA) certifies agencies to provide services to individuals who have had an alcohol- or drug-related traffic offense. The Substance Abuse Traffic Offender Program (SATOP) serves more than 30,000 DWI offenders annually who are referred as a result of an administrative suspension or revocation of their driver licenses, court order, condition of probation, or plea bargain. SATOP is, by law, a required element in driver license reinstatement by the Missouri Department of Revenue. Missouri law now requires all persons arrested for DWI to complete an assessment of their alcohol and substance use related to their driving behavior. This screening consists of a Department of Revenue driver's record check, breath alcohol concentration (BAC) at the time of their arrest, computer-interpreted assessment, and an interview with a Qualified Substance Abuse Professional. Based upon the information gathered during the assessment, a referral is made to one of several types of SATOP service levels.

In January of 2003, the ADA partnered with the Greene County DWI Court to implement the Serious and Repeat Offender Program (SROP) pilot project. The program is defined by ADA as an intensive, court ordered, court supervised, outpatient treatment program designed and targeted specifically for serious and repeat offenders. This program is targeted at individuals with felony alcohol related traffic convictions.

The goal is to provide services to serious and repeat offenders that:

- **a.** provide a court ordered alternative to incarceration,
- **b.** inform and educate about the hazards and consequences of impaired driving,
- **c.** promote safe and responsible decision-making regarding driving,
- **d.** encourage personal change and growth,
- **e.** contribute to public health and safety in the State of Missouri.

The desired outcomes for the Serious and Repeat Offender Pilot Project are:

- **a.** reduced recurrence of impaired driving by serious and repeat offenders,
- **b.** reduced number of substance abuse related incarcerations, and
- **c.** reduced number of alcohol related traffic crashes.

The Greene County DWI court and ADA continue to partner to provide the adult felony DWI offender the opportunity to meet the Serious and Repeat Offender goals.

# GOALS AND OBJECTIVES

The ultimate goal of the Greene County DWI Court is to protect public safety by attacking the root cause of DWI: alcohol and other substance abuse.

Specific program goals, objectives and performance measures supporting the focus of the Court and the community are outlined in the following table:

| GOAL | OBJECTIVES | PERFORMAMCE MEASURES |
|---|---|---|
| Retention of DWI Court participants in the court | 1. Client will be engaged in treatment within one week of client's admission to the court.<br>2. Team will work to develop an alliance with the participant as soon as participant is admitted to the court and strengthen that alliance over time.<br>3. Treatment provider and participant will work together (with input from the probation officer) to complete individualized treatment plan within 30 days of admission.<br>4. Treatment provider and participant will review treatment plan at least every 90 days or more frequently if needed and adjust the treatment plan as needed.<br>5. Client's medical, physical, and/or mental health needs will be identified in the first level (if possible) and referrals made.<br>6. During the first court level there will be weekly communication among team members regarding the progress of the participant; this will decrease accordingly as the participant progresses through the levels.<br>7. The treatment provider and the PO will work together to monitor the participant's compliance with the rules of the court and communicate with the participant about rewards and sanctions. | Cumulative survival rate (percent still participating one month after signing contract, two months after signing contract, etc.)<br>- measured by month, months 1-12<br>- measured by month, months 13-end. |

| GOAL | OBJECTIVES | PERFORMANCE MEASURES |
|---|---|---|
| Increase the personal, familial, and societal accountability of DWI court participants | 1. During the program, the participant will be held accountable for tardiness; missed UA's or missed appointments.<br>2. In Level 2 of the court, if unemployed, the participant will obtain and maintain employment or engage in vocational training.<br>3. In Level 2 of the court, if needed, the participant will obtain and maintain stable housing.<br>4. The participant will complete his/her GED before graduation.<br>5. If eligible, the participant will obtain a valid driver's license.<br>6. Female clients who are pregnant during their participation will have no positive UA's during their pregnancy.<br>7. Parents will establish paternity and/or visitation and pay support as ordered.<br>8. Each level fee will be paid before advancing to the next level; community service, circuit court costs, fines and restitution, and treatment court costs must be paid 14 days prior to graduation. | 1. Number/type of sanctions as related to behaviors as participant progresses in the program.<br>2. Change in employment status (compare when contract is signed and when program is exited: unemployed, part-time, full-time) – percentage change.<br>3. Change in housing status (compare when contract is signed and when program is exited: see OSCA state database reporting form categories) – percentage change from "paying no rent" to other categories.<br>4. Change in education status (compare when contract is signed and when program is exited: see OSCA state database reporting form categories) – percentage change.<br>5. Drivers' license restoration (compare driver's license status when contract is signed and when program is exited) – percentage change.<br>6. Number of alcohol/drug-free babies (see OSCA state database reporting form).<br>7. Collection of monetary penalties: Track fines, fees, fee reductions, restitution, community service hours, court costs, number of parents paying child support before participation vs. at time of graduation, number of participants receiving public monies before participation vs. at time of graduation. |

| GOAL | OBJECTIVES | PERFORMANCE MEASURES |
|---|---|---|
| Reduction of post-graduation recidivism of DWI Court participants | 1. Team will work to develop an alliance with the participant as soon as participant is admitted to the court and strengthen that alliance over time.<br>2. Treatment provider will assist the participant in developing an aftercare/ relapse plan and participant will demonstrate understanding of plan.<br>3. Requirements of graduation will include the participant's having a minimum of six months sobriety and stability in employment and housing.<br>4. The participant will obtain a sponsor or mentor and continue that relationship throughout the program.<br>5. As a requirement of graduation the participant will demonstrate engagement in community support groups.<br>6. The participant will gain an awareness of his/her physical and mental health issues and demonstrate a knowledge and/or utilization of community resources to address these issues. | 1. Number of arrests resulting in a felony DWI charge – measured two years and five years post graduation.<br>2. Number of convictions or guilty pleas for felony DWI offenses – measured two years and five years post graduation.<br>3. Percentage of graduates who have at least one arrest resulting in a felony DWI charge – measured two years and five years post graduation.<br>4. Percentage of graduates who have at least one felony DWI conviction or plead guilty to a felony DWI offense – measured two years and five years post graduation. |

# STRUCTURE/MODEL

The Greene County DWI Court operates within a post-conviction model.

In recognition of public safety and sentiment, this court concurs with the supported resolution by National Mothers Against Drunk Driving, "MADD recommends that DUI/DWI courts should not be used to avoid a record of conviction and/or license sanctions."

The Ten Key Components of Drug Courts and the Ten Guiding Principles of DWI Courts, as established by the National Association of Drug Court Professionals and the National Drug Court Institute, form the foundation and structure of this court:

**Ten Key Components**

- Drug courts integrate alcohol and other drug treatment services with justice system case processing.
- Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
- Eligible participants are identified early and promptly placed in the drug court program.
- Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
- Abstinence is monitored by frequent alcohol and other drug testing.
- A coordinated strategy governs drug court responses to participants' compliance.
- Ongoing judicial interaction with each drug court participant is essential.
- Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
- Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.
- Forging partnerships among drug courts, public agencies, and community based organizations generates local support and enhances drug court program effectiveness.

## GUIDING PRINCIPLES FOR DWI COURTS

### GUIDING PRINCIPLE #1 – TARGET THE POPULATION

Targeting is the process of identifying a subset of the DWI offender population for inclusion in the DWI court program. This is a complex task given that DWI courts, in comparison to traditional drug court programs, accept only one type of offender: the person who drives while under the influence of alcohol or drugs. The DWI court target population, therefore, must be clearly defined, with eligibility criteria clearly documented.

### GUIDING PRINCIPLE #2 – PERFORM A CLINICAL ASSESSMENT

A clinically competent objective assessment of the impaired-driving offender must address a number of bio-psychosocial domains including alcohol use severity and drug involvement, the level of needed care, medical and mental health status, extent of social support systems, and individual motivation to change. Without clearly identifying a client's needs, strengths, and resources along each of these important bio-psychosocial domains, the clinician will have considerable difficulty in developing a clinically sound treatment plan.

### GUIDING PRINCIPLE #3 – DEVELOP THE TREATMENT PLAN

Substance dependence is a chronic, relapsing condition that can be effectively treated with the right type and length of treatment regimen. In addition to having a substance abuse problem, a significant proportion of the DWI population also suffers from a variety of co-occurring mental health disorders. Therefore, DWI courts must carefully select and implement treatment practices demonstrated through research to be effective with the hard-core impaired driver to ensure long-term success.

### GUIDING PRINCIPLE #4 – SUPERVISE THE OFFENDER

Driving while intoxicated presents a significant danger to the public. Increased supervision and monitoring by the court, probation department, and treatment provider must occur as part of a coordinated strategy to intervene with repeat and high-risk DWI offenders and to protect against future impaired driving.

### GUIDING PRINCIPLE #5 – FORGE AGENCY, ORGANIZATION, AND COMMUNITY PARTNERSHIPS

Partnerships are an essential component of the DWI court model as they enhance credibility, bolster support, and broaden available resources. Because the DWI court model is built on and dependent upon a strong team approach, both within the court and beyond, the court should solicit the cooperation of other agencies, as well as community organizations to form a partnership in support of the goals of the DWI court program.

## GUIDING PRINCIPLE #6 – TAKE A JUDICIAL LEADERSHIP ROLE

Judges are a vital part of the DWI court team. As leader of this team, the judge's role is paramount to the success of the Drug court program. The judge must also possess recognizable leadership skills as well as the capability to motivate team members and elicit buy-in from various stakeholders. The selection of the judge to lead the DWI court team, therefore, is of utmost importance.

## GUIDING PRINCIPLE #7 – DEVELOP CASE MANAGEMENT STRATEGIES

Case management, the series of inter-related functions that provides for a coordinated team strategy and seamless collaboration across the treatment and justice systems, is essential for an integrated and effective DWI court program.

## GUIDING PRINCIPLE #8 – ADDRESS TRANSPORTATION ISSUES

Though nearly every state revokes or suspends a person's driving license upon conviction for a DUI offense, the loss of driving privileges poses a significant issue for those individuals involved in a DWI/Drug Court program. In many cases, the participant solves the transportation problem created by the loss of their driver's license by driving anyway and taking a chance that he or she will not be caught. With this knowledge, the court must caution the participant against taking such chances in the future and to alter their attitude about driving without a license.

## GUIDING PRINCIPLE #9 – EVALUATE THE PROGRAM

To convince "stakeholders" about the power of DWI court, program designers must design a DWI court evaluation model capable of documenting behavioral change and linking that change to the program's existence. A credible evaluation is the only mechanism for mapping the road to program success or failure. To prove whether a program is efficient and effective requires the assistance of a competent evaluator, an understanding of and control over all relevant variables that can systematically contribute to behavioral change, and a commitment from the DWI court team to rigorously abide by the rules of the evaluation design.

## GUIDING PRINCIPLE #10 – CREATE A SUSTAINABLE PROGRAM

The foundation for sustainability is laid, to a considerable degree, by careful and strategic planning. Such planning includes considerations of structure and scale, organization and participation and, of course, funding. Becoming an integral and proven approach to the DWI problem in the community however is the ultimate key to sustainability.

# TEAM MEMBERS

The core members of the DWI Court team include:

- DWI Court Judge
- Greene County Prosecuting Attorney's Office
- Members of the Defense Bar
- Missouri Board of Probation and Parole (community supervision)
- Treatment provider representatives

DWI Court Judge: Balances public safety vs. due process concerns

- Understands the nature of addiction
- Is willing to engage in the team process
- Administers sanctions and incentives based on the team's recommendations
- Keeps the offender involved in treatment
- Is the ultimate decision maker.

In the DWI Court model, the criminal justice system maintains substantial supervisory control over offenders. Research shows that ongoing judicial interaction with each DWI Court participant is a key factor in the success of DWI Courts.

The Prosecutor:

- Participates as a team member
- Operates in a non-adversarial manner
- Promotes a sense of a unified team presence
- Commits him or herself to the program mission and goals
- Monitors offender progress to define parameters of behavior that allow continued program participation and suggests effective sanctions and incentives for program compliance
- Is knowledgeable about addiction, alcoholism and pharmacology generally and applies that knowledge to respond to compliance in a therapeutically appropriate manner.

Ensures community safety concerns by maintaining eligibility standards while participating in a non-adversarial environment which focuses on the benefits of therapeutic program outcomes.

The Defense Bar:

As part of the DWI Court team, in appropriate non-court settings (i.e. staffing), the defense attorney:

- advocates for appropriate sanctions and incentives
- Monitors client progress to support full participation and ensure the appropriate provision of treatment and other rehabilitative services

- evaluates the offenders' legal situation
- ensures that the offenders' legal rights are protected

Community Supervision (Missouri Board of Probation and Parole):

- Protects public safety
- Provides accountability
- Monitors the offender's behavior and program compliance outside of the court room by making home visits and scheduling regular office visits

The probation officer participates fully as a DWI court team member, committing him or herself to the program mission and goals, maintaining a balanced view and providing coordinated and comprehensive supervision of the DWI offender so as to minimize manipulation and splitting of program staff.

Treatment Provider (Sigma House):

- Ensure offenders are evaluated in a timely and competent process
- Ensures that placement in treatment is determined by the individual needs of the offender and that treatment is individualized
- Provides multiple treatment interventions capable of addressing the domains of behavior, affect, cognitive, medical, social/family, and spirituality
- Administers drug and alcohol testing
- Communicate treatment compliance and progress of the participants to the team.

All team members' work together to hold the participant accountable, promote a sense of a unified team presence, protect internal and external program integrity and protect public safety.

## TARGET POPULATION

The Greene County DWI Court targets the felony DWI repeat offender who drives while under the influence of alcohol.

# ELIGIBILITY CRITERIA

Eligibility criteria are as follows:

- Offense – Felony conviction of DWI offense in Greene County
- Residence – Greene County or adjoining county
- Age – 17 years or older
- Physical and Mental Health – Ability to meet DWI court requirements
- Prior Criminal History – No offenses that would compromise the safety of the participants and staff.

# ENTRY PROCESS

Following is a brief outline of the process by which the DWI court program moves offenders from arrest to treatment/program entry.

1. Arrest report submitted to prosecutor.
2. Prosecutor reviews report.
3. Prosecutor files misdemeanor or felony charges based on Missouri statute.
4. If a felony is charged, the Circuit Clerk assigns the case to the circuit court division of the DWI Court Commissioner.
5. Defendant appears before DWI Court Commissioner and is arraigned on the felony DWI charge. Defendant is ordered to:
    - Meet with probation officer for initial screening
    - Complete SATOP screening
    - Meet with Court case manager to determine barriers to recovery
    - Reappear in Court approximately four weeks later to review the results of the screenings.
6. On reappearance date, defendant and his/her attorney are informed of results of screening.
7. Defendant and attorney announce how they wish to proceed:
    - Jury trial – case is set on circuit judge's trial docket
    - Guilty plea – case set for plea in circuit court

8. Defendant found guilty by trial or plea and meets eligibility criteria:
    - Sentenced to four years in the Department of Corrections, Suspended Execution of Sentence with five years probation
    - Ordered to complete DWI Court as condition of probation
    - Ordered to begin program immediately
    - Appears at the first DWI Court hearing session following his/her sentencing.

## PROGRAM PHASES

The following table outlines the steps identified by the DWI court team that clients must progress through to complete each of the four phases of the DWI court program.

# DWI Court – Phase Structure

| Phase | Goals | Expectations of Participant and Team | Advancement Requirements | Comments |
|---|---|---|---|---|
| **P-1**<br><br>**Min. of 3 mos.** | The defendant will most likely come into DWI Court in the *PreContemplative* stage of change. This is not so much a stage, but rather a prelude to the formal stages of change. The defendant does not seriously consider the idea of change and is not yet acknowledging that there is a problem behavior that needs to be changed.<br><br>***Chief Goal:***<br>**Engagement/ Communication/ Building an Alliance (Getting to know the client – forming a relationship)** | **Participant will:**<br>• Complete substance abuse assessment (ISAP)<br>• Work with counselor to develop treatment plan with input from PO<br>• Work toward meeting requirements of treatment plan.<br>• Demonstrate consistency in attending treatment<br>• Keep scheduled appointments with PO and allow PO to make unannounced visits to his/her residence<br>• Make weekly court appearances<br>• Submit to drug testing on a schedule determined by Counselor and PO<br>• Comply with court orders<br>• Begin working toward stable housing<br>• Begin AA attendance (frequency determined by treatment and included in treatment plan)<br>• Cooperate with tracker<br>• Follow 10:30pm curfew<br>• Pay Level 1 fees<br>**Treatment provider and PO will:**<br>• Engage client in treatment within one week of client's admission to DC<br>• Prepare treatment plan and work with participant to meet TP goals<br>• Begin identifying medical issues and physical and mental health issues and the need for referrals<br>• Work to develop an alliance with the participant<br>• Monitor tracking reports<br>• Communicate with the participant about rewards and sanctions<br>• Monitor compliance with the rules of probation and DC | • **At least 3 months since admission date**<br>• **Some engagement in recovery demonstrated in part by consistency in attending treatment and meeting with the PO as directed**<br>• **Minimum of 30 consecutive days C&S prior to level change or 30 days C&S if off a missed UA**<br>• **Regular court appearances**<br>• **Progress with treatment plan**<br>• **Compliance with court orders**<br>• **Cooperation with tracker**<br>• **Compliance with curfew**<br>• **Working toward stable housing**<br>• **Keeps appointments with counselor or other referral sources**<br>• **Phase 1 fees are paid**<br>• **Team recommendation**<br><br>**"Showed up and did something"** | Engagement: showing up for drug testing, treatment, court; making appointments; adjusting to structure of program, making phone calls, keeping appointments; and applying for funding for meds.<br><br>Communication between PO and treatment essential to client's success.<br><br>Complete road mapping for the participant (what are the goals for the client) |

| Phase | Goals | Expectations of Participant and Team | Advancement Requirements | Comments |
|---|---|---|---|---|
| **P-2**<br><br>**Min. of 4 mos.** | The participant may begin Phase 2 still in the *Pre-contemplative* stage but will rapidly transition to the *Contemplative* stage – acknowledging that there is a problem but not yet ready or sure of wanting to make a change and then to the *Action* stage – where the participant believes he/she has the ability to change behavior and is actively involved in taking steps to change his/ her behavior by using a variety of different techniques.<br><br>***Chief Goal:***<br>**Consistency in following treatment plan: Are they buying in? Demonstrating consistency/ internalization?** | **Participant will:**<br>• Work with counselor to review and revise treatment plan as needed with input from PO<br>• Work toward meeting requirements of treatment plan including beginning to identify family issues<br>• Maintain consistency in attending and participating in treatment<br>• Meet regularly with PO<br>• Make bi-weekly court appearances<br>• Submit to drug testing on a schedule determined by Counselor and PO<br>• Comply with court orders<br>• Begin other services as determined by assessments (e.g. domestic violence counseling, anger management, mental health counseling, medical/dental…)<br>• Continue AA attendance (frequency determined by treatment and included in treatment plan)<br>• Obtain stable housing<br>• Obtain employment or engage in employment/ vocational training<br>• Take pre-test for GED<br>• Verify regular attendance at AA<br>• Obtain sponsor<br>• Cooperate with tracker<br>• Pay fees for Level 2<br>**Treatment provider and PO will:**<br>• Review treatment plan and work with participant to meet TP goals by making referrals and monitoring compliance (educational/vocational, mental and physical health, etc.<br>• Continue building an alliance with the participant<br>• Communicate with the participant about rewards and sanctions<br>• Monitor compliance with the rules of probation and DC<br>• Monitor tracking reports<br>• Meet with participant & sponsor if possible | • **At least 4 months since placed in Level 2**<br>• **Engagement in recovery demonstrated in part by consistency in attending and participating in treatment and meeting with the PO as directed**<br>• **Minimum of 60 consecutive days C&S immediately prior to level change**<br>• **Regular court appearances**<br>• **Progress with treatment plan (includes compliance with PO directives and keeping appointments with outside referral sources**<br>• **Stable housing**<br>• **Employed or engaged in employment/ vocational training**<br>• **GED pre-test completed**<br>• **Compliance with court orders**<br>• **Sponsor verified**<br>• **Phase 2 fees are paid**<br>• **Team recommendation** | Other things to consider:<br>Are they using the tools of recovery?<br>Are they staying sober?<br>Are they reaching out? |

3-15

| Phase | Goals | Expectations of Participant and Team | Advancement Requirements | Comments |
|---|---|---|---|---|
| **P-3**<br><br>**Min. of 5 mos.** | The participant will enter Phase 3 still in the *Action* Stage - where the participant believes he/she has the ability to change behavior and is actively involved in taking steps to change his/ her behavior by using a variety of different techniques.<br><br>***Chief Goal*: Reaching personal and treatment goals/ sustaining achievements** | **Participant will:**<br>• Work with counselor to review and revise treatment plan as needed with input from PO<br>• Develop a relapse prevention plan<br>• Work toward meeting requirements of treatment plan.<br>• Maintain consistency in attending and participating in treatment<br>• Meet regularly with PO<br>• Make court appearances every 4 wks<br>• Submit to drug testing on a schedule determined by Counselor and PO<br>• Comply with court orders/ sanctions, etc.<br>• Continue AA attendance (frequency determined by treatment and included in treatment plan)<br>• Maintain stable housing<br>• Maintain employment or engagement in employment / vocational training<br>• Take test for GED<br>• Verify regular attendance at AA<br>• Continue with sponsor<br>• Cooperate with tracker<br>• Pay fees for Level 3<br>**Treatment provider and PO will:**<br>• Review treatment plan and work with participant to meet TP goals by making referrals and monitoring compliance (educational/vocational, mental and physical health, AA/NA or other support group etc.)<br>• Continue alliance with the participant<br>• Communicate with the participant about rewards and sanctions<br>• Monitor compliance with the rules of probation and DC<br>• Monitor tracking reports | • **At least 5 months since placed in Level 3**<br>• **Engagement in recovery demonstrated in part by continued consistency in attending treatment and meeting with the PO as directed**<br>• **Developed a relapse prevention plan**<br>• **Minimum of 90 consecutive days C&S prior to level change**<br>• **Regular court appearances**<br>• **Progress with treatment plan**<br>• **Stable housing**<br>• **Employed or engaged in employment/ vocational training**<br>• **1st GED test completed**<br>• **Compliance with court orders**<br>• **Continuing with sponsor**<br>• **Phase 3 fees are paid**<br>• **Team recommendation** | If participant wanted to use, how did she/he respond?<br><br>Even if client may be faking engagement in recovery, remember: Do it often enough and it becomes internalized. |

3-16

| Phase | Goals | Expectations of Participant and Team | Advancement Requirements | Comments |
|---|---|---|---|---|
| **P-4**<br><br>**Min. of 6 mos** | The participant will spend Phase 4 in the Maintenance stage. This involves being able to successfully manage temptations and sustain healthy practices.<br><br>***Chief Goals:*** **Reaching personal and treatment goals/ sustaining achievements. Reinforcing and maintaining a clean, sober and legal lifestyle.** | **Participant will:**<br>• Work with counselor to review and revise treatment plan as needed with input from PO<br>• Work toward meeting requirements of treatment plan.<br>• Maintain consistency in attending and participating in treatment<br>• Develop aftercare plan<br>• Meet regularly with PO<br>• Make court appearances every 6 wks<br>• Submit to drug testing on a schedule determined by Counselor and PO<br>• Comply with court orders<br>• Continue AA attendance (frequency determined by treatment and included in treatment plan)<br>• Maintain stable housing<br>• Maintain employment or engagement in employment / vocational training<br>• Completion of GED<br>• Complete community service<br>• Demonstrate engagement in community support groups (AA/NA, etc.<br>• Continue with sponsor<br>• Cooperate with tracker<br>• Pay fees for Level 4<br>**Treatment provider and PO will:**<br>• Review treatment plan and work with participant to meet TP goals by making referrals and monitoring compliance (educational/vocational, mental and physical health, AA/NA or other support group etc.)<br>• Continue alliance with the participant<br>• Communicate with the participant about rewards and sanctions<br>• Monitor compliance with the rules of probation and DC<br>• Monitor tracking reports<br>• Verify participant has completed graduation requirements | **Graduation Requirements**<br>▪ **Aftercare Plan**<br>▪ **Minimum of 6 months <u>and</u> 18 months in program**<br>▪ **Minimum of 6 months C&S**<br>▪ **Consistency in keeping appointments w/PO, treatment, etc.**<br>▪ **Stable housing**<br>▪ **Stable employment**<br>▪ **Community service completed**<br>▪ **Completion of GED**<br>▪ **Engagement in community support groups (AA/NA or other groups)**<br>▪ **Sponsor**<br>▪ **Getting more involved in the community**<br>▪ **All fees paid for DWI Court**<br><br>**If a participant has a missed UA (not a positive) in Level 4 and has at least 6 months sobriety prior to the miss, then the team may – <u>on a case by case basis</u> – decide to waive the 6 months C&S requirement IF participant has exceeded all other minimum requirements.** | To graduate, the participant must have a minimum of 6 months in Level 4 <u>and</u> 18 months in Drug Court.<br><br>Requirements for graduation must be completed 14 days before graduation.<br><br>Must the participant be fully engaged in recovery or is it sufficient that he/she has made it with no hitches, even though his/her commitment to recovery is suspect? |

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## STAFFINGS AND HEARINGS

The DWI Court probation officers, the treatment counselors and the contracted case manager hold a weekly "pre-staffing" meeting to discuss the progress of the participants scheduled to attend that week's scheduled court hearing. They also talk about other participants whose behavior may be causing concern.

After the pre-staffing, all the DWI Court team members meet with the DWI Court Judge. Incentives and sanctions are reviewed and progress reports are made.

The DWI Court Judge, the administrator, the treatment counselors, probation officers, and the private contractors who provide mental health and case management services regularly participate in staffing. The assistant prosecutor and the defense bar attend as needed.

The weekly court hearing is held immediately following the staffing.

The clerk of the court is responsible for preparing the court schedule and determines the dates of the appearances for each phase.

## TERMINATION CRITERIA

The DWI Court, recognizing that the felony DWI offender has serious alcohol/drug dependences or addictions and presents a serious risk to the community, makes every effort to engage the offenders in treatment. The average length of participation for those defendants who have been terminated from the program is 56 weeks.

The team will consider and recommend termination from the program when there is

- Continued noncompliance with program expectations
- Continued failure to embrace an attitude of recovery and personal growth.

A participant, who is subsequently diagnosed with a physical or mental condition that renders him/her unable to comply with the program requirements, may be released from the program with an "administrative discharge".

## GRADUATION CRITERIA

DWI Court graduation requirements are:

- Development of an aftercare plan
- Minimum of 6 months sobriety
- Consistency in keeping appointments with Probation Officer, treatment provider, etc.
- Consistency in complying with the terms of the treatment plan
- Stable housing
- Stable employment
- Completion of community service
- Completion of GED
- Engagement in community support groups (AA/NA or other groups)
- Sponsor
- Demonstrating involvement in the community
- Completion of Victim Impact group
- All fees and court costs paid in full.

If a participant has a missed UA (not a positive) in Level 4 and has at least 6 months sobriety prior to the miss, then the team may – on a case-by-case basis – decide to waive the 6 months sobriety requirement IF participant has exceeded all other minimum requirements.

To graduate, the participant must have a minimum of 6 months in Level 4 and 18 months in DWI Court.

Requirements for graduation must be completed 14 days before graduation.

Ideally, prior to graduation, the participant should be fully engaged in recovery. However, occasionally there will be a participant who has made it through the program with no hitches but the team may believe his/her commitment to recovery is suspect. This participant will be allowed to graduate on time unless there is some evidence to support the lack of true commitment to recovery.

## SANCTIONS AND INCENTIVES

Sanctions are the imposition of a consequence, perceived as negative by the receiver, as a direct result of a prohibited activity. Incentives are responses to compliance, perceived as positive, by the receiver. At each court hearing, participants are subject to consequences based on their performance and program compliance for the reporting period. Both compliant and noncompliant behaviors will be addressed, with rewards and sanctions ordered to reinforce the consequences of participants' choices and behaviors.

The more severe noncompliant behaviors receive the more severe responses. There is an absolute accountability for new DWI's, driving and for missed urine tests. New DWI's and driving while in DWI court (there is a mandatory 10 year suspension in Missouri) will result in jail time or termination from the program depending on the circumstances of the offense. The first missed or positive test is jail time for a minimum of 24 hours. The only acceptable excuse is a verified accident or severe illness requiring contact with a doctor. When ordering consequences, the Judge considers the number of previous consequences, the participant's current phase level, and the participant's attitude and ownership of the behavior.

The DWI Court grants incentives to recognize participants for their efforts in recovery and to reinforce their positive behaviors. Incentives are granted on an as-earned basis, however, it is routine for program certificates to be granted to clients for achieving sobriety time in the following day-intervals: 30, 60, 90, 180, and 1 year.

The table below outlines the schedule of responses to behaviors that may be utilized.

| RESPONSES TO BEHAVIOR | |
|---|---|
| **ACHIEVEMENTS** | **REWARDS** |
| ▪ Attending court appearances<br>▪ Negative drug test results<br>▪ Attendance and participation in treatment<br>▪ Attendance and participation in support meetings<br>▪ Completion of GED<br>▪ Job promotion<br>▪ Compliance with treatment plan | ▪ Recognition by the Judge<br>▪ Courtroom recognition<br>▪ Certificates of achievement<br>▪ Decreased court appearances<br>▪ Decreased drug testing<br>▪ Phase advancement<br>▪ Program graduation |
| **CHOICES** | **CONSEQUENCES** |
| ▪ Missed court appearances<br>▪ Missed appointment with probation officer<br>▪ Missed support meetings<br>▪ Violation of court order<br>▪ Positive drug test<br>▪ Missed drug test (considered a positive drug test)<br>▪ Tampered drug test or forged case documentation<br>▪ Missed treatment<br>▪ Inappropriate behavior at treatment facility<br>▪ New DWI or other felony arrest<br>▪ Driving while license suspended/revoked<br>▪ Failure to perform sanctions<br>▪ Noncompliance with treatment plan<br>▪ Dishonesty | ▪ Reprimand from the Judge<br>▪ Increased court appearances<br>▪ Increased drug testing<br>▪ 90/90<br>▪ Phase demotion<br>▪ Additional community service hours<br>▪ Essay presented to Judge<br>▪ Court Watch on sentencing day<br>▪ Jail or holding cell<br>▪ 120 day treatment in the Missouri Department of Corrections<br>▪ Termination from the program |

# TREATMENT PROTOCOL

The Department of Mental Health, Division of Alcohol and Drug Abuse (ADA) certifies alcohol and drug abuse programs in Missouri. ADA has contracted with Sigma House of Springfield to provide treatment services for the DWI Court participants. Sigma House and the DWI Court adhere to the following ADA "Essential Treatment Principles":

(1) Therapeutic Alliance – The organization shall promote initial attendance, engagement and development of an ongoing therapeutic alliance by:

- Treating people with respect and dignity;
- Enhancing motivation and self-direction through identification of meaningful goals that establish positive expectations;
- Working with other sources (such as family, guardian or courts) to promote the individual's participation;
- Addressing barriers to treatment;
- Providing consumer and family education to promote understanding of services and supports in relationship to individual functioning or symptoms and to promote understanding of individual responsibilities in the process;
- Encouraging individuals to assume an active role in developing and achieving productive goals; and
- Delivering services in a manner that is responsive to each individual's age, cultural background, gender, language and communication skills, and other factors, as indicated.

(2) Individualized Treatment – Services and supports shall be individualized in accordance with the needs and situation of each individual served:

- There is variability in the type and amount of services that individuals receive, consistent with their needs, goals and progress;
- There is variability in the length of stay for individuals to successfully complete a level of care or treatment episode, consistent with their severity of need and treatment progress;
- In structured and intensive levels of care, group education/counseling sessions are available to deal with special therapeutic issues applicable to some, but not all, individuals;
- Services on a one-to-one basis between an individual served and a staff member (such as individual counseling and community support) are routinely available and scheduled, as needed.

(3) Least Restrictive Environment – Services and supports shall be provided in the most appropriate setting available, consistent with the individual's safety, protection from harm, and other designated utilization criteria.

(4) Array of Services – A range of services shall be available to provide service options consistent with individual need. Emotional, mental, physical and spiritual needs shall be addressed whenever applicable.

- The organization has a process that determines appropriate services and ensures access to the level of care appropriate for the individual.
- Each individual shall be provided the least intensive and restrictive set of services, consistent with the individual's needs, progress, and other designated utilization criteria.
- To best ensure each individual's access to a range of services and supports within the community, the organization shall maintain effective working relationships with other community resources. Community resources include, but are not limited to, other organizations expected to make referrals to and receive referrals from the program.

(5) Assistance in accessing transportation, childcare and safe and appropriate housing shall be utilized as necessary for the individual to participate in treatment and rehabilitation services or otherwise meet recovery goals.

(6) Assistance in accessing employment, vocational and educational resources in the community shall be offered, in accordance with the individual's recovery goals.

(7) Recovery – Services shall promote the independence, responsibility, and choices of individuals.

- An individual shall be encouraged to achieve positive social, family and occupational/educational functioning in the community to the fullest extent possible.
- Every effort shall be made to accommodate an individual's schedule, daily activities and responsibilities when arranging services, unless otherwise warranted by factors related to safety or protection from harm.
- Individuals shall be encouraged to accomplish tasks and goals in an independent manner without undue staff assistance.
- Reducing the frequency and severity of symptoms and functional limitations are important for continuing recovery.

(8) Peer Support and Social Networks - The organization shall mobilize peer support and social networks among those individuals it serves and encourages participation in self-help groups. Opportunities and resources in the community are used by individuals, to the fullest extent possible.

(9) Family Involvement – Efforts shall be made to involve family members, whenever appropriate, in order to promote positive relationships.

- Family ties and supports shall be encouraged in order to enrich and support recovery goals.
- Family members shall be routinely informed of available services, and the program shall demonstrate the ability to effectively engage family members in a recovery process.
- When the family situation has been marked by circumstances that may eopardize safety (such as domestic violence, child abuse and neglect, separation and divorce, or financial and legal difficulties), family members shall be encouraged to

participate in education and counseling sessions to better understand these effects and to reduce the risk of further occurrences.

(10) Pharmacological Treatment – When clinically indicated for the person served, pharmacological treatment shall be provided or arranged to ameliorate psychiatric and substance abuse problems.

(11) Co-Occurring Disorders – For individuals with clearly established co-occurring disorders, coordinated services for these disorders shall be provided or arranged.

These essential treatment principles are integrated into the philosophy of the DWI Court: alcohol and chemical dependency/addiction is viewed as a bio-psycho-social illness that is primary, chronic, and progressive and treatment **must** meet all needs of the individual in order to be most effective.

After the defendant has been admitted to the DWI Court, the treatment provider conducts a substance abuse assessment utilizing the Individualized Standardized Assessment Protocol (ISAP) and a clinical interview. The ISAP assesses medical, HIV/STD/TB risk, substance abuse and treatment history, employment, education, criminal history, family history, psychological, parenting, housing, life skills, community support, and transportation. This assessment and the clinical interview yield a quantifiable Addiction Severity Index (ASI) level and a multi-axial DSM-IV classification.

This Court is a proponent of medication assisted treatment. Every DWI Court participant is ordered to be screened at intake by the treatment provider for utilization of naltrexone or Vivitrol. The participant is not ordered to take the medication. If he/she opts for no medication and subsequently reports cravings for alcohol and/or relapses, then the subject of medication is revisited. Again, the participant is never ordered to take medication. Repeated relapses will result in the participant being terminated from the DWI Court program.

Assessing the participants' need for treatment intensity and structure is determined by utilizing the CSTAR Service Model Chart that outlines admission criteria based on ASI and DSM-IV Global Assessment of Functioning (GAF) scores. Individualized treatment plans are initiated for each participant upon admission to treatment. The treatment counselor assists the participants in identifying and prioritizing their strengths, needs, and treatment goals while incorporating those goals mandated by the court. Participants' plans are modified as needed throughout treatment to reflect their changing needs as they progress in recovery.

Treatment providers also work with the participants to develop relapse prevention and aftercare plans. Participants are expected to play active roles in establishing these plans. The treatment providers offer formal aftercare services as part of their programs, in addition to case management, counseling, and group support/education classes.

## SUPERVISION PROTOCOL

Community supervision is provided by the Missouri Board of Probation and Parole. Although the state has embraced the DWI Court, the protocol is dictated to a certain extent by local office policy. The probation officers (PO) assigned to the DWI Court complete the initial screening of the defendant and, once the defendant is enrolled in the program, they monitor his/her behavior and program compliance outside of the court room by making home visits and scheduling regular office visits. Initially, they meet with the participants on a weekly basis; the frequency lessens as the participant progresses. The PO's attend the pre-staffing, the staffing, and court hearings; maintain a "road book" that contains documentation of the participant's movement through the program; complete "violation" reports as required for those participants who fail to comply with the program rules; attend training retreats and graduation ceremonies and above all, maintain a balanced view of the DWI offender so as to minimize manipulation and splitting of program staff.

## CASE MANAGEMENT PROTOCOL

Within the DWI Court there is no formal division of case management responsibilities. The treatment provider, the probation officer and the contracted case manager prefer to determine "who should do what" based on the needs of the participant.

In general, the treatment provider works with the participant on treatment matters: support groups and relapse and recovery issues.

The probation officer monitors the compliance with court requirements such as attendance at court hearings, support groups, treatment, drug testing, and employment and GED classes; makes referrals to employment services, anger management, mental health providers, etc.; and maintains documentation of the participants' progress.

The contracted case manager meets with all new participants and works to remove barriers to recovery. The case manager is knowledgeable regarding community resources and works with the participants to access housing, basic needs (food and clothing), transportation (bus passes are available), medical and dental care, psychiatric care and medication. The case manager has an understanding of the variety of insurance and health maintenance options available and assists participants in accessing those benefits.

# TESTING PROTOCOL

Participants undergo random drug testing throughout their participation in DWI Court. They may be tested for alcohol, marijuana, methamphetamine, amphetamine, opiates, benzodiazepines, cocaine, ecstasy, PCP, methadone, and tricyclates. Other drugs, such as steroids, are tested for on an as-needed basis. In Phases 1 and 2 they undergo testing, at minimum, two to three times per week. In Phases 3 and 4 they are tested one to two times per week. Methods of analysis include alcohol breath tests and urinalysis. Based on drug-testing research, the court does not assess concentration changes, but interprets the results as qualitative information only. DWI Court also utilizes ethyl glucuronide (EtG) testing. Due to the expense of EtG testing, these tests are administered only 2-3 times per phase unless a participant's behavior warrants more frequent testing.

*Global Drug Testing Services* conducts the testing for the DWI Court using urinalysis and breath-analysis. When a defendant is admitted to DWI court he/she is assigned to a testing group. The testing groups are named after colors.

**MALES** in Phase 1 and Phase 2 are assigned to the **GREEN** group; those in Phases 3 and 4 are assigned to the **BLUE** group. If the DWI Court team believes the male participant needs more frequent drug and alcohol testing, he is instructed to test every time the **GOLD 1** group is on the call-in list.

*Those males assigned to GOLD 1 must report to Global before 1:00 pm on the days that GOLD 1 is scheduled to test.*

**FEMALES** in Phase 1 and Phase 2 are assigned to the **ORANGE** group; those in Phases 3 and 4 are assigned to the **PURPLE** group. If the DWI Court team believes the female participant needs more frequent drug and alcohol testing, she is instructed to test every time the **GOLD 4** group is on the call-in list.

*Those females assigned to GOLD 4 must report to Global before 1:00 pm on the days that GOLD 4 is scheduled to test.*

The participant must call **829-6061** EVERY day, including weekends and holidays, to see if his/her assigned group is scheduled to test that day. The telephone message changes at **5:30 AM** each morning, including weekends and holidays. Please be sure to listen to the date and the entire message.

Things to note regarding urinalysis testing:

- You **are** observed to ensure freedom from errors.
- Missed tests **do** count as positive (dirty) tests.
- Positive tests **do** result in immediate sanctions that may include time in jail to help stop the drug and alcohol using behavior.
- Global staff will **NOT** discuss your test results with you.

If a participant has a drug test that comes back as positive but he/she denies use, the sample will be sent off for confirmation. If the confirmation determines that the sample is negative, then the Court assumes the cost of the confirmation. If the confirmation results corroborate the original test results, the participant is responsible for the cost and he/she receives an additional sanction for lying to the Court.

Additional urine drug testing and/or alcohol breath testing may be administered at the court or at the probation office.

Participants are given guidelines for appropriate use of prescription and over-the-counter medications that will not cause them to test positive for alcohol or other prohibited substances.

## TRACKING PROTOCOL

The DWI Court has adopted a "test, observe and report" protocol for trackers.

Off-duty police officers are utilized as trackers. They are required to complete an eight-hour training session with the Court and an experienced tracker before being hired.

Their duties include:

- Performing breath-analyzer testing on participants at the participants' homes after work hours and on weekends
- Submitting reports on the breath-analyzer results
- Furthering the relationship between the DWI Court and the participants and their families

Urinalysis testing is not performed because of the difficulty of using proper observation techniques in the participants' home settings.

All DWI court participants are tracked. The team members select participants for more intense tracking based on history and current behavior. The DWI court administrator provides the tracker with a randomized list of participants. The team's selections are contacted first. The trackers vary the schedule so that the unannounced home visits may occur at anytime.

Communication between the team and the trackers is accomplished by the use of a G-mail e-mail account that is password protected. The tracker e-mails the tracking reports to the email address at the end of the tracking shift. The team members are able to access the reports and take immediate action if needed. If a team member wants to make a special request for tracking, they may email the tracker but must send a copy to the G-mail account.

# FEES

DWI Court participants are assessed a $1970 fee for costs associated with drug testing, treatment services, and program administration that are not covered by other funding. The participant must pay a portion of the total fee as a requirement for advancement to each phase of the program:

- Phase 1 – $130
- Phase 2 – $340
- Phase 3 – $660
- Phase 4 – $840

The team may allow a fee reduction to a participant who demonstrates a need. The circumstances are re-examined periodically. If a participant is able to pay the fees at a later date, it is collected.

Participants make their payments in the Circuit Clerk's office. The Clerk is the financial manager for all Court costs. DWI fees are kept in an account separate from other Court collections. The Greene County Auditor and Treasurer monitor and assist in managing the DWI Court assets and expenses. The team may give fee reductions to participants with special financial circumstances.

# DATA COLLECTION

In anticipation of future process and outcome evaluations, the following date elements are collected:

Data elements captured upon admission include: name; date of birth; SSN; DCN (if applicable); sex; race/ethnicity; driver's license status; case number; eligibility date; date assigned to court; female: pregnant at time of admission; female: drug/alcohol exposed babies born prior to admission; number of children age 18 and under and the children's custody status; status of child support payments (if applicable); marital status; living arrangements; employment status 30 days prior to admission; education status and level; financial benefits received at time of admission (e.g., TANF, Medicaid, SSI/SSD); and drugs of choice. Elements collected during the program encompass: dates of phase advancements or demotions; status of participant within each phase (e.g., residential, outpatient, jail, etc.); dates and nature of incentives and sanctions; documentation regarding naltrexone, including date screened, screening results, number prescribed, and duration of naltrexone treatment; payments and fee reductions; and new criminal violations. Upon the program exit, data elements collected include: date of exit; disposition of treatment court case (e.g., graduation, termination, voluntary withdrawal); paternity commenced and/or established; child support payment status; female: births during program and prenatal substance exposure; living arrangements; employment status; education level; financial benefits; number of warrants issued during program; arrests or convictions during program; number of community service hours completed; monetary obligations collected (e.g., fines, fees, restitution); and if and how long participant to continue on probation after graduation.

Revised 3-14-09

# GREENE COUNTY

# DWI COURT

## Frequently Asked Questions

Revised 3-14-09



3-28

## *What is the difference between DWI Court, Adult Drug Court and Mothers Choosing Change Court?*

All three are drug courts, but each one is limited to certain types of cases. In general, DWI Court participants have been convicted of three or more DWI's; Adult Drug Court participants usually have been charged with or convicted of a felony drug charge. Mothers Choosing Change Court is limited to mothers whose use of methamphetamine and/or cocaine has impacted their children.

All three courts follow certain guidelines that have been found to be effective in helping people to stop using drugs and alcohol. This handout is for DWI Court participants.

## *I've been charged with a felony DWI – what happens next?*

Everyone who has been charged in Greene County with a felony DWI is referred to the DWI Court for an interview with a probation officer and a SATOP screening. The interview and screening help us determine whether you meet the guidelines for DWI Court, the severity of your alcohol problem, and what services you may need.

Your attorney will be advised of the results of your interview and screening. A recommendation as to whether you meet the DWI Court guidelines will be sent to your sentencing judge.

Once you have pleaded guilty, your sentencing judge will order you to participate in and complete the DWI Court program. Your attorney will be able to answer your legal questions.

## *Once I'm in DWI Court, what comes next?*

Week 1:

1. Contact your treatment counselor to schedule a substance abuse assessment. This must be scheduled before you return to Court the following week.

2. Talk with your probation officer to find out what day each week you report to the probation office.

3. Start calling Global Drug Testing **every** morning to see if you are scheduled to appear for drug testing that day.

4. Pick up a monthly schedule that tells you when you must appear in court during that month. These are kept in the courtroom.

5. Learn the DWI Court rules.

6. If you have been given a folder to keep your papers in, then take that personal folder with you to Court, to treatment and to the probation office.

## ***What should I expect from treatment?***

Each person who enters DWI Court is different. You will complete a substance abuse assessment with your treatment provider. It is very important to answer the questions honestly because the results will be used to determine the type and amount of treatment that is best for you. Although detoxification services or residential treatment may be recommended, most participants initially begin with outpatient services that include both individual and group counseling.

Your treatment counselor will work with you to set up your treatment schedule.

The assessment results are also used to assist your treatment counselor and the probation officer in developing an individual treatment plan with you that is specific to your individual needs.

The treatment plan, which is updated regularly, serves as a guide for you through out the duration of your time in DWI Court.

You will be evaluated for placement on medication such as naltrexone or Vivitrol; prescription drugs that help you maintain your sobriety.

Your treatment counselor is a part of the DWI court team. Each week your counselor will give the Judge and other DWI Court team members an updated report regarding your progress. The report will detail your attendance, participation and cooperation in the treatment program. The team works together with you to help you achieve your goals.

**KEEP YOUR COUNSELING APPOINTMENTS**

**YOU MAY BE CHARGED FOR MISSED APPOINTMENTS**

## *What should I expect from my probation officer?*

Every DWI court participant is assigned a probation officer from the Department of Probation and Parole. Your probation officer is also a DWI court team member and will share information about you with the Judge and the other team members. Your probation officer will report your drug testing results and will provide updates on employment or other requirements that you must meet in order to complete DWI Court.

You will meet on a regular basis with your probation officer. He or she will set up a schedule with you so you know when to report to the probation office. As you progress through the program, the frequency of your contacts with your probation officer may decrease.

Your probation officer may make announced and unannounced visits to your home and may check in with your work supervisor, school officials, physicians, counselors and any other persons involved in working with you during the program. It is your probation officer's responsibility to monitor your living conditions, your employment and educational/ vocational endeavors, and your cooperation with all aspects of the DWI Court program.

**The probation officer is considered an "arm of the court". You must follow the directives of your probation officer just as if the Judge had directed you.**

## *What do I need to know about drug and alcohol testing?*

You will be required to submit to random drug and alcohol testing up to twelve times a month as long as you are in DWI Court. If you are having trouble staying sober, you may be asked to test every day. *Global Drug Testing Services,* 1111 N. Boonville, located just across the street and a little to the north of the Greene County Judicial Center, conducts the testing for the DWI Court using urinalysis and breath-analysis.

When you are admitted to DWI court you will be assigned to a testing group.

You must call **829-6061** EVERY day, including weekends and holidays, to see if your group is scheduled to test that day. The telephone message changes at **5:30 AM** each morning, including weekends and holidays. Please be sure to listen to the date and the entire message.

The testing groups are named after colors.

**MALES** will be assigned to the **GREEN** or **BLUE** group. You will stay in your assigned group all the way through the program unless the DWI Court team believes you need more frequent drug and alcohol testing. If this happens, your probation officer will instruct you to test every time **GOLD 1** is on the testing list.

*If you are assigned to GOLD 1 you must report to Global before 1:00 pm every day that you are scheduled to test.*

**FEMALES** will be assigned to the **ORANGE** or **PURPLE** group. You will stay in your assigned group all the way through the program unless the DWI Court team believes you need more frequent drug and alcohol testing. If this happens, your probation officer will instruct you to test every time **GOLD 4** is on the testing list.

*If you are assigned to GOLD 4 you must report to Global before 1:00 pm every day that you are scheduled to test.*

Things to note regarding urinalysis testing:

- You **are** observed to ensure freedom from errors.
- Missed tests **do** count as positive (dirty) tests.
- Positive tests **do** result in immediate sanctions that may include time in jail to help stop the drug and alcohol using behavior.
- Global staff will **NOT** discuss your test results with you.

**Please be courteous to the Global staff.**
**It is not their fault you are in this program.**

## *What is a tracker? Do I have to let the tracker in my house?*

A tracker is an off-duty police officer who may knock at your door and ask you to take a breathalyzer test. The tracker is not there to arrest you. If the tracker asks to come inside, you should let him/her come in. If you choose not to, the tracker will not force his/her way in but will report this to the team.

## *How do I advance through DWI Court?*

The DWI court program has four phases; as you progress through the phases, there will be fewer requirements that you must meet. The minimum length of the DWI Court program is 18 months, but many participants need additional time to complete the requirements.

Listed below are the general requirements for each phase. Remember, each person in the DWI Court program has different needs: You may be required to participate in one or more activities that are not on this list.

| PHASE 1 | |
|---|---|
| **Length of phase:** | **A minimum of 3 months** |
| **General Requirements: These will be adapted to your individual needs** | Participation in treatment as determined by your needs; Court attendance **weekly**; 1-3 random urine tests per week; compliance with medication assisted treatment if appropriate; contact with your probation officer as directed; Phase 1 fees paid in full before moving to the next phase. |
| | |
| **PHASE 2** | |
| **Length of phase:** | **A minimum of 4 months** |
| **General Requirements: These will be adapted to your individual needs** | Continued participation in treatment or other services as determined by your progress; Court attendance **every other week**; 1-3 random urine tests per week; compliance with medication assisted treatment if appropriate; contact with your probation officer as directed; pre-GED testing (if needed); employment or vocational training (if needed); stable housing; Phase 2 fees paid in full before moving to the next phase. |

| PHASE 3 | |
|---|---|
| **Length of phase:** | **A minimum of 5 months** |
| **General Requirements: These will be adapted to your individual needs** | Continued participation in treatment or other services as determined by your progress; Court Attendance **every four weeks**; 1-3 random urine tests per week; continued compliance with medication assisted treatment if needed; continue GED study - schedule/take test (if needed); maintain stable employment; continue vocational training; stable housing; Phase 3 fees paid in full before moving to the next phase. |
| | |
| **PHASE 4** | |
| **Length of phase:** | **A minimum of 6 months** |
| **General Requirements: These will be adapted to your individual needs** | Continued participation in treatment or other services as determined by your progress; Court attendance **every six weeks**, 1-3 random urine tests per week; sobriety for at least 6 months; pass GED test; stable employment and living circumstances, Phase 4 fees paid in full, all Court costs paid, at least 60 hours of community service completed. |

## *Is my information confidential?*

Federal law requires that drug court participants' identities and privacy be protected. In response to these regulations, the Drug Court has developed policies and procedures that guard your privacy. Upon entry into DWI Court, you will be asked to sign a **Consent for Disclosure and Exchange of Confidential Information Regarding Substance Abuse and Mental Health Treatment**. This disclosure of information gives the DWI Court permission to obtain prior and current substance abuse treatment information and allows the DWI Court teams to discuss your progress. You will be expected to allow the teams' access to medical and other records of care and services (as necessary, and with your full knowledge) that may impact your participation in the program.

## *How often do I go to Court?*

You are required to appear in court on a regular basis. The number of appearances depends upon the Phase of DWI Court you have achieved.

- If you are in Phase 1 you attend once a week
- In Phase 2, you will come to Court every two weeks
- In Phase 3, every 4 weeks;
- Phase 4 meets every six weeks.

There are calendars with the DWI Court schedule that you may pick up at court.

**If you fail to appear in court, an arrest warrant may be issued and you may be subsequently detained in jail until you are brought before the Judge.**

## *How much do I pay for DWI Court?*

You will be required to pay a DWI Court fee of $1970. In addition, you may be ordered by your sentencing judge to pay circuit court costs, fines and restitution. The DWI court team is not involved in assessing these charges. If you have questions about the circuit court costs, fines and restitution, please discuss this with your attorney.

The DWI court fee has been distributed among the four phases to make it easier for you to keep up. In Phases 1, 2, 3 and 4, you will pay

Phase 1 = $130
Phase 2 = $340
Phase 3 = $660
Phase 4 = $840

You must pay the amount of the fee for each phase before you will be advanced to the next phase.

**Try to pay ahead so it is not so hard to keep up in the upper phases.**

## What does it mean to be "terminated" from DWI Court?

Warrants, new arrests or a violation of any aspect of the treatment plan may result in your termination or expulsion from the program. Other violations that may result in termination include the following:

- A pattern of missing scheduled drug tests and/or positive drug tests,
- Altered drug tests,
- Demonstrating a lack of commitment to the DWI Court program by failing to cooperate with the probation officer or treatment provider,
- Violence or threat of violence directed at treatment staff, other participants of the program or other clients of the treatment providers.

Termination from the DWI Court program is considered a violation of your probation, therefore the DWI Court probation officer will submit a violation report to your sentencing court and the matter will be set for hearing. The sentencing judge will determine whether you remain in the community or are sent to prison.

*When you are terminated from the DWI Court and thereafter appear for a probation violation on your case, Missouri law provides that the sentencing judge may consider the reason(s) you were terminated from the program.*

## What am I required to do to graduate from DWI Court?

You will have to participate for a minimum of eighteen months in MCC Court. You will also be required to have:

- spent at least six consecutive months in Phase 4
- finished your substance abuse treatment program and/or any other services you may have been directed to complete
- at least 6 months of sobriety
- no missed drug tests for 6 months
- maintained a stable residence
- maintained employment (or involvement in an educational or vocational program)
- obtained a GED (requirement for those who did not receive a high school diploma)
- completed your community service hours
- paid all MCC Court fees
- paid all of your criminal case Court costs

Depending on the terms of the agreement under which you entered the DWI Court, you may receive an early release from probation. If you successfully complete the DWI Court program, you will receive a SATOP completion form that will enable you to obtain your Driver's License after your period of suspension and/or revocation.

# DRUG/DWI COURT RULES




1. Totally abstain from the use of alcohol and illegal drugs (This includes medications, mouthwashes or other substances that may result in a positive urine or breathalyzer test.

2. Inform all treating physicians that you are a recovering addict and may not take narcotic or addictive medications or drugs.

3. Attend court sessions and treatment sessions as scheduled, submit to random alcohol and drug testing, remain clean and sober and law abiding.

4. No association with people who use or possess drugs or alcohol.

5. No possession of any weapons while in the Drug/DWI Court program; you must disclose the presence of any weapons possessed by anyone else in the household.

6. Keep the Drug/DWI Court teams, probation officer, case manager and treatment provider informed of your current address and phone number at all times.

7. Dress appropriately for court and treatment sessions: a shirt or blouse or clean t-shirt, pants, dress or skirt of reasonable length; shoes must be worn at all times; clothing bearing violent, racist, sexist, drug or alcohol-related themes or promoting or advertising alcohol or drug use is considered inappropriate; NO hats, NO shorts, NO gang attire, NO tank tops or halter tops.

8. **Remember,** when you are in Court, turn off cell phones, do not chew gum and if your child is causing a disturbance, take the child into the Court entryway.

9. Be quiet in Court and when it is your turn to talk to the Drug Court Judge, call her or him "**Judge**" or "**Your Honor**".

10. Abide by all other rules and regulations imposed by the Drug Court Team.

# *Missouri Revised Statutes*

## Chapter 478
## Circuit Courts
## Section *478.001*

August 28, 2008

**Drug courts, establishment, purpose--referrals to certified treatment programs required, exceptions--completion of treatment program, effect.**

478.001. Drug courts may be established by any circuit court pursuant to sections 478.001 to 478.006 to provide an alternative for the judicial system to dispose of cases which stem from drug use. A drug court shall combine judicial supervision, drug testing and treatment of drug court participants. Except for good cause found by the court, a drug court making a referral for substance abuse treatment, when such program will receive state or federal funds in connection with such referral, shall refer the person only to a program which is certified by the department of mental health, unless no appropriate certified treatment program is located within the same county as the drug court. Upon successful completion of the treatment program, the charges, petition or penalty against a drug court participant may be dismissed, reduced or modified. Any fees received by a court from a defendant as payment for substance treatment programs shall not be considered court costs, charges or fines.

(L. 1998 H.B. 1147, et al. § 5 subsec. 1, A.L. 1999 S.B. 1, et al.)



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# *Missouri Revised Statutes*

## Chapter 478
## Circuit Courts
## Section *478.003*

August 28, 2008

**Administration--commissioners, appointment, term, removal, powers, duties, qualifications, compensation--orders of commissioners, confirmation or rejection by judges, effect.**

478.003. In any judicial circuit of this state, a majority of the judges of the circuit court may designate a judge to hear cases arising in the circuit subject to the provisions of sections 478.001 to 478.006. In lieu thereof and subject to appropriations or other funds available for such purpose, a majority of the judges of the circuit court may appoint a person or persons to act as drug court commissioners. Each commissioner shall be appointed for a term of four years, but may be removed at any time by a majority of the judges of the circuit court. The qualifications and compensation of the commissioner shall be the same as that of an associate circuit judge. If the compensation of a commissioner appointed pursuant to this section is provided from other than state funds, the source of such fund shall pay to and reimburse the state for the actual costs of the salary and benefits of the commissioner. The commissioner shall have all the powers and duties of a circuit judge, except that any order, judgment or decree of the commissioner shall be confirmed or rejected by an associate circuit or circuit judge by order of record entered within the time the judge could set aside such order, judgment or decree had the same been made by the judge. If so confirmed, the order, judgment or decree shall have the same effect as if made by the judge on the date of its confirmation.

(L. 1998 H.B. 1147, et al. § 5 subsec. 2)




Missouri General Assembly

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# *Missouri Revised Statutes*

## Chapter 478
## Circuit Courts
## Section *478.005*

August 28, 2008

**Conditions for referral--statements by participant not to be used as evidence, when--records, access to staff, closed, when.**

478.005. 1. Each circuit court shall establish conditions for referral of proceedings to the drug court. The defendant in any criminal proceeding accepted by a drug court for disposition shall be a nonviolent person, as determined by the prosecuting attorney. Any proceeding accepted by the drug court program for disposition shall be upon agreement of the parties.

2. Any statement made by a participant as part of participation in the drug court program, or any report made by the staff of the program, shall not be admissible as evidence against the participant in any criminal, juvenile or civil proceeding. Notwithstanding the foregoing, termination from the drug court program and the reasons for termination may be considered in sentencing or disposition.

3. Notwithstanding any other provision of law to the contrary, drug court staff shall be provided with access to all records of any state or local government agency relevant to the treatment of any program participant. Upon general request, employees of all such agencies shall fully inform a drug court staff of all matters relevant to the treatment of the participant. All such records and reports and the contents thereof shall be treated as closed records and shall not be disclosed to any person outside of the drug court, and shall be maintained by the court in a confidential file not available to the public.

(L. 1998 H.B. 1147, et al. § 5 subsecs. 3, 4, 5)





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# *Missouri Revised Statutes*

## Chapter 478
## Circuit Courts
## Section *478.009*

August 28, 2008

**Drug courts coordinating commission established, members, meetings --fund created.**

478.009. 1. In order to coordinate the allocation of resources available to drug courts throughout the state, there is hereby established a "Drug Courts Coordinating Commission" in the judicial department. The drug courts coordinating commission shall consist of one member selected by the director of the department of corrections; one member selected by the director of the department of social services; one member selected by the director of the department of mental health; one member selected by the director of the department of public safety; one member selected by the state courts administrator; and three members selected by the supreme court. The supreme court shall designate the chair of the commission. The commission shall periodically meet at the call of the chair; evaluate resources available for assessment and treatment of persons assigned to drug courts or for operation of drug courts; secure grants, funds and other property and services necessary or desirable to facilitate drug court operation; and allocate such resources among the various drug courts operating within the state.

2. There is hereby established in the state treasury a "Drug Court Resources Fund", which shall be administered by the drug courts coordinating commission. Funds available for allocation or distribution by the drug courts coordinating commission may be deposited into the drug court resources fund. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the drug court resources fund shall not be transferred or placed to the credit of the general revenue fund of the state at the end of each biennium, but shall remain deposited to the credit of the drug court resources fund.

(L. 2001 H.B. 471 merged with S.B. 89 & 37)





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# GUIDING PRINCIPLES FOR DWI COURTS

**GUIDING PRINCIPLE #1**
TARGET THE POPULATION

Targeting is the process of identifying a subset of the DWI offender population for inclusion in the DWI court program. This is a complex task given that DWI courts, in comparison to traditional drug court programs, accept only one type of offender: the person who drives while under the influence of alcohol or drugs. The DWI court target population, therefore, must be clearly defined, with eligibility criteria clearly documented.

**GUIDING PRINCIPLE #2**
PERFORM A CLINICAL ASSESSMENT

A clinically competent objective assessment of the impaired-driving offender must address a number of bio-psychosocial domains including alcohol use severity and drug involvement, the level of needed care, medical and mental health status, extent of social support systems, and individual motivation to change. Without clearly identifying a client's needs, strengths, and resources along each of these important bio-psychosocial domains, the clinician will have considerable difficulty in developing a clinically sound treatment plan.

**GUIDING PRINCIPLE #3**
DEVELOP THE TREATMENT PLAN

Substance dependence is a chronic, relapsing condition that can be effectively treated with the right type and length of treatment regimen. In addition to having a substance abuse problem, a significant proportion of the DWI population also suffers from a variety of co-occurring mental health disorders. Therefore, DWI courts must carefully select and implement treatment practices demonstrated through research to be effective with the hard-core impaired driver to ensure long-term success.

**GUIDING PRINCIPLE #4**
SUPERVISE THE OFFENDER

Driving while intoxicated presents a significant danger to the public. Increased supervision and monitoring by the court, probation department, and treatment provider must occur as part of a coordinated strategy to intervene with repeat and high-risk DWI offenders and to protect against future impaired driving.

**GUIDING PRINCIPLE #5**
FORGE AGENCY, ORGANIZATION, AND COMMUNITY PARTNERSHIPS

Partnerships are an essential component of the DWI court model as they enhance credibility, bolster support, and broaden available resources. Because the DWI court model is built on and dependent upon a strong team approach, both within the court and beyond, the court should solicit the cooperation of other agencies, as well as community organizations to form a partnership in support of the goals of the DWI court program.

**GUIDING PRINCIPLE #6**
**TAKE A JUDICIAL LEADERSHIP ROLE**

Judges are a vital part of the DWI court team. As leader of this team, the judge's role is paramount to the success of the Drug court program. The judge must also possess recognizable leadership skills as well as the capability to motivate team members and elicit buy-in from various stakeholders. The selection of the judge to lead the DWI court team, therefore, is of utmost importance.

**GUIDING PRINCIPLE #7**
**DEVELOP CASE MANAGEMENT STRATEGIES**

Case management, the series of inter-related functions that provides for a coordinated team strategy and seamless collaboration across the treatment and justice systems, is essential for an integrated and effective DWI court program.

**GUIDING PRINCIPLE #8**
**ADDRESS TRANSPORTATION ISSUES**

Though nearly every state revokes or suspends a person's driving license upon conviction for a DUI offense, the loss of driving privileges poses a significant issue for those individuals involved in a DWI/Drug Court program. In many cases, the participant solves the transportation problem created by the loss of their driver's license by driving anyway and taking a chance that he or she will not be caught. With this knowledge, the court must caution the participant against taking such chances in the future and to alter their attitude about driving without a license.

**GUIDING PRINCIPLE #9**
**EVALUATE THE PROGRAM**

To convince "stakeholders" about the power of DWI court, program designers must design a DWI court evaluation model capable of documenting behavioral change and linking that change to the program's existence. A credible evaluation is the only mechanism for mapping the road to program success or failure. To prove whether a program is efficient and effective requires the assistance of a competent evaluator, an understanding of and control over all relevant variables that can systematically contribute to behavioral change, and a commitment from the DWI court team to rigorously abide by the rules of the evaluation design.

**GUIDING PRINCIPLE #10**
**CREATE A SUSTAINABLE PROGRAM**

The foundation for sustainability is laid, to a considerable degree, by careful and strategic planning. Such planning includes considerations of structure and scale, organization and participation and, of course, funding. Becoming an integral and proven approach to the DWI problem in the community however is the ultimate key to sustainability.

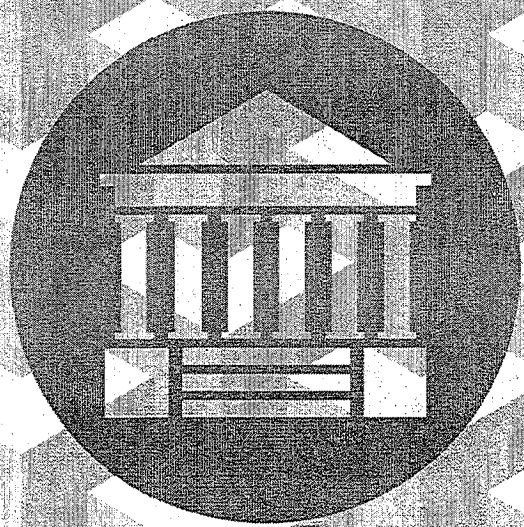
U.S. Department of Justice
Office of Justice Programs
*Bureau of Justice Assistance*

Bureau of Justice Assistance

Drug Courts Resource Series

## *Defining Drug Courts:*

# THE KEY COMPONENTS



In collaboration with
National Association
of Drug Court
Professionals

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# Defining Drug Courts: The Key Components

**January 1997**
**Reprinted October 2004**

**The National Association of Drug Court Professionals**

**Drug Court Standards Committee**

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Notice

In November 2002, the Bureau of Justice Assistance (BJA) assumed responsibility for administering the Drug Court Grant Program and the Drug Court Training and Technical Assistance Program. For further information, please contact BJA.

# Contents

# Key Component #1

## Drug courts integrate alcohol and other drug treatment services with justice system case processing.

### Purpose

The mission of drug courts is to stop the abuse of alcohol and other drugs and related criminal activity. Drug courts promote recovery through a coordinated response to offenders dependent on alcohol and other drugs. Realization of these goals requires a team approach, including cooperation and collaboration of the judges, prosecutors, defense counsel, probation authorities, other corrections personnel, law enforcement, pretrial services agencies, TASC programs, evaluators, an array of local service providers, and the greater community. State-level organizations representing AOD issues, law enforcement and criminal justice, vocational rehabilitation, education, and housing also have important roles to play. The combined energies of these individuals and organizations can assist and encourage defendants to accept help that could change their lives.

The criminal justice system has the unique ability to influence a person shortly after a significant triggering event such as arrest, and thus persuade or compel that person to enter and remain in treatment. Research indicates that a person coerced to enter treatment by the criminal justice system is likely to do as well as one who volunteers.[1]

Drug courts usually employ a multiphased treatment process, generally divided into a stabilization phase, an intensive treatment phase, and a transition phase. The stabilization phase may include a period of AOD detoxification, initial treatment assessment, education, and screening for other needs. The intensive treatment phase typically involves individual and group counseling and other core and adjunctive therapies as they are available (see Key Component #4). The transition phase may emphasize social reintegration, employment and education, housing services, and other aftercare activities.

### Performance Benchmarks

1. Initial and ongoing planning is carried out by a broad-based group, including persons representing all aspects of the criminal justice system, the local treatment delivery system, funding agencies, and the local community's other key policymakers.
2. Documents defining the drug court's mission, goals, eligibility criteria, operating procedures, and performance measures are collaboratively developed, reviewed, and agreed upon.

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[1] Hubbard, R., Marsden, M., Rachal, J., Harwood, H., Cavanaugh E., and Ginzburg, H. Drug Abuse Treatment: A National Study of Effectiveness. Chapel Hill: University of North Carolina Press, 1989.

Pringle G.H., Impact of the criminal justice system on substance abusers seeking professional help, Journal of Drug Issues, Summer, pp. 275–283, vol 12, no. 3, 1982.

3. Abstinence and law-abiding behavior are the goals, with specific and measurable criteria marking progress. Criteria may include compliance with program requirements, reductions in criminal behavior and AOD use, participation in treatment, restitution to the victim or to the community, and declining incidence of AOD use.
4. The court and treatment providers maintain ongoing communication, including frequent exchanges of timely and accurate information about the individual participant's overall program performance.[2]
5. The judge plays an active role in the treatment process, including frequently reviewing treatment progress. The judge responds to each participant's positive efforts as well as to noncompliant behavior.
6. Interdisciplinary education is provided for every person involved in drug court operations to develop a shared understanding of the values, goals, and operating procedures of both the treatment and justice system components.
7. Mechanisms for sharing decisionmaking and resolving conflicts among drug court team members, such as multidisciplinary committees, are established to ensure professional integrity.

[2] All communication about an individual's participation in treatment must be in compliance with the provisions of 42 CFR, Part 2 (the federal regulations governing confidentiality of alcohol and drug abuse patient records), and with similar State and local regulations.

# Key Component #2

## Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.

### Purpose

To facilitate an individual's progress in treatment, the prosecutor and defense counsel must shed their traditional adversarial courtroom relationship and work together as a team. Once a defendant is accepted into the drug court program, the team's focus is on the participant's recovery and law-abiding behavior—not on the merits of the pending case.

The responsibility of the prosecuting attorney is to protect the public's safety by ensuring that each candidate is appropriate for the program and complies with all drug court requirements. The responsibility of the defense counsel is to protect the participant's due process rights while encouraging full participation. Both the prosecuting attorney and the defense counsel play important roles in the court's coordinated strategy for responding to noncompliance.

### Performance Benchmarks

1. Prosecutors and defense counsel participate in the design of screening, eligibility, and case-processing policies and procedures to guarantee that due process rights and public safety needs are served.
2. For consistency and stability in the early stages of drug court operations, the judge, prosecutor, and court-appointed defense counsel should be assigned to the drug court for a sufficient period of time to build a sense of teamwork and to reinforce a nonadversarial atmosphere.
3. The prosecuting attorney:
   - ❑ Reviews the case and determines if the defendant is eligible for the drug court program.
   - ❑ Files all necessary legal documents.
   - ❑ Participates in a coordinated strategy for responding to positive drug tests and other instances of noncompliance.
   - ❑ Agrees that a positive drug test or open court admission of drug possession or use will not result in the filing of additional drug charges based on that admission.
   - ❑ Makes decisions regarding the participant's continued enrollment in the program based on performance in treatment rather than on legal aspects of the case, barring additional criminal behavior.
4. The defense counsel:
   - ❑ Reviews the arrest warrant, affidavits, charging document, and other relevant information, and reviews all program documents (e.g., waivers, written agreements).

- ❑ Advises the defendant as to the nature and purpose of the drug court, the rules governing participation, the consequences of abiding or failing to abide by the rules, and how participating or not participating in the drug court will affect his or her interests.
- ❑ Explains all of the rights that the defendant will temporarily or permanently relinquish.
- ❑ Gives advice on alternative courses of action, including legal and treatment alternatives available outside the drug court program, and discusses with the defendant the long-term benefits of sobriety and a drug-free life.
- ❑ Explains that because criminal prosecution for admitting to AOD use in open court will not be invoked, the defendant is encouraged to be truthful with the judge and with treatment staff, and informs the participant that he or she will be expected to speak directly to the judge, not through an attorney.

# Key Component #3

## Eligible participants are identified early and promptly placed in the drug court program.

### Purpose

Arrest can be a traumatic event in a person's life. It creates an immediate crisis and can force substance abusing behavior into the open, making denial difficult. The period immediately after an arrest, or after apprehension for a probation violation, provides a critical window of opportunity for intervening and introducing the value of AOD treatment. Judicial action, taken promptly after arrest, capitalizes on the crisis nature of the arrest and booking process.

Rapid and effective action also increases public confidence in the criminal justice system. Moreover, incorporating AOD concerns into the case disposition process can be a key element in strategies to link criminal justice and AOD treatment systems overall.

### Performance Benchmarks

1. Eligibility screening is based on established written criteria. Criminal justice officials or others (e.g., pretrial services, probation, TASC) are designated to screen cases and identify potential drug court participants.
2. Eligible participants for drug court are promptly advised about program requirements and the relative merits of participating.
3. Trained professionals screen drug court-eligible individuals for AOD problems and suitability for treatment.
4. Initial appearance before the drug court judge occurs immediately after arrest or apprehension to ensure program participation.
5. The court requires that eligible participants enroll in AOD treatment services immediately.

# Key Component #4

## Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.

### Purpose

The origins and patterns of AOD problems are complex and unique to each individual. They are influenced by a variety of accumulated social and cultural experiences. If treatment for AOD is to be effective, it must also call on the resources of primary health and mental health care and make use of social and other support services.[3]

In a drug court, the treatment experience begins in the courtroom and continues through the participant's drug court involvement. In other words, drug court is a comprehensive therapeutic experience, only part of which takes place in a designated treatment setting. The treatment and criminal justice professionals are members of the therapeutic team.

The therapeutic team (treatment providers, the judge, lawyers, case managers, supervisors, and other program staff) should maintain frequent, regular communication to provide timely reporting of a participant's progress and to ensure that responses to compliance and noncompliance are swift and coordinated. Procedures for reporting progress should be clearly defined in the drug court's operating documents.

While primarily concerned with criminal activity and AOD use, the drug court team also needs to consider co-occurring problems such as mental illness, primary medical problems, HIV and sexually-transmitted diseases, homelessness; basic educational deficits, unemployment and poor job preparation; spouse and family troubles—especially domestic violence—and the long-term effects of childhood physical and sexual abuse. If not addressed, these factors will impair an individual's success in treatment and will compromise compliance with program requirements. Co-occurring factors should be considered in treatment planning. In addition, treatment services must be relevant to the ethnicity, gender, age, and other characteristics of the participants.

Longitudinal studies have consistently documented the effectiveness of AOD treatment in reducing criminal recidivism and AOD use.[4] A study commissioned by the Office of National Drug Control Policy found AOD treatment is significantly more cost-effective than domestic law enforcement, interdiction, or "source-country control" in reducing drug use in the United States.[5] Research indicates that the length of time an offender spends in

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[3] Treatment-Based Drug Court Planning Guide and Checklist, Combining Alcohol and Other Drug Abuse Treatment With Diversion for Juveniles in the Justice System, TIP #21, Treatment Drug Courts: Integrating Substance Abuse Treatment With Legal Case Processing, TIP #23. Rockville, MD: Center for Substance Abuse Treatment, 1996.

[4] The Effectiveness of Treatment for Drug Abusers Under Criminal Justice Supervision. Lipton, D., Washington, DC: National Institute of Justice, Research Report, November 1995.

[5] Rydell, P., Everingham, S. Controlling Cocaine: Supply Versus Demand Programs. Santa Monica, CA: RAND Corporation, Office of National Drug Control Policy, Policy Research Center, 1994.

treatment is related to the level of AOD abuse and criminal justice involvement.[6] A comprehensive study conducted by the State of California indicates that AOD treatment provides a $7 return for every $1 spent on treatment. The study found that outpatient treatment is the most cost-effective approach, although residential treatment, sober living houses, and methadone maintenance are also cost-effective.[7] Comprehensive studies conducted in California[8] and Oregon[9] found that positive outcomes associated with AOD treatment are sustained for several years following completion of treatment.

For the many communities that do not have adequate treatment resources, drug courts can provide leadership to increase treatment options and enrich the availability of support services. Some drug courts have found creative ways to access services, such as implementing treatment readiness programs for participants who are on waiting lists for comprehensive treatment programs. In some jurisdictions, drug courts have established their own treatment programs where none existed. Other drug courts have made use of pretrial, probation, and public health treatment services.

### Performance Benchmarks

1. Individuals are initially screened and thereafter periodically assessed by both court and treatment personnel to ensure that treatment services and individuals are suitably matched:
   - ❑ An assessment at treatment entry, while useful as a baseline, provides a time specific "snapshot" of a person's needs and may be based on limited or unreliable information. Ongoing assessment is necessary to monitor progress, to change the treatment plan as necessary, and to identify relapse cues.
   - ❑ If various levels of treatment are available, participants are matched to programs according to their specific needs. Guidelines for placement at various levels should be developed.
   - ❑ Screening for infectious diseases and health referrals occurs at an early stage.
2. Treatment services are comprehensive:
   - ❑ Services should be available to meet the needs of each participant.
   - ❑ Treatment services may include, but are not limited to, group counseling; individual and family counseling; relapse prevention; 12-step self-help groups; preventive and primary medical care; general health education; medical detoxification; acupuncture for detoxification, for control of craving, and to make people more amenable to treatment; domestic violence programs; batterers' treatment; and treatment for the long-term effects of childhood physical and sexual abuse.

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[6] Field, G. Oregon prison drug treatment programs. In C. Leukefeld and F. Tims (eds.), Drug Abuse Treatment in Prisons and Jails. Research monograph series #108. Rockville, MD: National Institute on Drug Abuse, 1992. Wexler, H., Falkin, G., and Lipton, D. Outcome evaluation of a prison therapeutic community for substance abuse treatment. Criminal Justice and Behavior, 17, pp 71-92, 1990.

[7] Evaluating Recovery Services: The California Drug and Alcohol Treatment Assessment (CALDATA) General Report. Sacramento, CA: California Department of Alcohol and Drug Programs, April 1994.

[8] Ibid.

[9] Societal Outcomes and Cost Savings of Drug and Alcohol Treatment in the State of Oregon. Salem, OR: Office of Alcohol and Drug Abuse Programs, Oregon Department of Human Resources, February 1996.

- ❑ Other services may include housing; educational and vocational training; legal, money management, and other social service needs; cognitive behavioral therapy to address criminal thinking patterns; anger management; transitional housing; social and athletic activities; and meditation or other techniques to promote relaxation and self-control.
- ❑ Specialized services should be considered for participants with co-occurring AOD problems and mental health disorders. Drug courts should establish linkages with mental health providers to furnish services (e.g., medication monitoring, acute care) for participants with co-occurring disorders. Flexibility (e.g., in duration of treatment phases) is essential in designing drug court services for participants with mental health problems.
- ❑ Treatment programs or program components are designed to address the particular treatment issues of women and other special populations.
- ❑ Treatment is available in a number of settings, including detoxification, acute residential, day treatment, outpatient, and sober living residences.
- ❑ Clinical case management services are available to provide ongoing assessment of participant progress and needs, to coordinate referrals to services in addition to primary treatment, to provide structure and support for individuals who typically have difficulty using services even when they are available, and to ensure communication between the court and the various service providers.

3. Treatment services are accessible:
   - ❑ Accommodations are made for persons with physical disabilities, for those not fluent in English, for those needing child care, and/or for persons with limited literacy.
   - ❑ Treatment facilities are accessible by public transportation, when possible.

4. Funding for treatment is adequate, stable, and dedicated to the drug court:
   - ❑ To ensure that services are immediately available throughout the participant's treatment, agreements are made between courts and treatment providers. These agreements are based on firm budgetary and service delivery commitments.
   - ❑ Diverse treatment funding strategies are developed based on both government and private sources at national, State, and local levels.
   - ❑ Health care delivered through managed care organizations is encouraged to provide resources for the AOD treatment of member participants.
   - ❑ Payment of fees, fines, and restitution is part of treatment.
   - ❑ Fee schedules are commensurate with an individual's ability to pay. However, no one should be turned away solely because of an inability to pay.

5. Treatment services have quality controls:
   - ❑ Direct service providers are certified or licensed where required, or otherwise demonstrate proficiency according to accepted professional standards.
   - ❑ Education, training, and ongoing clinical supervision are provided to treatment staff.

6. Treatment agencies are accountable:

   - ❑ Treatment agencies give the court accurate and timely information about a participant's progress. Information exchange complies with the provisions of 42 CFR, Part 2 (the Federal regulations governing confidentiality of AOD abuse patient records) and with applicable State statutes.
   - ❑ Responses to progress and noncompliance are incorporated into the treatment protocols.

7. Treatment designs and delivery systems are sensitive and relevant to issues of race, culture, religion, gender, age, ethnicity, and sexual orientation.

# Key Component #5

## Abstinence is monitored by frequent alcohol and other drug testing.

### Purpose

Frequent court-ordered AOD testing is essential. An accurate testing program is the most objective and efficient way to establish a framework for accountability and to gauge each participant's progress. Modern technology offers highly reliable testing to determine if an individual has recently used specific drugs. Further, it is commonly recognized that alcohol use frequently contributes to relapse among individuals whose primary drug of choice is not alcohol.

AOD testing results are objective measures of treatment effectiveness, as well as a source of important information for periodic review of treatment progress. AOD testing helps shape the ongoing interaction between the court and each participant. Timely and accurate test results promote frankness and honesty among all parties.

AOD testing is central to the drug court's monitoring of participant compliance. It is both objective and cost-effective. It gives the participant immediate information about his or her own progress, making the participant active and involved in the treatment process rather than a passive recipient of services.

### Performance Benchmarks

1. AOD testing policies and procedures are based on established and tested guidelines, such as those established by the American Probation and Parole Association. Contracted laboratories analyzing urine or other samples should also be held to established standards.
2. Testing may be administered randomly or at scheduled intervals, but occurs no less than twice a week during the first several months of an individual's enrollment. Frequency thereafter will vary depending on participant progress.
3. The scope of testing is sufficiently broad to detect the participant's primary drug of choice as well as other potential drugs of abuse, including alcohol.
4. The drug-testing procedure must be certain. Elements contributing to the reliability and validity of a urinalysis testing process include, but are not limited to:
   - ❑ Direct observation of urine sample collection.
   - ❑ Verification temperature and measurement of creatinine levels to determine the extent of water loading.
   - ❑ Specific, detailed, written procedures regarding all aspects of urine sample collection, sample analysis, and result reporting.
   - ❑ A documented chain of custody for each sample collected.

- ❑ Quality control and quality assurance procedures for ensuring the integrity of the process.
- ❑ Procedures for verifying accuracy when drug test results are contested.

5. Ideally, test results are available and communicated to the court and the participant within one day. The drug court functions best when it can respond immediately to noncompliance; the time between sample collection and availability of results should be short.
6. The court is immediately notified when a participant has tested positive, has failed to submit to AOD testing, has submitted the sample of another, or has adulterated a sample.
7. The coordinated strategy for responding to noncompliance includes prompt responses to positive tests, missed tests, and fraudulent tests.
8. Participants should be abstinent for a substantial period of time prior to program graduation.

# Key Component #6

## A coordinated strategy governs drug court responses to participants' compliance.

### Purpose

An established principle of AOD treatment is that addiction is a chronic, relapsing condition. A pattern of decreasing frequency of use before sustained abstinence from alcohol and other drugs is common. Becoming sober or drug free is a learning experience, and each relapse to AOD use may teach something about the recovery process.

Implemented in the early stages of treatment and emphasized throughout, therapeutic strategies aimed at preventing the return to AOD use help participants learn to manage their ambivalence toward recovery, identify situations that stimulate AOD cravings, and develop skills to cope with high-risk situations. Eventually, participants learn to manage cravings, avoid or deal more effectively with high-risk situations, and maintain sobriety for increasing lengths of time.

Abstinence and public safety are the ultimate goals of drug courts, many participants exhibit a pattern of positive urine tests within the first several months following admission. Because AOD problems take a long time to develop and because many factors contribute to drug use and dependency, it is rare that an individual ceases AOD use as soon as he or she enrolls in treatment. Even after a period of sustained abstinence, it is common for individuals to occasionally test positive.

Although drug courts recognize that individuals have a tendency to relapse, continuing AOD use is not condoned. Drug courts impose appropriate responses for continuing AOD use. Responses increase in severity for continued failure to abstain.

A participant's progress through the drug court experience is measured by his or her compliance with the treatment regimen. Certainly cessation of drug use is the ultimate goal of drug court treatment. However, there is value in recognizing incremental progress toward the goal, such as showing up at all required court appearances, regularly arriving at the treatment program on time, attending and fully participating in the treatment sessions, cooperating with treatment staff, and submitting to regular AOD testing.

Drug courts must reward cooperation as well as respond to noncompliance. Small rewards for incremental successes have an important effect on a participant's sense of purpose and accomplishment. Praise from the drug court judge for regular attendance or for a period of clean drug tests, encouragement from the treatment staff or the judge at particularly difficult times, and ceremonies in which tokens of accomplishment are awarded in open court for completing a particular phase of treatment are all small but very important rewards that bolster confidence and give inspiration to continue.

Drug courts establish a coordinated strategy, including a continuum of responses, to continuing drug use and other noncompliant behavior. A coordinated strategy can provide a common operating plan for treatment providers and other drug court personnel. The criminal justice system representatives and the treatment providers develop a series of complementary, measured responses that will encourage compliance. A written copy of these responses, given to participants during the orientation period, emphasizes the predictability, certainty, and swiftness of their application.

### Performance Benchmarks

1. Treatment providers, the judge, and other program staff maintain frequent, regular communication to provide timely reporting of progress and noncompliance and to enable the court to respond immediately. Procedures for reporting noncompliance are clearly defined in the drug court's operating documents.
2. Responses to compliance and noncompliance are explained verbally and provided in writing to drug court participants before their orientation. Periodic reminders are given throughout the treatment process.
3. The responses for compliance vary in intensity:
   - ❑ Encouragement and praise from the bench.
   - ❑ Ceremonies and tokens of progress, including advancement to the next treatment phase.
   - ❑ Reduced supervision.
   - ❑ Decreased frequency of court appearances.
   - ❑ Reduced fines or fees.
   - ❑ Dismissal of criminal charges or reduction in the term of probation.
   - ❑ Reduced or suspended incarceration.
   - ❑ Graduation.
4. Responses to or sanctions for noncompliance might include:
   - ❑ Warnings and admonishment from the bench in open court.
   - ❑ Demotion to earlier program phases.
   - ❑ Increased frequency of testing and court appearances.
   - ❑ Confinement in the courtroom or jury box.
   - ❑ Increased monitoring and/or treatment intensity.
   - ❑ Fines.
   - ❑ Required community service or work programs.
   - ❑ Escalating periods of jail confinement (however, drug court participants remanded to jail should receive AOD treatment services while confined).
   - ❑ Termination from the program and reinstatement of regular court processing.

# Key Component #7

## Ongoing judicial interaction with each drug court participant is essential.

### Purpose

The judge is the leader of the drug court team, linking participants to AOD treatment and to the criminal justice system. This active, supervising relationship, maintained throughout treatment, increases the likelihood that a participant will remain in treatment and improves the chances for sobriety and law-abiding behavior. Ongoing judicial supervision also communicates to participants—often for the first time—that someone in authority cares about them and is closely watching what they do.

Drug courts require judges to step beyond their traditionally independent and objective arbiter roles and develop new expertise. The structure of the drug court allows for early and frequent judicial intervention. A drug court judge must be prepared to encourage appropriate behavior and to discourage and penalize inappropriate behavior. A drug court judge is knowledgeable about treatment methods and their limitations.

### Performance Benchmarks

1. Regular status hearings are used to monitor participant performance:
   - ❑ Frequent status hearings during the initial phases of each participant's program establish and reinforce the drug court's policies, and ensure effective supervision of each drug court participant. Frequent hearings also give the participant a sense of how he or she is doing in relation to others.
   - ❑ Time between status hearings may be increased or decreased, based on compliance with treatment protocols and progress observed.
   - ❑ Having a significant number of drug court participants appear at a single session gives the judge the opportunity to educate both the offender at the bench and those waiting as to the benefits of program compliance and consequences for noncompliance.
2. The court applies appropriate incentives and sanctions to match the participant's treatment progress.
3. Payment of fees, fines and/or restitution is part of the participant's treatment. The court supervises such payments and takes into account the participant's financial ability to fulfill these obligations. The court ensures that no one is denied participation in drug courts solely because of on an inability to pay fees, fines, or restitution.



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# Key Component #8

## Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.

### Purpose

Fundamental to the effective operation of drug courts are coordinated management, monitoring, and evaluation systems. The design and operation of an effective drug court program result from thorough initial planning, clearly defined program goals, and inherent flexibility to make modifications as necessary.

The goals of the program should be described concretely and in measurable terms to provide accountability to funding agencies and policymakers. And, since drug courts will increasingly be asked to demonstrate tangible outcomes and cost-effectiveness, it is critical that the drug court be designed with the ability to gather and manage information for monitoring daily activities, evaluating the quality of services provided, and producing longitudinal evaluations.

Management and monitoring systems provide timely and accurate information about program operations to the drug court's managers, enabling them to keep the program on course, identify developing problems, and make appropriate procedural changes. Clearly defined drug court goals shape the management information system, determine monitoring questions, and suggest methods for finding information to answer them.

Program management provides the information needed for day-to-day operations and for planning, monitoring, and evaluation. Program monitoring provides oversight and periodic measurements of the program's performance against its stated goals and objectives.

Evaluation is the institutional process of gathering and analyzing data to measure the accomplishment of the program's long-term goals. A process evaluation appraises progress in meeting operational and administrative goals (e.g., whether treatment services are implemented as intended). An outcome evaluation assesses the extent to which the program is reaching its long-term goals (e.g., reducing criminal recidivism). An effective design for an outcome evaluation uses a comparison group that does not receive drug court services.

Although evaluation activities are often planned and implemented simultaneously, process evaluation information can be used more quickly in the early stages of drug court implementation. Outcome evaluation should be planned at the beginning of the program as it requires at least a year to compile results, especially if past participants are to be found and interviewed.

Evaluation strategies should reflect the significant coordination and the considerable time required to obtain measurable results. Evaluation studies are useful to everyone, including funding agencies and policymakers who may not be involved in the daily operations of the program. Information and conclusions developed from periodic monitoring reports, process evaluation activities, and longitudinal evaluation studies may be used to modify program

procedures, change therapeutic interventions, and make decisions about continuing or expanding the program.

Information for management, monitoring, and evaluation purposes may already exist within the court system and/or in the community treatment or supervision agencies (e.g., criminal justice data bases, psychosocial histories, and formal AOD assessments). Multiple sources of information enhance the credibility and persuasiveness of conclusions drawn from evaluations.

### Performance Benchmarks

1. Management, monitoring, and evaluation processes begin with initial planning. As part of the comprehensive planning process, drug court leaders and senior managers should establish specific and measurable goals that define the parameters of data collection and information management. An evaluator can be an important member of the planning team.
2. Data needed for program monitoring and management can be obtained from records maintained for day-to-day program operations, such as the numbers and general demographics of individuals screened for eligibility; the extent and nature of AOD problems among those assessed for possible participation in the program; and attendance records, progress reports, drug test results, and incidence of criminality among those accepted into the program.
3. Monitoring and management data are assembled in useful formats for regular review by program leaders and managers.
4. Ideally, much of the information needed for monitoring and evaluation is gathered through an automated system that can provide timely and useful reports. If an automated system is not available manual data collection and report preparation can be streamlined. Additional monitoring information may be acquired by observation and through program staff and participant interviews.
5. Automated manual information systems must adhere to written guidelines that protect against unauthorized disclosure of sensitive personal information about individuals.
6. Monitoring reports need to be reviewed at frequent intervals by program leaders and senior managers. They can be used to analyze program operations, gauge effectiveness, modify procedures when necessary, and refine goals.
7. Process evaluation activities should be undertaken throughout the course of the drug court program. This activity is particularly important in the early stages of program implementation.
8. If feasible, a qualified independent evaluator should be selected and given responsibility for developing and conducting an evaluation design and for preparing interim and final reports. If an independent evaluation is unavailable the drug court program designs and implements its own evaluation, based on guidance available through the field:

- ❑ Judges, prosecutors, the defense bar, treatment staff, and others design the evaluation collaboratively with the evaluator.
- ❑ Ideally, an independent evaluator will help the information systems expert design and implement the management information system.
- ❑ The drug court program ensures that the evaluator has access to relevant justice system and treatment information.
- ❑ The evaluator maintains continuing contact with the drug court and provides information on a regular basis. Preliminary reports may be reviewed by drug court program personnel and used as the basis for revising goals, policies, and procedures as appropriate.

9. Useful data elements to assist in management and monitoring may include, but are not limited to:
   - ❑ The number of defendants screened for program eligibility and the outcome of those initial screenings.
   - ❑ The number of persons admitted to the drug court program.
   - ❑ Characteristics of program participants, such as age, sex, race/ethnicity, family status, employment status, and educational level; current charges; criminal justice history; AOD treatment or mental health treatment history; medical needs (including detoxification); and nature and severity of AOD problems.
   - ❑ Number and characteristics of participants (e.g., duration of treatment involvement, reason for discharge from the program).
   - ❑ Number of active cases.
   - ❑ Patterns of drug use as measured by drug test results.
   - ❑ Aggregate attendance data and general treatment progress measurements.
   - ❑ Number and characteristics of persons who graduate or complete treatment successfully.
   - ❑ Number and characteristics of persons who do not graduate or complete the program.
   - ❑ Number of participants who fail to appear at drug court hearings and number of bench warrants issued for participants.
   - ❑ Rearrests during involvement in the drug court program and type of arrest(s).
   - ❑ Number, length, and reasons for incarcerations during and subsequent to involvement in the drug court program.

10. When making comparisons for evaluation purposes, drug courts should consider the following groups:
    - ❑ Program graduates.
    - ❑ Program terminations.

- ❑ Individuals who were referred to, but did not appear for, treatment.
- ❑ Individuals who were not referred for drug court services.

11. At least six months after exiting a drug court program, comparison groups (listed above) should be examined to determine long-term effects of the program. Data elements for follow-up evaluation may include:
    - ❑ Criminal behavior/activity.
    - ❑ Days spent in custody on all offenses from date of acceptance into the program.
    - ❑ AOD use since leaving the program.
    - ❑ Changes in job skills and employment status.
    - ❑ Changes in literacy and other educational attainments.
    - ❑ Changes in physical and mental health.
    - ❑ Changes in status of family relationships.
    - ❑ Attitudes and perceptions of participation in the program.
    - ❑ Use of health care and other social services.
12. Drug court evaluations should consider the use of cost-benefit analysis to examine the economic impact of program services. Important elements of cost-benefit analysis include:
    - ❑ Reductions in court costs, including judicial, counsel, and investigative resources.
    - ❑ Reductions in costs related to law enforcement and corrections.
    - ❑ Reductions in health care utilization.
    - ❑ Increased economic productivity.

# Key Component #9

## Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.

### Purpose

Periodic education and training ensures that the drug court's goals and objectives, as well as policies and procedures, are understood not only by the drug court leaders and senior managers, but also by those indirectly involved in the program. Education and training programs also help maintain a high level of professionalism, provide a forum for solidifying relationships among criminal justice and AOD treatment personnel, and promote a spirit of commitment and collaboration.

All drug court staff should be involved in education and training, even before the first case is heard. Interdisciplinary education exposes criminal justice officials to treatment issues, and treatment staff to criminal justice issues. It also develops shared understandings of the values, goals, and operating procedures of both the treatment and the justice system components. Judges and court personnel typically need to learn about the nature of AOD problems and the theories and practices supporting specific treatment approaches. Treatment providers typically need to become familiar with criminal justice accountability issues and court operations. All need to understand and comply with drug testing standards and procedures.

For justice system or other officials not directly involved in the program's operations, education provides an overview of the mission, goals, and operating procedures of the drug court.

A simple and effective method of educating new drug court staff is to visit an existing court to observe its operations and ask questions. On-site experience with an operating drug court provides an opportunity for new drug court staff to talk to their peers directly and to see how their particular role functions.

### Performance Benchmarks

1. Key personnel have attained a specific level of basic education, as defined in staff training requirements and in the written operating procedures. The operating procedures should also define requirements for the continuing education of each drug court staff member.
2. Attendance at education and training sessions by all drug court personnel is essential. Regional and national drug court training provide critical information on innovative developments across the Nation. Sessions are most productive when drug court personnel attend as a group. Credits for continuing professional education should be offered, when feasible.

3. Continuing education institutionalizes the drug court and moves it beyond its initial identification with the key staff who may have founded the program and nurtured its development.
4. An education syllabus and curriculum are developed, describing the drug court's goals, policies, and procedures. Topics might include:
   - ❑ Goals and philosophy of drug courts.
   - ❑ The nature of AOD abuse, its treatment and terminology.
   - ❑ The dynamics of abstinence and techniques for preventing relapse.
   - ❑ Responses to relapse and to noncompliance with other program requirements.
   - ❑ Basic legal requirements of the drug court program and an overview of the local criminal justice system's policies, procedures, and terminology.
   - ❑ Drug testing standards and procedures.
   - ❑ Sensitivity to racial, cultural, ethnic, gender, and sexual orientation as they affect the operation of the drug court.
   - ❑ Interrelationships of co-occurring conditions such as AOD abuse and mental illness (also known as "dual diagnosis").
   - ❑ Federal, State, and local confidentiality requirements.

# Key Component #10

## Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.

### Purpose

Because of its unique position in the criminal justice system, a drug court is especially well suited to develop coalitions among private community-based organizations, public criminal justice agencies, and AOD treatment delivery systems. Forming such coalitions expands the continuum of services available to drug court participants and informs the community about drug court concepts.

The drug court is a partnership among organizations—public, private, and community-based—dedicated to a coordinated and cooperative approach to the AOD offender. The drug court fosters systemwide involvement through its commitment to share responsibility and participation of program partners. As a part of, and as a leader in, the formation and operation of community partnerships, drug courts can help restore public faith in the criminal justice system.

### Performance Benchmarks

1. Representatives from the court, community organizations, law enforcement, corrections, prosecution, defense counsel, supervisory agencies, treatment and rehabilitation providers, educators, health and social service agencies, and the faith community meet regularly to provide guidance and direction to the drug court program.
2. The drug court plays a pivotal role in forming linkages between community groups and the criminal justice system. The linkages are a conduit of information to the public about the drug court, and conversely, from the community to the court about available community services and local problems.
3. Partnerships between drug courts and law enforcement and/or community policing programs can build effective links between the court and offenders in the community.
4. Participation of public and private agencies, as well as community-based organizations, is formalized through a steering committee. The steering committee aids in the acquisition and distribution of resources. An especially effective way for the steering committee to operate is through the formation of a nonprofit corporation structure that includes all the principle drug court partners, provides policy guidance, and acts as a conduit for fundraising and resource acquisition.



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5. Drug court programs and services are sensitive to and demonstrate awareness of the populations they serve and the communities in which they operate. Drug courts provide opportunities for community involvement through forums, informational meetings, and other community outreach efforts.
6. The drug court hires a professional staff that reflects the population served, and the drug court provides ongoing cultural competence training.

# Appendix 1: Drug Court Standards Committee

Bill Meyer, Chairman
Judge, Denver Drug Court
Denver, CO

Ed Brekke
Administrator
Civil & Criminal Operations
Los Angeles Superior Court
Los Angeles, CA

Jay Carver
Director, District of Columbia
Pretrial Services Agency
Washington, DC

Caroline Cooper
Director
OJP Drug Court Clearinghouse and
Technical Assistance Project
American University
Washington, DC

Jane Kennedy
Executive Director
TASC of King County
Seattle, WA

Barry Mahoney
President
The Justice Management Institute
Denver, CO

John Marr
CEO
Choices Unlimited
Las Vegas, NV

Carlos J. Martinez
Assistant Public Defender
Law Offices of Bennett H. Brummer
Miami, FL

Molly Merrigan
Assistant Prosecutor
Jackson County Drug Court
Kansas City, MO

Ana Oliveira
Director
Samaritan Village
Briarwood, NY

Roger Peters
Associate Professor
University of South Florida
Florida Mental Health Institute
Department of Mental Health Law and Policy
Tampa, FL

Frank Tapia
Probation Officer
Oakland, CA

**U.S. Department of Justice**
**Office of Justice Programs**
**Representatives**

Marilyn McCoy Roberts
Director, Drug Courts Program Office
Office of Justice Programs

Susan Tashiro
Program Manager
Office of Justice Programs



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**National Association of Drug Court Professionals**

Judge Jeffrey S. Tauber
President

Marc Pearce
Chief of Staff

**Writer and Coordinator**

Jody Forman
The Dogwood Institute
Charlottesville, VA



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# Appendix 2: Resource List

## Federal Organizations and Agencies Providing Information and Guidance on Drug Courts:

### The White House

Office of National Drug Control Policy
(ONDCP)
Executive Office of the President
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20502-0002
Tel: 202/395-6700

### U.S. Department of Justice

Bureau of Justice Assistance
Office of Justice Programs
U.S. Department of Justice
810 Seventh Street, NW
Washington, DC 20531
Tel: 202/616-6500
Fax: 202/305-1367

National Criminal Justice Reference Service
Tel: 800/851-3420

## Federal Agencies and Organizations Providing Information on AOD Treatment:

### U.S. Department of Health and Human Services

Alcoholism and Substance Abuse Branch
Indian Health Service
5600 Fishers Lane, Room 5A-20
Rockville, MD 20857
Tel: 301/443-7623

Center for Substance Abuse Treatment
Substance Abuse and Mental Health Services
Administration, Public Health Service
5515 Security Lane
Rockville, MD 20852
Tel: 301/443-5700

National Clearinghouse for Alcohol and Drug
Information
11426 Rockville Pike, Suite 200
Rockville, MD 20852
Tel: 800/729-6686

National Institute on Alcohol and Alcoholism
Substance Abuse and Mental Health Services
Administration, Public Health Service
Willco Bldg., Suite 400-MSC7003
6000 Executive Blvd.
Bethesda, MD 20892
Tel: 301/443-3851

National Institute on Drug Abuse
Substance Abuse and Mental Health Services
Administration, Public Health Service
5600 Fishers Lane, Room 18-49
Rockville, MD 20857
Tel: 301/443-0107



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## Organizations Providing Information on Drug Courts:

Drug Court Clearinghouse & Technical Assistance Project
American University
Justice Programs Office
4400 Massachusetts Avenue, NW
Brandywine, Suite 660
Washington, DC 20016-8159
Tel: 202/885-2875
Fax: 202/885-2885

Justice Management Institute
1900 Grant St., Suite 815
Denver, CO 80203
Tel: 303/831-7564
Fax: 303/831-4564

National Association of Drug Court Professionals
901 North Pitt St., Suite 300
Alexandria, VA 22314
Tel: 800/542-2322 or 703/706-0576
Fax: 703/706-0565

National TASC
8630 Fenton St., Suite 121
Silver Spring, MD 20910
Tel: 301/608-0595
Fax: 301/608-0599

State Justice Institute
1650 King St., Suite 600
Alexandria, VA 22314
Tel: 703/684-6100
Fax: 703/684-7618

## Private Organizations Providing Information on AOD Treatment:

American Society of Addiction Medicine, Inc.
Upper Arcade, Suite 101
4601 North Park Avenue
Chevy Chase, MD 20815
Tel: 301/656-3920

Guidepoints: Acupuncture in Recovery
(Information on innovative treatment of addictive and mental disorders)
7402 NE 58th St.
Vancouver, WA 98662
Tel: 360/254-0186

National Acupuncture Detoxification Association
P.O. Box 1927
Vancouver, WA 98668-1927
Tel and Fax: 360/260-8620

National Association of Alcohol & Drug Abuse Counselors
1911 North Fort Meyer Drive, Suite 900
Arlington, VA 22209
Tel: 703/741-7686

National Association of State Alcohol and Drug Abuse Directors (NASADAD)
444 North Capitol St., Suite 642
Washington, DC 20001
Tel: 202/783-6868
Fax: 202/783-2704

National GAINS Center for People with Co-occurring Disorders in the Justice System
Policy Research, Inc.
262 Delaware Ave
Delmar, NY 12054
Tel: 800/331-GAIN
Fax: 518/439-7612

**Private Organizations Providing Information on Community Anti-Drug Alliances:**

Community Anti-Drug Coalitions of America
(CADCA)
James Copple, Executive Director
701 North Fairfax
Alexandria, VA 22314
Tel: 703/706-0563

Drug Strategies, Inc.
2445 M Street, NW, Suite 480
Washington, DC 20037
Tel: 202/663-6090

Join Together
441 Stuart Street, 6th Floor
Boston, MA 02116
Tel: 617/437-1500

Partnership for a Drug Free America
State Alliance Program
405 Lexington Ave., 16th Floor
New York, NY 10174
Tel: 212/922-1560

# Bureau of Justice Assistance Information

For more indepth information about BJA, its programs, and its funding opportunities, contact:

**Bureau of Justice Assistance**
810 Seventh Street NW.
Washington, DC 20531
202–616–6500
Fax: 202–305–1367
Web site: www.ojp.usdoj.gov/BJA
E-mail: AskBJA@usdoj.gov

The BJA Clearinghouse, a component of the National Criminal Justice Reference Service, shares BJA program information with state and local agencies and community groups across the country. Information specialists provide reference and referral services, publication distribution, participation and support for conferences, and other networking and outreach activities. The clearinghouse can be contacted at:

**Bureau of Justice Assistance Clearinghouse**
P.O. Box 6000
Rockville, MD 20849–6000
1–800–851–3420
Fax: 301–519–5212
Web site: www.ncjrs.org
E-mail: askncjrs@ncjrs.org

Clearinghouse staff are available Monday through Friday, 10 a.m. to 6 p.m. eastern time. Ask to be placed on the BJA mailing list.

To subscribe to the electronic newsletter JUSTINFO and become a registered NCJRS user, visit http://puborder.ncjrs.org/register.

BJA

3-75

# NATIONAL PARTNERSHIP ON ALCOHOL MISUSE AND CRIME

## NPAMC

October 2009
Kansas DUI Commission
Topeka, Kansas

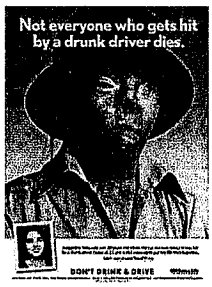
## Alcohol Misuse and Crime

- We don't have a good handle on the problem
- We really aren't doing a good job addressing it



## DUI

- Traffic crashes are the single greatest cause of death for every age group between three and 34 years of age in the U.S. (except for age 7)
- Almost 12,000 people are killed in crashes where at least one driver has a BAC of 0.08 or higher each year
- Alcohol related crashes cost society over 100 billion dollars each year






## Kansas



## Kansas at a Glance – The Human Toll

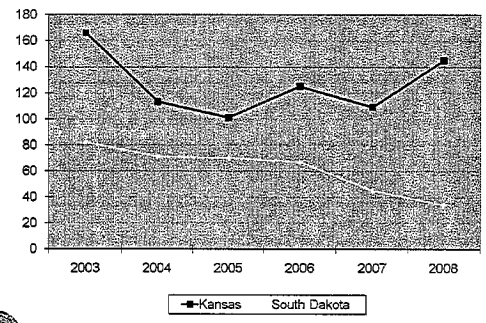
- In 2008, 145 people were killed in alcohol-impaired crashes in 2008 (up from 109 in 2007), a 33% increase
  - 416 were killed in motor vehicle crashes in 2008, 385 in 2007 (a 7.5% drop)
  - The number of people killed in alcohol-impaired crashes in the United States fell 9.7% during the same time
- Another 1,999 people were injured in alcohol-related crashes

## Kansas at a Glance – Crash Costs

- According to the Kansas Traffic Accident Facts Book, in 2008, there were 3,366 alcohol-related crashes drivers, costing society almost $645M
  - Each fatally injured person augments the cost of a crash by over $3.3M
  - NOTE: The cost estimates include: property damage, lost earnings, lost household production, medical costs, emergency services, travel delay, vocational rehabilitation, workplace costs, administrative, legal, pain and lost quality of life



## Alcohol-Impaired MV Fatalities






## Of course, it's not all about drunk drivers

Approximately 80% of offenders under state and federal supervision have substance misuse issues



## Crimes Committed Under the Influence of Alcohol

- More than 36% of the 5.3 million convicted adult offenders under the jurisdiction of probation authorities, jails, prisons or parole agencies in 1996 had been drinking at the time of the offenses for which they had been convicted
  - The average estimated BAC of probationers who drank during the 8 hours prior to their offense was 0.16
  - The average estimated BAC of state prison inmates who drank during the 8 hours prior to their offense was 0.27
  - About half of all probationers reported that they had driven a vehicle while under the influence of alcohol



As a nation, we're not making much progress



We can't expect different results if we keep relying on the same strategies



Barriers to Change

## Lack of Resources



## Structural and Attitudinal Barriers

- Prosecutors, judges, sheriffs, and legislators don't want to appear "soft on crime"
- The justice system is an adversarial system
  - Participants don't trust each other
  - Defense attorneys fight for the "best result," not what's in their clients' "best interests"
- Because of crushing resource problems, system participants generally ignore offenders until they cross a certain threshold, usually a crisis point



## Knowledge Gap

- An incredible amount of time and resources have been invested in research
- Data has been collected, tools have been created, possible solutions have been advanced
- But, much of this has not made it past the confines of the nation's laboratories, agencies or businesses
  - Practitioners don't have the information, don't understand the information, and don't have time to digest the information
  - Private industry (pharmaceuticals, correctional companies, treatment professionals) can't figure out how to reach justice professionals

## A Lack of National Standards

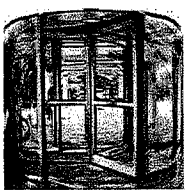
- With the exception of drug and DWI courts, there are no national standards for:
  - Identifying offenders with alcohol misuse issues (no standards for screening, assessment and evaluation)
  - Providing necessary and adequate treatment for offenders
  - Appropriately sanctioning offenders, particularly with regard to relapse



## Our Current Strategies Are Failing . . .

We tend to rely on punishment, but…….

Jail, prison and other sanctions alone don't work for most people who abuse alcohol or drugs and overcrowding is a major concern





## . . . And expensive!

- Kansas spends approximately $212M a year on prisons
  - In 2010, Kansas expects to spend $67.80 per offender per day
  - Approximately $45M is spent on inmate medical and mental health services each year (to put this in perspective, food services cost less than $14M)

## NPAMC: Working together to understand and address the problem



## NPAMC Board

- Public Interest Groups
  - American Probation and Parole Association
  - National Association of Drug Court Professionals
  - National District Attorneys Association
  - National Judicial College
- Private Industry
  - AMS
  - Alkermes
  - Fortune Brands



## Participants

- More than 50 people from more than 30 state and federal agencies, organizations, groups, associations and companies
  - Scientists
  - Researchers
  - Justice professionals
  - Victims groups
  - Treatment professionals
  - Correctional industry/monitoring companies
  - Pharmaceutical companies
  - Alcohol industry
  - Insurance industry
  - Policy experts

## NPAMC Vision

- A criminal justice system where:
  - We systematically address underlying and contributing causes of people's behaviors, rather than simply their actions
  - We address with offenders as individuals and tailor solutions to criminogenic needs and risks
  - We better protect our friends, families and communities
  - We maximize limited public resources



## And we do so simultaneously!



## The time is now!

We need to take control of these issues before they take control of us

So how do we do this?



## Judicial v. Medical Approaches

| Judicial | Medical |
|---|---|
| • Focuses on the crime itself<br>• Addresses alcohol as an element of a charged offense<br>• Tries to treat everyone the same<br>• Favors punishment<br>• Bases decisions on statutes and precedent | • Focuses on the alcohol misuse problem<br>• Addresses alcohol as a cause or contributing cause of behavior<br>• Treats people as individuals<br>• Favors rehabilitation<br>• Bases decisions on scientific evidence |



Which approach works best?

## Why Do People Routinely Ask That Question?

The solutions are NOT mutually exclusive.....

In fact, comprehensive approaches are the MOST effective!



## What do we know?



## Consensus Statements (September 2008)

- Incarceration alone is unlikely to change the subsequent criminal behavior of offenders who chronically misuse alcohol
- The most effective way to address offenders' alcohol misuse is through a comprehensive program of sanctions, treatment and accountability
- Addressing alcohol use disorders is an essential component in the rehabilitation of offenders who misuse alcohol

## Consensus Statements (January 2009)

- When feasible, the following defendants should be screened for alcohol, drug and mental health issues prior to arraignment using generally accepted tools:
  - Defendants with past histories of alcohol, drug or mental health issues
  - Defendants arrested for felonies or violent misdemeanors
  - Defendants under the influence of alcohol and/or other drugs at the time of the alleged offense
- Courts should consider recommendations based on risk and clinical needs assessments when sentencing offenders



## Consensus Statements (June 2009)

- Individuals in the criminal justice system should receive treatment for SUDs, as appropriate, throughout their contact with the system
- Judges may require convicted offenders to obtain treatment as a condition of sentence. Research demonstrates that coerced treatment can be effective. Accordingly, judges should order convicted offenders with SUDs who need treatment to obtain it as part of their sentence.



## Consensus Statements (June 2009)

- Offenders who suffer from SUDs often experience a wide range of difficulties, including medical problems, mental health problems, and functional impairments that impede comprehension, decision-making, and ability to maintain employment or relationships. Courts should refer offenders to programs that address all of these needs when appropriate and possible.
- Justice officials should refer offenders to programs that provide comprehensive treatment, either directly or through formal affiliations. Treatment should be individualized, continually re-evaluated and offer evidence-based solutions that may include psychosocial interventions and pharmacotherapy.

## Proven Programs

- Drug and DWI Courts
  - Numerous studies have demonstrated the utility of drug and DWI courts
    - Five meta-analysis show that drug courts can reduce recidivism by up to 35%
    - In a rigorous study of two DWI courts in Michigan, regular probationers were arrested for any offense three times as often as DWI court participants over a two year period. They were arrested for DWI 19 times more often



## DUI Courts versus Standard Probation and Parole

| Total Days On SCRAM Program | Probation & Parole | | | DUI Courts | | |
|---|---|---|---|---|---|---|
| | Unique Client-Offenders | % of Client-Offenders w/ Events | Average Number of Events per Offending | Unique Client-Offenders | % of Client-Offenders w/ Events | Average Number of Events per Offending |
| Up to 60 | 9,416 | 5.3% | 2.21 | 234 | 3.4% | 1.63 |
| 61-120 | 7,490 | 9.8% | 2.50 | 424 | 6.6% | 1.62 |
| 121-180 | 2,042 | 15.3% | 2.84 | 152 | 7.2% | 1.45 |
| 181-240 | 1,214 | 16.6% | 2.74 | 98 | 13.3% | 1.56 |
| 241-300 | 407 | 25.1% | 3.42 | 26 | 19.2% | 1.38 |
| 301-360 | 271 | 23.6% | 3.25 | 11 | 27.3% | 2.50 |
| >360 | 469 | 30.3% | 4.44 | 22 | 18.2% | 3.78 |



## Promising Programs Incorporating Evidence Based Practices

- Hawaii's Opportunity Program with Enforcement (HOPE)
  - Requires random testing of all participants
  - Imposes swift and certain sanctions for those who violate rules
  - Requires treatment only for those who test positive
  - Key preliminary findings:
    - Arrest rates for probationers in the control group were three times higher than the rate for those in the HOPE group
    - Probationers in the control group tested positive twice as often on drug tests as those in the HOPE group (26% v. 11%) *even though they knew when they would be tested*

## Promising Programs Incorporating Evidence Based Practices

The award winning
South Dakota 24/7 Sobriety Program

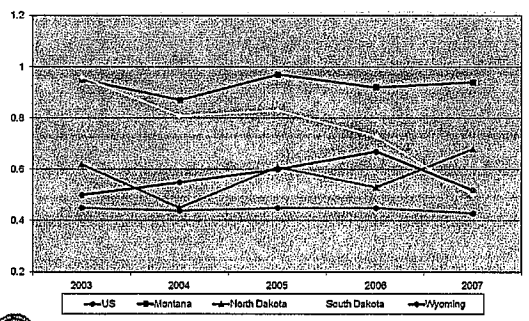


## What is the South Dakota 24/7 Sobriety Program?

- A statewide program that provides unprecedented levels of supervision by integrating state of the art testing
  - Twice daily breath testing or continuous alcohol monitoring to monitor sobriety
  - Random urine testing to monitor drug use
  - Drug patch testing to monitor drug use
- Preliminary data indicates that the program reduces recidivism
- A formal evaluation is underway; results should be available by the end of the year



## Alcohol-Impaired Motor Vehicle Fatalities/Vehicle Miles Traveled



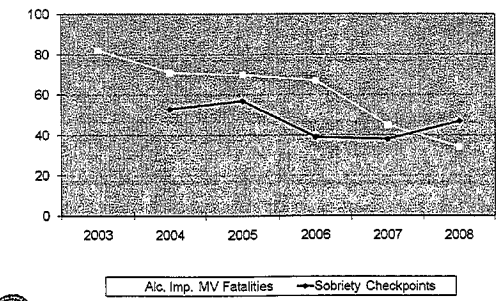
## Inside the Results:
## Potential Contributing Factors



## Enforcement Efforts



### Alcohol-Impaired MV Fatalities and High Visibility Enforcement (Checkpoints)

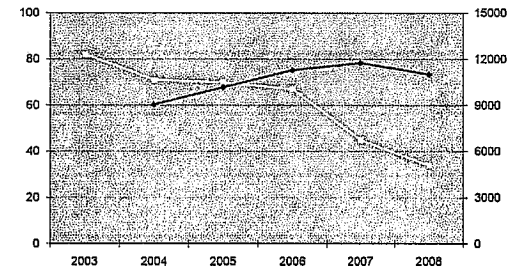






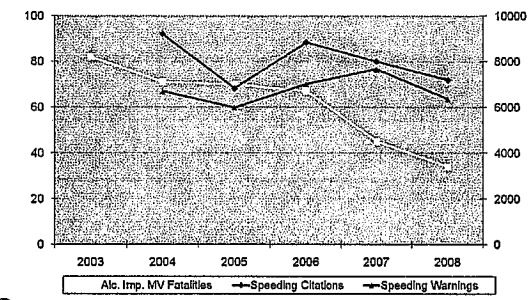

4-15

## Alcohol-Impaired MV Fatalities and DUI Filings



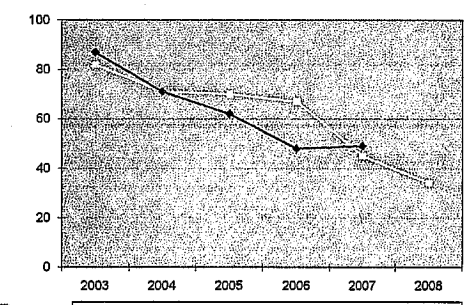

National Partnership on Alcohol Misuse and Crime | www.alcoholandcrime.org

## Alcohol-Impaired MV Fatalities and Speed Enforcement




National Partnership on Alcohol Misuse and Crime | www.alcoholandcrime.org

## Alcohol-Impaired MV Fatalities and Speeding-Related Fatalities

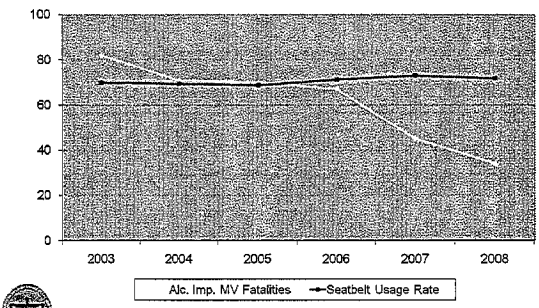



National Partnership on Alcohol Misuse and Crime | www.alcoholandcrime.org

## Other Potential Influencers



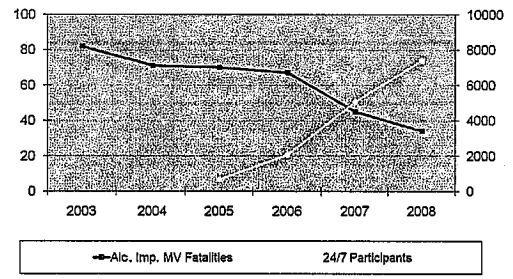
## Alcohol-Impaired MV Fatalities and the Seatbelt Usage Rate






## None of those factors/trends appears to explain the decline, but one trend correlates perfectly with it……..

## Alcohol-Impaired MV Fatalities and 24/7 Participation



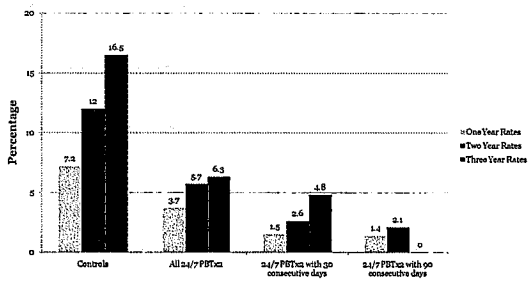



## South Dakota 24/7 Sobriety Program

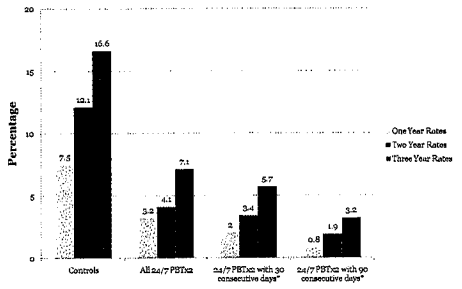
- Data was compiled by Roland Loudenberg and is current through December 31, 2008
- The information was provided by Attorney General Larry Long
- Recidivism statistics currently are available for offenders tested twice daily only (ie. not those monitored by SCRAM)



## 24/7 Participants' Recidivism: 2nd Time Offenders



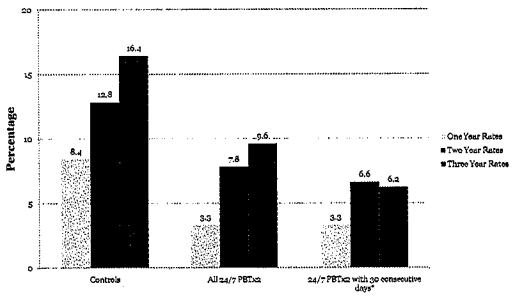
## 24/7 Participants' Recidivism: 3rd Time Offenders




*Caution in interpretation is advised because of the sample size. Trends are heading in right direction.



## 24/7 Participants' Recidivism: 4th Time Offenders




*Caution in interpretation is advised because of the sample size. Trends are heading in right direction.



## What do all of these programs have in common?

- These programs are different, but all work well because they share certain features in common. They all:
  - Require abstinence
  - Impose intensive supervision/monitoring
  - Hold offenders accountable
  - Provide for swift, certain, meaningful, proportional and fair sanctions or other responses to violations

## Why are those features so important?

- They deter substance misuse. Deterrence works when
  - People perceive that they are likely to be caught
  - Punishment is swift
  - Punishment is certain
  - Punishment is meaningful, but fair and proportional
- Research which shows that chronic substance misusers regain cognitive abilities during periods of extended sobriety



## Combine them with traditional solutions (including ignition interlock) and treatment to get the best results



## Planned Expansion of the 24/7 Program

- Integrate screening at booking for alcohol, drug and mental health misuse issues (already being piloted in Brookings County)
- Create a web based tracking system (being discussed)
- Treat pre-trial release and probation as a continuum
  - Incentivize offenders to obtain treatment pre-trial
  - Establish a system of sanctions and rewards based on principles of contingency management, need and dangerousness
- Examine other testing methods, including saliva testing
- Evaluate program effectiveness

## The Kansas Experience

- Kansas DOC Secretary Roger Werholz has urged a shift in strategy from simple punishment to rehabilitation
- The probation and parole violation rates have improved
- The number of absconders has plummeted
- Will it change the new offense rate?
- Will the legislature, which funded overall changes in programming, cut these programs to resolve current fiscal problems?



## The Kansas Experience

- Will the legislature, which funded overall changes in programming, cut these programs to resolve current fiscal problems?
  - According to the DOC Annual Report, it appears that less money is authorized in 2010 for community corrections, re-entry and day reporting centers, and other offender programs but more money is authorized for prisons.
    - Does that make sense?
    - Will Kansas lose the gains its made?



## Contact Information

Stephen K. Talpins
Chief Executive Officer
National Partnership on Alcohol Misuse and Crime
sktalpins@alcoholandcrime.org
(305) 610-3585

DUI Courts: One Judge's Perspective

DUI Commission October 1, 2009
Pete Ruddick, District Court of Johnson County, Kansas

1. Johnson County case filings, jail population, work release admissions.

   - Misdemeanors (1st and 2nd offenses)

     Cases filed in Johnson County Magistrate Traffic Court 2008: 559
     Cases filed in 18 Municipal Courts FY2008: 3556

   - Felonies (3rd and higher offenses)

     Cases filed in Johnson County District Court and Incarceration Statistics

| | 3rd DUI's Cases filed | 4th or higher DUI Cases filed | JAIL DUI Sentenced Average Daily Population | JAIL All Population Average Daily Population | Work Release Admissions |
|---|---|---|---|---|---|
| 2004 | 378 | 40 | 49 | 807 | |
| 2005 | 262 | 127 | 77 | 887 | |
| 2006 | 238 | 113 | 76 | 871 | |
| 2007 | 270 | 169 | 77 | 869 | 19 (Oct start up) |
| 2008 | 285 | 148 | 57 | 710 | 133 |
| 2009 as of 8/31 | 213 | 127 | 56 | 704 | 111 |

2. Effective Local Programming

   A. Pre-trial release: Bond Supervision, Random Urinalysis, House Arrest and SCRAM
   B. Probation placements: LSI-R and Substance Abuse Evaluation
      1. Adult Court Services
      2. Community Corrections Intensive Supervision
      3. Residential Center
      4. Therapeutic Community

DUI Commission 2009
10-1-09
Attachment 5

C. Hybrid Work Release

3. Felony DUI Process

   A. Preliminary Examination
   B. Motions to Suppress
   C. Jury Trials

4. Appellate Court Decisions

5. Therapeutic Courts

   A. Treatment vs. incapacitation and punishment for multiple repeat offenders
   B. Early intervention vs. felony process
   C. Judicial reluctance to ongoing interaction with defendants

DUI Commission 2009
10-1-09
Attachment 6

# Kansas Criminal Justice Information System (KCJIS)

*"Electronic Information: Effectively Enhancing Justice and Public Safety"*

## Overview for
## **DUI Commission**

October 1, 2009

Gordon Lansford, Director
Kansas Criminal Justice Information System

6-2

# What is KCJIS?

- An Information Sharing System
- A Communications System
- A Highly Secure Network
- Connecting all 105 Counties
- Operational since 1998, "all day, every day"

6-3

# Who Uses KCJIS?

- State, Local and Federal
  - Law Enforcement Officers
  - Courts and Court Service Officers
  - Parole and Probation Officers
  - Prosecutors
  - Jails and Prisons
- County Emergency Managers for Homeland Security
- Private and Public Sector Background checks

# How do they use KCJIS?

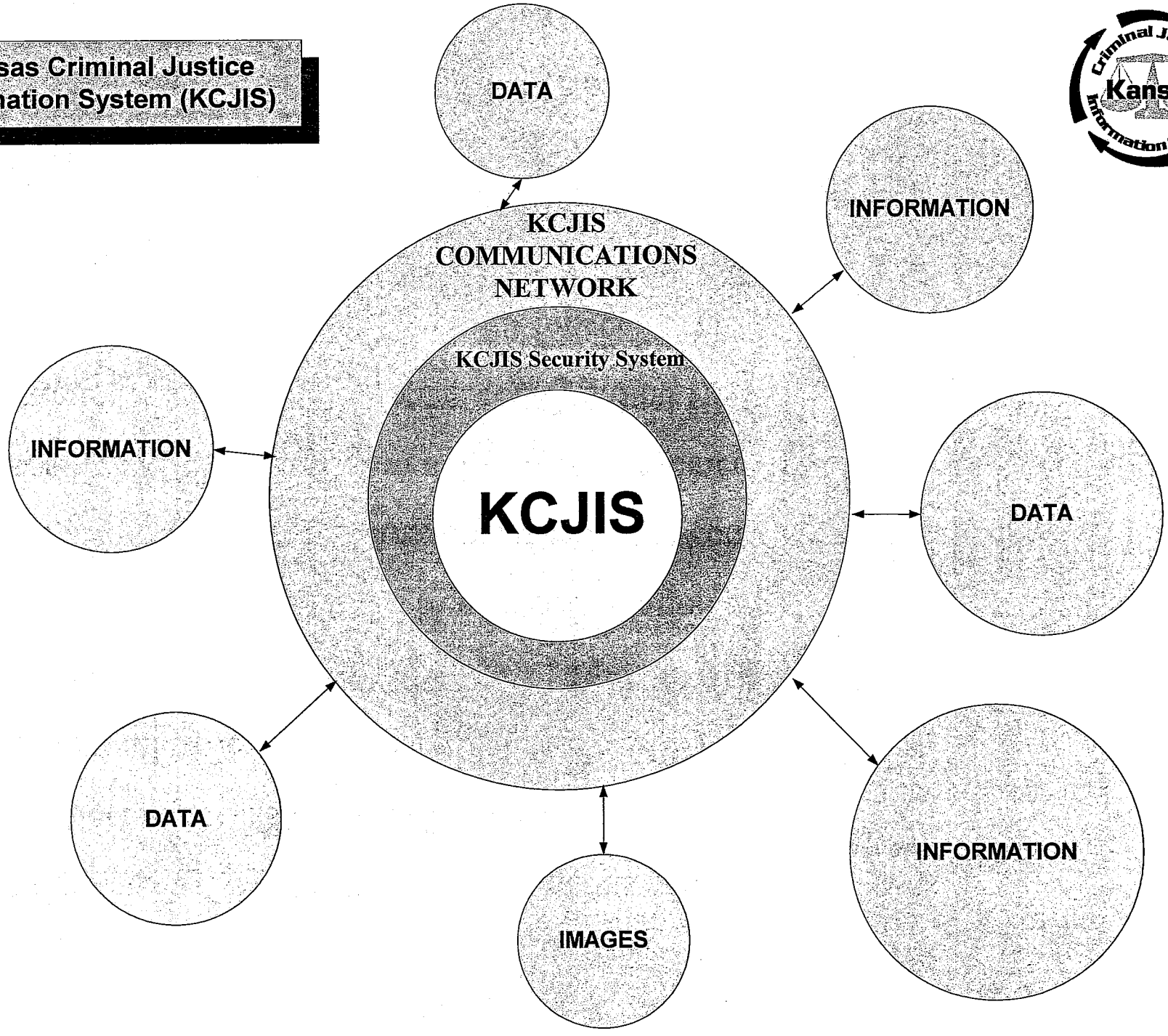
- Car Stops
- Electronic Fingerprint Identification
- Criminal Investigations
- Case Management (Courts, Prosecutors, and Law Enforcement
- Criminal History/Background Checks
- Pre-Sentence Investigations
- To eliminate duplicate data entry
- Communications to other local, state, & national agencies
- State and Federal Wants and Warrants
- Secure communications and messaging

# KCJIS Provides

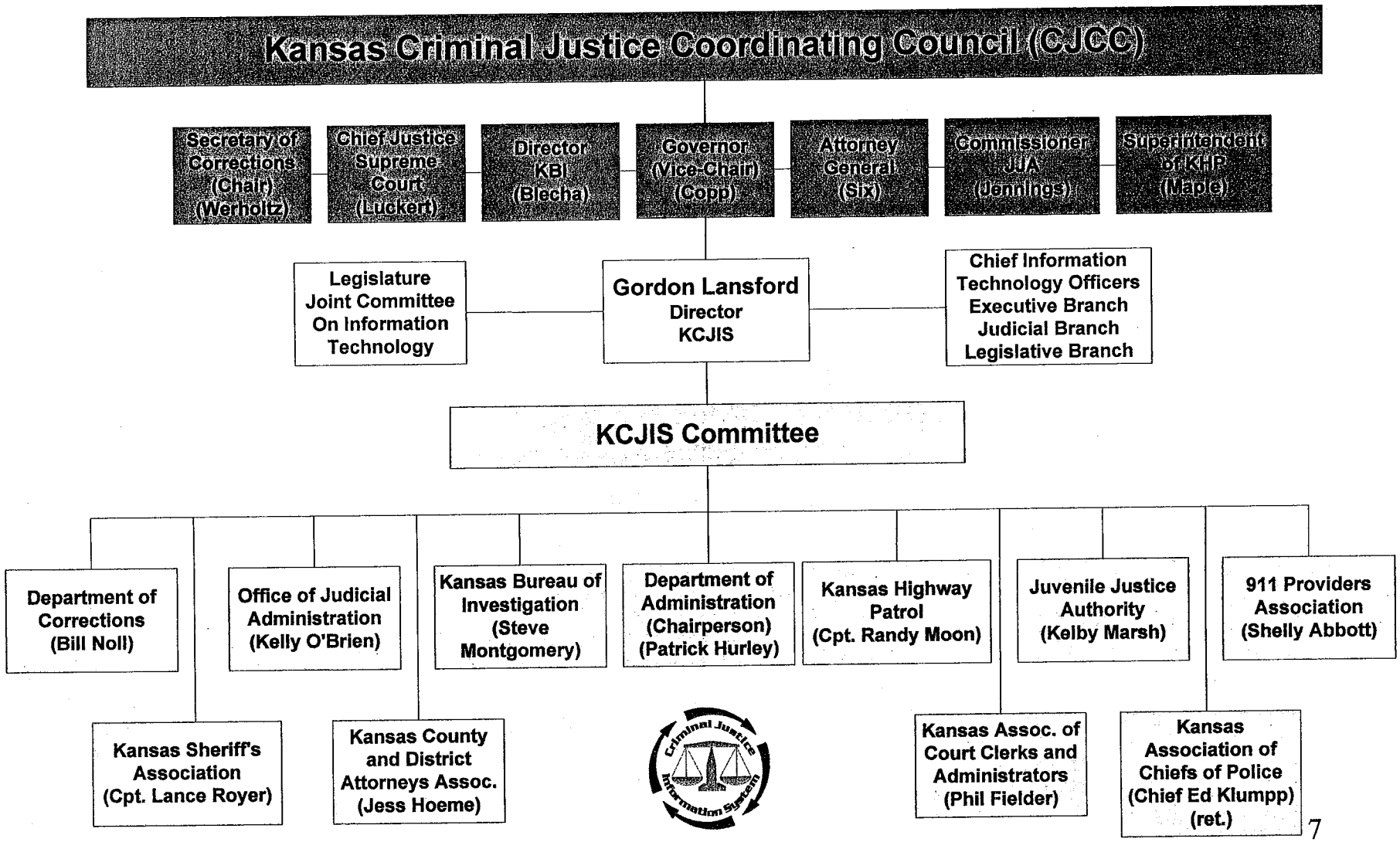
- **Master Search Capability** for both Persons and Vehicles
- Highly Secure access for over 9,400 authorized users
- Access for all officers to Kansas Car Stop (KCS)
- Electronic fingerprint capability
- Online access to Registered Offender information
- Online information on inmates, community corrections, and parolees
- Kansas Drivers License photo's for law enforcement
- Electronic Rap Sheets (Computerized Criminal Histories)
- Access to Misdemeanor Warrants for most counties (local choice)
- A **"One-Stop Shop"** for criminal justice users

*(Kansas is III and NFF certified by the FBI)*

# Kansas Criminal Justice Information System (KCJIS)



# KANSAS CRIMINAL JUSTICE INFORMATION SYSTEM (KCJIS)



# KCJIS Authorized Users

| | |
|---|---|
| Law Enforcement | 7,557 |
| 911/Regional Dispatch | 535 |
| Corrections | 354 |
| Probation/Parole | 291 |
| KBI | 250 |
| Courts | 195 |
| Prosecutors | 164 |
| Other | 69 |
| **TOTAL*** | **9,415** |

*As of 9/30/09

6-9

# KCJIS Usage

- Processes an average of 2,455,080 Transactions per month
- Process over 32,000 Searches per month via KCJIS Web Portal (specific queries)
- In the time it took you to read this we processed 500 transactions

6-10

- How can KCJIS assist in addressing the challenges being discussed by the DUI Commission?

6-11

# What are Kansas DUI needs?

- **Complete, Accurate, and Timely Information**
- "Easy-to-use" access to information
- One-stop shop for Prosecutors
- Issuance of Required Reports (User defined)
- "Certification" Statements & Documents (kept electronically)
- Electronic connections to all information sources
- Arrests, Prosecutions, Convictions, Pending Cases (plus new arrests), and Electronic Journal Entries
- Positive Identification of Individuals and their information
- "Disposition Matching" to Arrests (insure completeness)

6-12

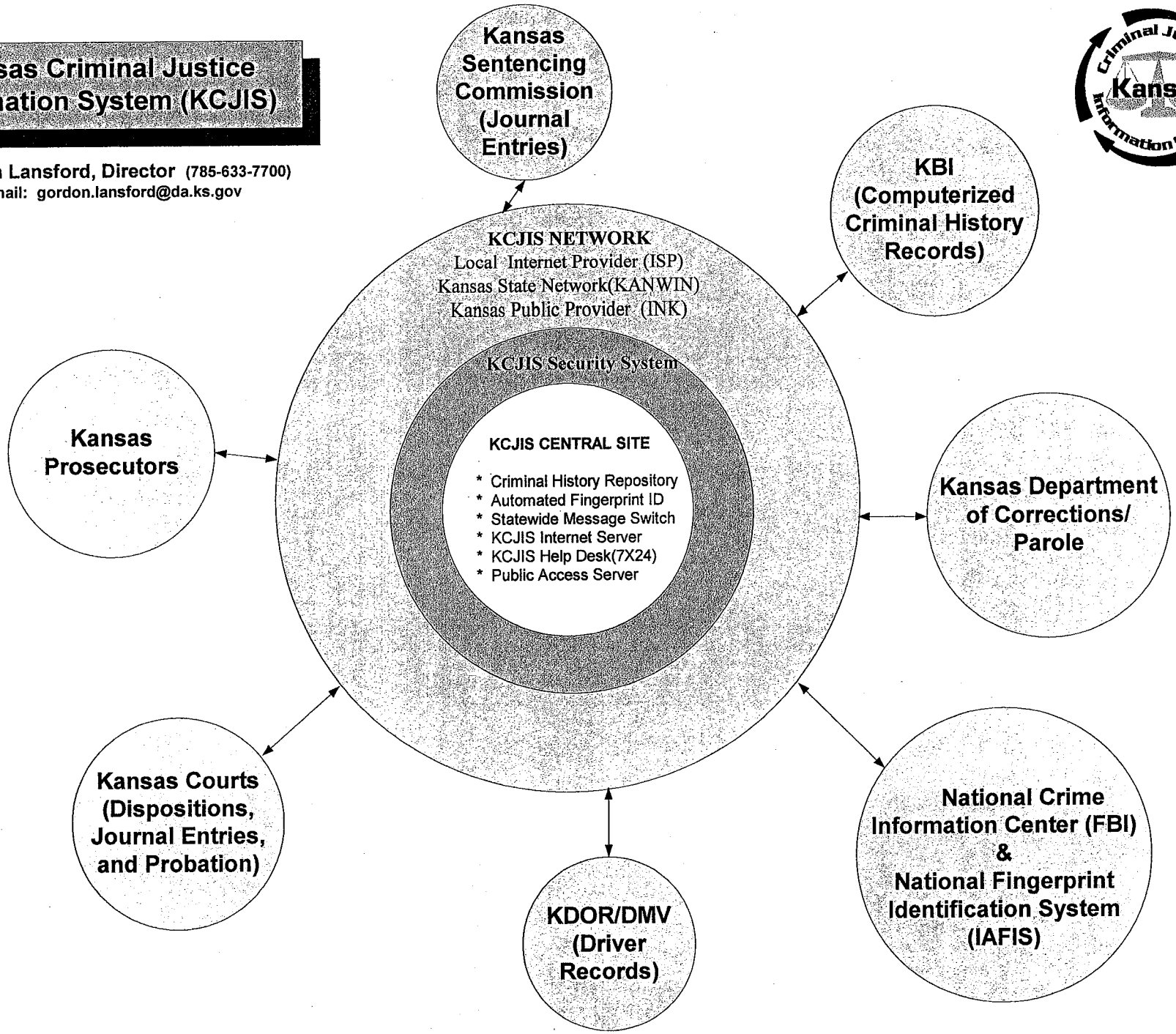
# How could KCJIS assist?

- **Be the electronic connection to provide:**
- Criminal History including:
  - Arrests
  - Prosecutions
  - Convictions
- District Courts (dispositions/journal entries)
- Municipal Courts (dispositions/journal entries)
- Prosecutors (dispositions/DUI queries)
- DMV (driving records)
- Corrections (journal entries)
- Sentencing Commission (journal entries)
- Electronic Disposition Reporting (currently in testing; operational in Shawnee and Johnson Counties)
- Electronic Journal Entries (currently in testing with KDOC/Sentencing Commission)
- e-Citations (currently in development)
- And eventually, automatic "notifications" to users regarding "new" arrests of individuals involved in pending cases

# Kansas Criminal Justice Information System (KCJIS)

Gordon Lansford, Director (785-633-7700)
email: gordon.lansford@da.ks.gov





6-14

# *"Information Sharing Saves Lives"*

- 1996: "Some information in the right place as soon as possible"

- KCJIS: "Provide the right information to the right people whenever, wherever, and however they need it"

6-15

# Questions and Suggestions always welcome!

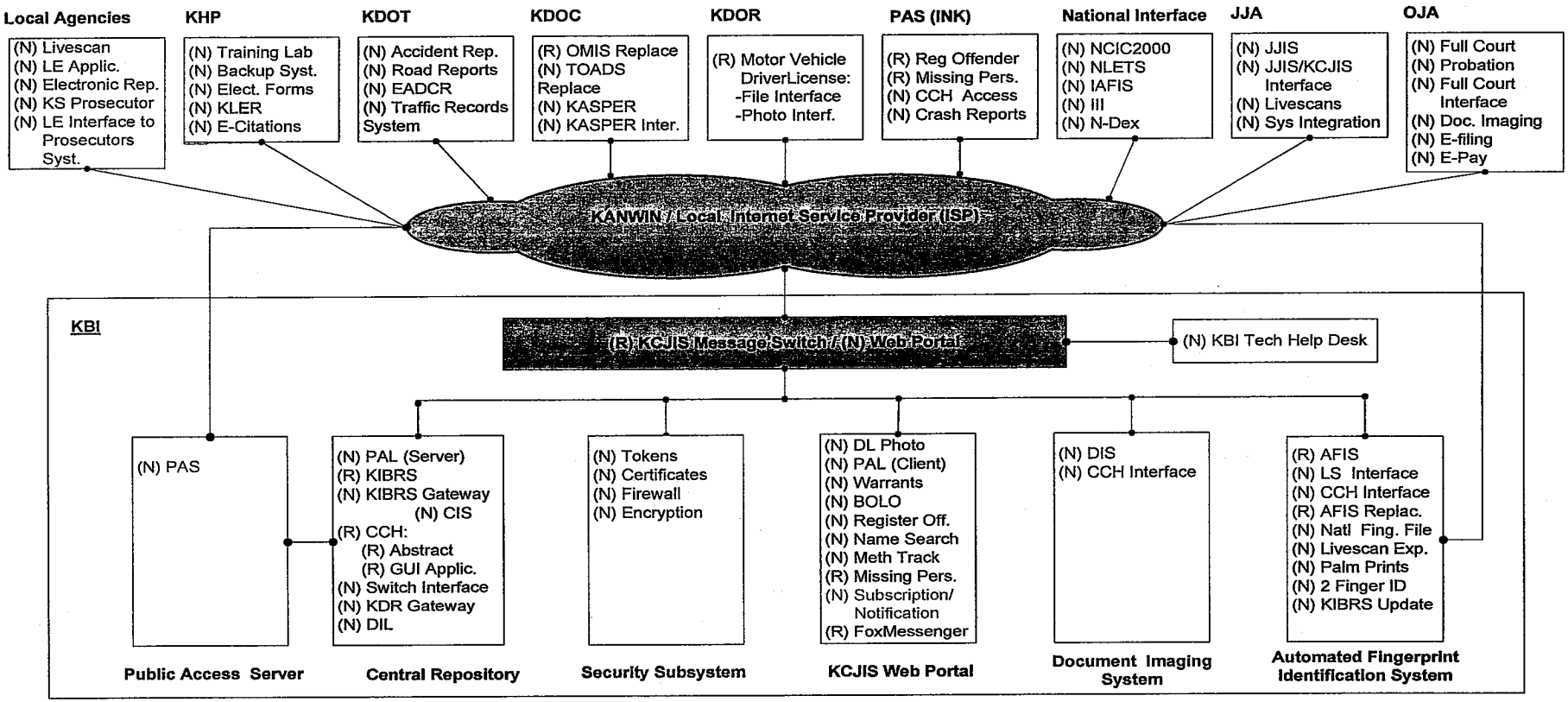
Gordon Lansford

785-633-7700 cell

gordon.lansford@da.ks.gov

# State of Kansas
# Criminal Justice Information System (KCJIS)

April 2009




R=Replacement N=New

= Implemented

= Under Development

= Testing

= Future Development

**Definitions**

| | | | |
|---|---|---|---|
| **Abstract** | Criminal History Summary Report | **JJIMS** | Juvenile Justice Information Mgt. System |
| **AFIS** | Automated Fingerprint Identification Syst. | **KASPER** | KS Adult Supervised Population Elect. Rep. |
| **BOLO** | Be On the Look Out | **DL Photo** | Driver's License Photograph |
| **CCH** | Computerized Criminal History | **KDR** | Kansas Disposition Report |
| **Certificates** | Digital Identification | **KIBRS** | KS Incident Based Reporting System |
| **CIS** | Customer Information System | **LE Applic.** | Law Enforcement Application |
| **DIL** | Digital Imaging Library | **NCIC2000** | National Crime Inform. Center 2000 |
| **DIS** | Document Imaging System | **NLETS** | National Law Enforcement Telecom. Syst. |
| **EADCR** | Electronic Accident Data Collection & Reporting | **OMIS** | Offender Management Information System |
| **Encryption** | Data Transmission Protection Softw are | **PAL** | Paradigm4 Archival & Logging |
| **GUI Applic.** | Graphical User Interface Application | **PAS** | Public Access Server |
| **IAFIS** | Integrated Automated Fingerprint Ident. Syst. | **Pros. App.** | Prosecution Application |
| **III** | Interstate Identification Index | **TOADS** | Total Offender Activity Doc. System |
| **INK** | Information Netw ork Of Kansas | **Tokens** | Passw ord Security |

## KCJIS INTRODUCTION AND BACKGROUND

The Kansas Criminal Justice Information System (KCJIS) was initiated in the mid 1990's as a result of the establishment of Sentencing Guidelines and the resulting need for timely and accurate criminal history information. Since the inception, KCJIS has grown beyond this initial objective to one of the leading "integrated" criminal justice information systems in the United States. KCJIS provides the daily operating information used by criminal justice agencies in Kansas and elsewhere.

Beginning in 1996 the state of Kansas began a major project to enhance public safety and criminal justice services by adopting a multiyear strategic plan. This plan, known as the KCJIS Strategic Plan, was adopted in April 1996 and work began. By June 2003 the efforts identified in the 1996 KCJIS Strategic Plan were completed. All identified projects were implemented and new legislation was in place creating a KCJIS Committee. The KCJIS Committee includes representation from a wide range of state and local criminal justice entities, with the purpose of guiding the long-term development of KCJIS. The KCJIS Committee meets monthly.

There are many separate information systems and a variety of users that collectively comprise KCJIS. Some information systems are fully integrated into KCJIS and others have yet to be integrated. The list of users, or "customers", is extensive as detailed in the following section. All users and agencies are critical to the success of KCJIS as they both provide information to and use information from the system.

As funds become available additional categories of information are added to KCJIS for access by over 9000 authorized users. Each user has an individual security device while KCJIS has multiple levels of security, which are transparent to users of the system. As a result of its highly sophisticated security, in 1998 KCJIS became the first statewide criminal justice system authorized to access secure FBI information over the Internet. As a result, KCJIS is capable of providing information to users anywhere in Kansas regardless of the size of the community or agency. Even the smallest agency and community benefit from secure access to KCJIS information.

Effective operation of KCJIS depends upon the ready collection and access to current, complete and accurate information in the system by all authorized parties.

## CUSTOMERS

There are approximately 1700 state, local, federal, and international agencies that are users of KCJIS. Users or "customers" are grouped into three types – primary, secondary and tertiary. The following list of customers demonstrates the broad involvement of organizations that have a stake in the quality, effectiveness, and improvement of KCJIS.

Primary customers are those with a direct operational need for the information that is created and/or stored within the system and include:

- Law enforcement (sheriffs, police departments, university police, tribal councils/police, all other states, Royal Canadian Mounted Police, and Interpol for other countries)
- District, County, City, and U.S. Attorneys
- Jails
- Courts, Judges, and Court Service Officers
- Parole, Probation, and Community Corrections officers
- Kansas Sentencing Commission
- Kansas Highway Patrol (KHP)
- Kansas Department of Corrections (KDOC) and local jail administrators
- Office of Judicial Administration (OJA)
- Juvenile Justice Authority (JJA)
- Kansas Attorney General
- Kansas Bureau of Investigation (KBI)
- 911 Communication Centers
- Kansas Securities Commissioner and Alcohol Beverage Control
- Kansas Adjutant General and Homeland Security
- Kansas Insurance Commissioner (Anti-fraud Unit)
- Federal law enforcement officers (Bureau of Citizenship and Immigration Services [BCIS], FBI, International Law Enforcement, Military Police, U.S. Marshall Service, etc.)

In addition, some customers or stakeholders require (both provide and/or use) system-related information and communications and include:

- Kansas Departments of Social and Rehabilitation Services, Transportation, Revenue and Education
- Kansas Lottery, Racing, and Gaming Commissions
- Kansas Department of Health and Environment
- County Commissioners and City Council members
- Federal regulatory agencies (Social Security Administration, Internal Revenue Service, etc.)
- Firearms dealers
- Private background check providers
- Crime Victims
- Housing Authorities
- Elections officials (voter registration)
- Newly enacted concealed carry permit processes

The third groups of customers or stakeholders with a general interest in KCJIS are defined as tertiary customers and include:

- The Legislature
- Other federal and state agencies (not listed above)
- The press and the general public
- Public Defenders/Criminal Defense Bar
- Advocacy groups
- Local government and private associations
- Colleges and universities

## KCJIS CAPABILITIES

KCJIS has been in development since the mid 1990's, going into operation in 1998. The number of authorized users has grown steadily and currently exceeds 8000. KCJIS provides timely, electronic information to authorized users. While there are many types of information available, and a variety of users with diverse needs, the following information highlights some of the current functions and capabilities of KCJIS:

- **Car Stops** – Provides officers with current vehicle registration and drivers license information, BOLO's (Be on the Look Out), felony warrants, misdemeanor warrants, concealed carry holder information, stolen vehicle information, offender registration status, gang file information, protection from abuse order information, some probation/parole status, and missing person information.
    - **Use**: Prior to KCJIS, dispatchers would make multiple inquiries and obtain less information. Today, with a single electronic inquiry a dispatcher will automatically generate thirteen different inquiries to different information sources in Kansas, other states and the federal level. Reponses are normally returned to the officer in less than 10 seconds.

- **Registered Offenders** – Provides most current demographics on registered sex and violent offenders along with photographs as well as a "mapping" function showing the locations of current registered offenders.
    - **Use**: The information concerning registered sexual and other violent offenders is important to citizens as well as criminal justice users, aiding in investigations of current cases while providing general information for the public. With a single query a resident may obtain most currently available public information on any Kansas Registered Offender. Kansas is also a participant in the National Sex Offender Public Registry.

- **Supervised Individuals** – Provides information on individuals in the custody of the Department of Corrections, on parole, or supervised by Community Corrections.
    - **Use**: Information concerning individuals in custody or under supervision is important to officers as well as citizens. Officers conducting investigations are aided by location information of potential suspects. Photographs are also provided to aid in identification. Citizens with access to the Internet have access to this information including photographs.

- **Electronic Fingerprint Identification** – Provides positive identification of an individual in as little as thirty minutes when fingerprints are taken using an electronic fingerprint station, commonly called a "live scan". This identification is provided on matches to all Kansas fingerprint records as well as all other states via the FBI. If there is no match on the fingerprint a new Kansas fingerprint record is created for arrest and booking.
    - **Use:** Fingerprints using "ink and rolled" prints on paper forms take from three days to a week to process after receipt by the KBI to provide positive identification of the individual that was arrested and booked. Today electronic fingerprint stations provide the ability to process fingerprints electronically and obtain a positive identification in minutes. In most cases this means the individual is still in custody when the identification is made, potentially eliminating the situation of releasing a person who should not be released or who is using false identification.

- **Kansas "Hot Files" including Kansas Misdemeanor Warrants, Registered Offenders, and BOLO's (be on the lookout)** – Provides current information on missing persons, outstanding warrants, and other individuals or vehicles of interest. Kansas hot files are searched each time a car stop is made or with individual searches of each database.

- **Use:** Misdemeanor Warrants are now available immediately and electronically from all but 12 counties in Kansas (local choice). This means that an individual who is stopped by law enforcement, and who has an outstanding misdemeanor warrant, will be identified as such at the time of the stop and the warrant can then be executed. This has resulted in warrants being served that otherwise would not have been known to the officer making the car stop. For the local agency this means that individuals are held accountable for their actions and more fines are collected.
- **Use:** BOLO's are short term notices to be on the lookout for a particular person, license tag, vehicle, or anything of interest to law enforcement, such as a general description of a vehicle used in a robbery or hit and run. These items stay active for 72 hours, unless renewed by the issuing agency. This is a very effective means of alerting all law enforcement across the state.

- **Incident Reporting** – Provides a process for reporting criminal offenses from local and state law enforcement. This information is used at the state level and provided to federal agencies.
  - **Use:** Kansas offenses are reported to the KBI either electronically or on paper and accumulated via KIBRS (Kansas Incident Based Reporting System). KIBRS data is then reported to NIBRS (National Incident Based Reporting System). KIBRS can be searched by law enforcement officers and may be used during investigation to search for information such as MO (method of operations), location, personal characteristics, or other demographic information. KIBRS is one of KCJIS' most valuable databases.

- **Computerized Criminal History (CCH)** – Maintains individual electronic criminal history records for each arrest in Kansas to include the arrest, with related prosecution, adjudication, and incarceration, as appropriate. CCH provides electronic criminal history information at differing levels of detail depending on the level of authorization of the user requesting the information.
  - **Use:** Criminal History contains records for each individual with a criminal history in Kansas. That may include just an arrest or may contain a complete cycle from arrest through incarceration. CCH information is used by law enforcement to determine the history of individuals arrested and fingerprinted. Many searches are also conducted using basic information such as name and date of birth, or numerous other demographic characteristics.
  - **Use**: CCH, sometimes referred to as Rap Sheets, are available instantly and electronically to authorized KCJIS users such as law enforcement or court service officers for ongoing investigations or pre-sentence investigations. Rap Sheets provide an immediate criminal history of an individual including arrests, prosecutions (or non-prosecutions), convictions, and incarcerations.
  - **Use**: Electronic criminal histories are available to the public via the Internet for a fee. They are also available for a fee via written request to the KBI. The major difference in the criminal history available to the public is that the history will only contain information regarding cases where there was a conviction, according to Kansas statute.

- **Electronic Network with Statewide Access** – Provides all authorized users with immediate electronic access to needed information based on their level of authorization.
  - **Use**: Each individual user of KCJIS has authorization to access Kansas, interstate, federal, and even international criminal justice information based on their type of agency and their particular level of authorization. KCJIS was developed to allow immediate, electronic access to information that was previously available only via manual or paper methods, and to electronically share information among agencies. Today, no matter where the individual or agency is located, there is access to immediate, electronic information.

- **Online Photographic Identification** – Provides access to photographs instantly and electronically. In 2004 a cooperative effort between the Kansas Department of Revenue and the Kansas Bureau of Investigation

led to the ability for law enforcement officers to obtain DL photos instantly and electronically. Prior to the implementation of online DL photos, significant human intervention was needed to gain access to DL photos. Photographs are also provided by the Department of Corrections for inmates and individuals supervised by Community Corrections.

- **Use:** Photographs are often needed to complete investigations or identifications. In the past this involved phone calls, faxes, usually taking a number of hours to obtain. With KCJIS all drivers' license photos are available immediately online to law enforcement. The database is updated each night by the department of motor vehicles. KCJIS also contains photographs of most individuals who are in the custody of the Department of Corrections, Community Corrections, or are registered offenders.
- **Use**: Electronic driver's license (DL) photographs are often times requested in conjunction with a car stop. All DL photos, current as of the day before, are provided instantly and electronically to authorized law enforcement users of KCJIS.

- **National Crime Information Center (NCIC)** - A national computerized information system dedicated to serving and supporting local, state and federal criminal justice agencies in their mission to uphold the law and protect the public's welfare.
  - **Use:** NCIC allows criminal justice agencies to access and share real time "hot file" information on wanted persons, missing persons, unidentified persons/bodies, stolen property, stolen securities, or identity theft. In addition agencies can share intelligence data on known or suspected violent gang and terrorist gang members, convicted felons on supervised release, sexual offenders, and individuals posing a risk to the lives of the President or other authorized protected governmental officials.
  - **Use:** There is also a criminal history capability in NCIC known as the Interstate Identification Index (III). "Triple I" allows Kansas agencies to search criminal histories of other states and territories thus providing a nationwide criminal history search capability.

- **Highly Secure Network** – KCJIS is a highly secure network operational since 1998 with no known security breaches.
  - **Use**: Keeping criminal justice information secure is critical. KCJIS uses six levels of security, including individual SecureID Tokens. This physical device, which is about the size of a remote car door opener, provides a new identification number every 60 seconds that is used in conjunction with the user identification and password to insure the highest possible level of security. KCJIS security is considered by the FBI to be of the highest quality and is therefore granted access to NCIC files over the Internet. In 1998 Kansas became the first statewide criminal justice system to provide this access to all users.

- **Mobile Terminal Access** – Provides, where available and authorized, wireless access to Mobile Data Terminals (MDT's) such as computers or terminals used in patrol cars by law enforcement.
  - **Use**: Wireless communications with computers mounted in law enforcement patrol cars provides extremely useful information immediately to officers on the street. While many local agencies still use dispatchers to relay information, more agencies are implementing some type of mobile application. KCJIS is fully capable of supporting agencies with wireless communications to authorized mobile laptops, or MDT's. This will continue to be an area of rapid deployment and will require continued investment.

- **Master Search Capability** – Provides the ability to search KCJIS information using a variety of identifiers ranging from FBI and KBI numbers to Social Security Number, drivers license number, date of birth, age,

height, weight, hair and eye color, and race. There are many other identifiers which can be used as search criteria, including vehicle information such as make, model, year and color.

- **Use**: This Master Name Index (MNI) is the key to the general search capability of KCJIS and related databases. MNI is primarily used for name and date of birth searches but the more information that can be provided the more effective the search capability. The KCJIS search capability can search even when the known information is incomplete or inaccurate. The search capability is a very flexible and detailed search mechanism.

Throughout the KCJIS system the ability to send and receive information electronically has created great efficiencies for all agencies and individuals involved. The savings of time and effort provided by the electronic capabilities of KCJIS would be difficult to estimate.

Since 1974
KAAP
Kansas Association of Addiction Professionals

Kansas Association of Addiction Professionals

September 25, 2009

Dear Members of the Commission:

I am Executive Director of the Kansas Association of Addiction Professionals (KAAP) and on behalf of our 400+ member association, we strongly support your work on behalf of all Kansans to address the critical issue of the State's DUI statutes.

The Chair of our Public Policy Committee, Ms. Sarah Riley-Hansen, appeared before the Commission on September 14, 2009, to provide information concerning 2010 legislative efforts to implement a statewide, standardization, and uniform application of addiction counselor licensure standards. DUI Commission member Les Sperling had raised the issue with the Commission at a prior meeting, and Ms. Riley-Hansen appeared at the request of the Commission to inform you all of the issues related to the new legislation.

During Ms. Riley-Hansen's presentation, there was a motion made for the Commission to endorse the concept of addiction counselor legislation during the 2010 legislative session. After some discussion, the Chair deferred the issue to the next meeting on October 1-2, 2009. Those in the addiction treatment field support licensure and would welcome and appreciate any support the Commission may make in its report to the 2010 Legislature.

Those who care about safe and professional substance abuse treatment to carry out the mission of the DUI Commission should welcome licensure. Current treatment and any future changes the Commission recommends will depend at the most fundamental level in trained, skilled, and safe professional treatment to carry out the work with offenders. The legislation, currently being drafted, will address three main concerns:

- There is no single set of qualifications – no standard of education and training
- There is little to no protection for the public
- These multiple credentials are confusing to consumers and even to counselors themselves

Passage of this legislation will accomplish the following goals:

- Improved consumer protection
- Increased consumer confidence
- Advancement and equity with other behavioral health professionals
- Attract and retain a professional workforce

**2655 SW WANAMAKER RD.**
**SUITE G**
**TOPEKA, KS 66614**
**(785) 235-2400**

Those who work in the addiction counselor field are already working hard to secure legislation and welcome any assistance the DUI Commission believes they provide to your cause for a more safe and effective implementation of Kansas DUI laws.

If you have any questions, please do not hesitate to contact me or your local substance abuse treatment provider.

Sincerely,

Claudia G. Larkin
Executive Director

# KANSAS LEGISLATIVE RESEARCH DEPARTMENT

010-West–Statehouse, 300 SW 10th Ave.
Topeka, Kansas 66612-1504
(785) 296-3181 ◆ FAX (785) 296-3824
kslegres@klrd.ks.gov http://www.kslegislature.org/klrd


September 30, 2009

**To**: Kansas DUI Commission

**From**: Athena Andaya, Principal Analyst

**Re**: Motor Vehicle Rental Agreements

I was asked by the Commission to research whether vehicle rental companies rent motor vehicles to individuals required to drive with an ignition interlock device. I contacted Chris Buck, Risk Manager for Enterprise Rent A Car in Kansas City, Kansas (913/383-1515, extension 8467). He advised that they rent cars to individuals with a valid driver's license and that installation or use of an ignition interlock device in their rental vehicle is not covered in their standard contract. He said "the issue is not even on their radar."

It should be noted in Illinois, 625 ILCS 5/6-206.2:

> No person shall knowingly rent, lease, or lend a motor vehicle to a person known to have his or her driving privilege restricted by being prohibited from operating a vehicle not equipped with an ignition interlock device, unless the vehicle is equipped with a functioning ignition interlock device. Any person whose driving privilege is so restricted shall notify any person intending to rent, lease, or loan a motor vehicle to the restricted person of the driving restriction imposed upon him or her.

A person convicted of a violation of this Section is guilty of a Class A misdemeanor.

Arizona (ARS §28-1464) and Maine (29 MRSA §2508) have similar laws with similar penalties. There may be other states that have similar provisions but I was not able to do an exhaustive search at this time.

I hope this information is responsive to your request. If you have further questions, please do not hesitate to contact me.

Office of Revisor of Statutes
300 S.W. 10th Avenue
Suite 010-E, Statehouse
Topeka, Kansas 66612-1592
Telephone (785) 296-2321 FAX (785) 296-6668

MEMORANDUM

To: Members of the Kansas DUI Commission

From: Jason Thompson, Assistant Revisor of Statutes JT

Date: October 2, 2009

Subject: Additional Information on New Mexico DWI Law

This memorandum provides a brief response to 3 questions raised during the Commission meeting on September 15, 2009, concerning New Mexico DWI law.

Judge Ruddick asked about case law on a DWI violation under New Mexico Statute 66-8-102, subsection A, which provides that: "It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state." Attached to this memo is a copy of State v. Neal, 176 P.3d 330 (N.M. Ct. App. 2007) (cert. denied, No. 30,773, Jan. 4, 2008). In the Neal opinion, the New Mexico Court of Appeals discussed this "impaired to the slightest degree" standard, reviewed cases back to 1938 using the standard, and held that there were no constitutional issues with the standard.

Judge Jones asked about ignition interlock for indigent offenders and the payment of costs. Max Strauss, Kansas Ignition Interlock Association, provided some background on the issue and indicated that indigent offenders pay 50% of the cost, with the other 50% coming from fees collected from non-indigent interlock users. Attached to this memo is New Mexico Statute 66-8-102.3, which provides that a fee shall be collected from non-indigent offenders (subsection A), that these fees are placed in the interlock device fund (subsection B), and that moneys in the fund shall be used "to cover the costs of installing and removing and one-half of the cost of leasing ignition interlock devices for indigent people" (subsection C).

Finally, Ed Klumpp asked about how the crime of aggravated DWI under New Mexico Statute 66-8-102, subsection D(3) - a person who "refused to submit to chemical testing, as provided for in the Implied Consent Act, and in the judgment of



DUI Commission 2009
10-2-2009
Attachment 9

the court, based upon evidence of intoxication presented to the court, was under the influence of intoxicating liquor or drugs" - interacts with the implied consent act. Attached to this memo is a copy of State ex rel. Schwartz v. Kennedy, 904 P.2d 1044 (N.M. 1995). In the Kennedy opinion, the New Mexico Supreme Court held that it is not double jeopardy to have an administrative license action and an aggravated DWI prosecution from the same occurrence of chemical test refusal. The opinion discusses many differences between the aggravated DWI crime and the implied consent act in reaching its conclusion.

For further information on these issues, and many other issues in New Mexico DWI law, I recommend consulting the 200-page DWI Benchbook produced by the New Mexico Judicial Education Center (available at http://jec.unm.edu/resources/index.htm).

Court of Appeals of New Mexico.
STATE of New Mexico, Plaintiff-Appellee,
v.
Richard NEAL, Defendant-Appellant.
**No. 26,879.**

Nov. 6, 2007.
Certiorari Denied, No. 30,773,
Jan. 4, 2008.

**Background:** Defendant was convicted in the District Court, Dona Ana County, Stephen Bridgforth, D.J., of driving under the influence of alcohol (DUI) and failure to maintain a traffic lane. Defendant appealed.

**Holdings:** The Court of Appeals, Sutin, C.J., held that:
(1) State did not violate six-month rule by filing nolle prosequi in magistrate court and reinstituting charges in district court;
(2) evidence was sufficient to support DUI conviction;
(3) DUI statute was not impermissibly broadened by case law standard requiring State to merely show that a defendant was impaired "to the slightest degree"; and
(4) impaired-to-the-slightest-degree standard did not lessen State's burden of proof.
Affirmed.

West Headnotes

**[1] Criminal Law ⚿577.14**
110k577.14 Most Cited Cases
State presented a valid reason for filing nolle prosequi in magistrate court and reinstituting, in district court, charge of driving under the influence of alcohol (DUI), and thus, six-month rule was not violated; State filed nolle prosequi less than two months after six-month rule began to run, and after a motion to suppress had been filed at a pretrial hearing and was not ruled on at that time, and district court had stated on the record that it had stated on many occasions that the State should file nolle prosequis in magistrate court within 60 days of the date when the six-month rule began to run. NMRA, Rule 6-506(B)(1).

**[2] Criminal Law ⚿1139**
110k1139 Most Cited Cases
Whether the State properly filed a nolle prosequi is a mixed question of law and fact, which Court of Appeals reviews de novo, as Court focuses on whether there was a valid, legal justification for the nolle prosequi.

**[3] Criminal Law ⚿90(5)**
110k90(5) Most Cited Cases
In misdemeanor driving while intoxicated (DWI) cases, both the magistrate court and the district court have concurrent jurisdiction.

**[4] District and Prosecuting Attorneys ⚿8(6)**
131k8(6) Most Cited Cases
(Formerly 131k8)
Prosecuting attorneys have the discretion to choose in which court to bring a criminal action.

**[5] Criminal Law ⚿303.45**
110k303.45 Most Cited Cases

**[5] Criminal Law ⚿577.14**
110k577.14 Most Cited Cases
For good and sufficient reasons, a criminal prosecution may be terminated and subsequently reinstituted, even if the prosecution is reinstituted in a different court with concurrent jurisdiction; however, when a prosecutor follows such a course of procedure for the purpose of delay or to circumvent operation of the six-month rule, Court of Appeals looks past the form to the substance and hold that the operative date which commenced the running of the period laid down in the rule was the original date in the first prosecution.

**[6] Criminal Law ⚿577.16(8)**
110k577.16(8) Most Cited Cases
If a defendant claims that the State has filed a nolle

prosequi and reinstituted charges in order to circumvent the six-month rule, then the burden is on the State to demonstrate its good faith and show that it did not take its actions to circumvent the six-month rule or for other bad reasons.

**[7] Criminal Law ⚷577.14**
110k577.14 Most Cited Cases
The district court may inquire into the reasons for State's dismissal of criminal charges to resolve the conflict between the policies underlying the six-month rule and the prosecutor's discretion to decide where to prosecute criminal charges and otherwise manage the prosecution; ordinarily, however, filing a nolle prosequi ends the previous proceeding and allows a new six-month period to run provided there was a reasonable basis to file the nolle prosequi, in which case the trial court should grant the dismissal and permit a new six-month rule to run.

**[8] Criminal Law ⚷577.14**
110k577.14 Most Cited Cases
In light of the State's strong interest in enforcing its statutes and managing criminal prosecutions, a new six-month rule period should begin to run when the State files a nolle prosequi following a suppression order by a magistrate court and refiles in district court; if the State can establish that it has acted in order to preserve its right to appeal an order suppressing evidence, which is substantial proof of a material fact in the proceeding, and that it is not doing so for the purpose of delay, the six-month rule should commence six months after the date of arraignment, or waiver of arraignment on the indictment or information.

**[9] Automobiles ⚷355(6)**
48Ak355(6) Most Cited Cases
Evidence was sufficient to support conviction for driving under the influence of alcohol (DUI); officer observed defendant veer over the shoulder line three times, defendant smelled of alcohol and had bloodshot and watery eyes, defendant admitted drinking, defendant showed signs of intoxication during the field sobriety tests, including that he swayed, he did not follow the officer's instructions on any of the tests, he lifted his arms away from his side during the one-leg stand test, and he "failed to maintain the stance" during the walk-and-turn test. West's NMSA § 66-8-102(A).

**[10] Automobiles ⚷332**
48Ak332 Most Cited Cases
Statute criminalizing driving under the influence of alcohol (DUI) was not impermissibly broadened by case law standard requiring State to merely show that a defendant was impaired "to the slightest degree"; 70-year-old Supreme Court decision crafted impaired-to-the-slightest-degree standard, which legislature never deemed necessary to correct. U.S.C.A. Const.Amend. 14; West's NMSA Const. Art. 2, § 18; West's NMSA § 66-8-102(A).

**[11] Criminal Law ⚷1139**
110k1139 Most Cited Cases
Court of Appeals reviews questions of statutory construction and questions of law de novo.

**[12] Automobiles ⚷316**
48Ak316 Most Cited Cases

**[12] Automobiles ⚷355(6)**
48Ak355(6) Most Cited Cases

**[12] Constitutional Law ⚷4509(19)**
92k4509(19) Most Cited Cases
Impaired-to-the-slightest-degree standard by which State was required to show that defendant was driving under the influence of alcohol (DUI), when combined with the alleged lack of objective proof that defendant was affected by alcohol, such as a blood or breath test, did not allow for conviction on less evidence than proof beyond a reasonable doubt, in violation of defendant's due process rights; that there was no scientific proof to measure the level or degree of influence of alcohol did not mean that there was a conviction on less than sufficient evidence to prove guilt beyond a reasonable doubt. U.S.C.A. Const.Amend. 14; West's NMSA § 66-8-102(A).
****332** Gary K. King, Attorney General, Margaret

McLean, Assistant Attorney General, Santa Fe, NM, for Appellee.

Wagner, Ford & Associates, Kenneth R. Wagner, L. Helen Bennett, Albuquerque, NM, for Appellant.

**OPINION**

SUTIN, Chief Judge.

***343** {1} Defendant Richard Neal argues that: (1) the State's nolle prosequi of his charges from magistrate court and subsequent refiling of the charges in district court were done for the improper purpose of avoiding the running of the six-month rule, and thus his charges should be dismissed; and (2) there was insufficient evidence to convict him of driving while intoxicated (DWI). We are not persuaded by either argument and affirm.

**BACKGROUND**

{2} Defendant was charged in magistrate court on November 4, 2005, with aggravated DWI, contrary to NMSA 1978, § 66-8-102 (2005) (amended 2007), failure to maintain a traffic lane, contrary to NMSA 1978, § 66-7-317 (1978), and impeding traffic, contrary to NMSA 1978, § 66-7-305 (2003). On November 16, Defendant filed a waiver of appearance in magistrate court, which commenced the running of the six-month rule in magistrate court, pursuant to Rule 6-506(B)(1) NMRA. During a subsequent pretrial conference, Defendant moved to suppress evidence. Before the magistrate court ruled on the motion, the State filed a nolle prosequi on January 7, 2006, and filed the same charges in district court on January 19, 2006.

{3} When Defendant's bench trial occurred on May 26, 2006, in district court, he moved to dismiss the charges, arguing that the six-month rule began to run on November 16, 2005, in magistrate court and had expired on May 17, 2006. Defendant argued that allowing the State to file a nolle prosequi and refile charges in district court after Defendant filed a motion to suppress allows the State to punish Defendant for lawfully filing a motion to suppress. Defendant also argued that it is more expensive for him and for the courts to allow the procedure used by the State, which is contrary to the purpose of the Rules of Criminal Procedure. *See* Rule 5-101(B) NMRA (stating that it is the purpose of the Rules of Criminal Procedure to eliminate unjustified expense and delay). The district court denied the motion and noted that it had stated many times before that it would dismiss cases where the State ***344 **333** had not filed the nolle prosequi within sixty days of when the rule began to run in magistrate court, which was not the circumstance in the case at hand.

{4} On the merits of the charges, Officer Andy Munoz testified that he observed Defendant's vehicle traveling about five miles an hour below the posted speed limit and he also saw the vehicle cross over the shoulder line three times. The traffic stop occurred at 1:01 a.m. When Officer Munoz pulled Defendant over, he noticed that Defendant smelled of alcohol and had bloodshot, watery eyes. Defendant told the officer that he had a couple of drinks. The officer had Defendant perform standardized field sobriety tests, including the walk-and-turn test and the one-leg stand test. According to the officer, Defendant failed to properly perform the walk-and-turn test: he took six steps instead of the eighteen total steps he was instructed to take, he "failed to maintain the stance" during the instruction phase, and he moved his arms away from his side even though he was instructed to keep his arms down at his side. During the one-leg stand test, according to the officer, Defendant exhibited two signs of intoxication: swaying noticeably and moving his hands away from his side.

{5} The officer arrested Defendant, took him to the police station, and read Defendant the Implied Consent Advisory. Defendant remained silent when asked if he agreed to provide a breath sample, and then requested to read the Implied Consent Advisory. After the officer ascertained from Defendant that he understood what the officer had read, the officer interpreted Defendant's request to read the advisory and his failure to respond to the officer with

"yes" or "no" as a refusal to provide a breath sample and took Defendant to jail.

{6} Defendant also testified, stating that he was surprised when the officer told him that he was pulled over for "minimum speed," that he did not think he was driving impaired, that he had a bad back and he told the officer so, which is why he failed the one-leg stand test, and that he did not remember the walk-and-turn test. Defendant testified that he was calling his wife when he was pulled over, which was likely why he was weaving. Defendant testified that he had consumed maybe four beers the previous day, between 3:30 and 9:00 p.m. Defendant also testified that he did not refuse to take the breath test, but that he told the officer that he did not understand the Implied Consent Advisory and wanted to read it himself.

{7} The district court found Defendant guilty of DWI and failure to maintain a traffic lane. The impeding traffic charge was dismissed. Defendant appeals both the denial of his motion to dismiss on six-month rule grounds and his conviction of DWI on substantial evidence grounds. We address both arguments in this opinion.

## DISCUSSION

### The Prosecutor Presented a Valid Reason for Filing a Nolle Prosequi and Thus, the Six-Month Rule Was Not Violated

[1][2] {8} Whether the State properly filed a nolle prosequi is a mixed question of law and fact, which we review de novo, because we are focusing on whether there was a valid, legal justification for the nolle prosequi. *State v. Kerby*, 2001-NMCA-019, ¶ 15, 130 N.M. 454, 25 P.3d 904.

[3][4][5][6] {9} In misdemeanor DWI cases, both the magistrate court and the district court have concurrent jurisdiction. *State v. Ahasteen*, 1998-NMCA-158, ¶ 21, 126 N.M. 238, 968 P.2d 328. "Prosecuting attorneys ... have the discretion to choose in which court to bring a criminal action." *Id.* ¶ 22. Further, for "good and sufficient reasons, a criminal prosecution may be terminated and subsequently reinstituted," even if the prosecution is reinstituted in a different court with concurrent jurisdiction. *State ex rel. Delgado v. Stanley*, 83 N.M. 626, 627, 495 P.2d 1073, 1074 (1972); *State v. Carreon*, 2006-NMCA-145, ¶ 7, 140 N.M. 779, 149 P.3d 95. However, when a prosecutor follows such a course of procedure for the purpose of delay or to circumvent operation of the six-month rule, we "look past the form to the substance and hold that the operative date which commenced the running of the period laid down in the rule was ... the original [date in the first prosecution]." *Delgado*, 83 N.M. at 627-28, 495 P.2d at 1074-75. If a defendant claims that the State has filed a nolle prosequi***345 **334** and reinstituted charges in order to circumvent the six-month rule, then the burden is on the State "to demonstrate its good faith and show that it did not take its actions to circumvent the six-month rule or for other bad reasons." *State v. Bolton*, 1997-NMCA-007, ¶ 14, 122 N.M. 831, 932 P.2d 1075.

{10} In *State v. Heinsen*, 2005-NMSC-035, ¶ 23, 138 N.M. 441, 121 P.3d 1040, our Supreme Court suggested that prosecutors file a nolle prosequi after an adverse ruling on a motion to suppress in magistrate court. The Court held that the State has no statutory or constitutional ground to appeal a suppression order of a magistrate court, and the Court refused to apply the "practical finality exception to the final judgment rule" because "the State may obtain judicial review of such a suppression order by filing a nolle prosequi to dismiss some or all of the charges in the magistrate court after the suppression order is entered and refiling in the district court for a trial de novo." *Id.* ¶ 1.

[7][8] {11} In *Heinsen*, the State had not actually filed a nolle prosequi, but rather had attempted to appeal from the grant of a motion to suppress in magistrate court. *Id.* ¶¶ 2-3. Stating that "[a]t any time prior to trial, the State may dismiss a case without prejudice by filing a nolle prosequi [,]" *id.*

¶ 23, the Court still recognized that this procedure might result in claims that the six-month rule is being circumvented.

> The district court may inquire into the reasons for the dismissal to resolve the conflict between the policies underlying the six-month rule and the prosecutor's discretion to decide where to prosecute criminal charges and otherwise manage the prosecution. Ordinarily, however, filing a nolle prosequi ends the previous proceeding and allows a new six-month period to run provided there was a reasonable basis to file the nolle prosequi. When the State has such a basis, the trial court should grant the dismissal and permit a new six-month rule to run.
>
> In light of the State's strong interest in enforcing its statutes and managing criminal prosecutions, we hold that a new six-month rule period should begin to run when the State files a nolle prosequi following a suppression order by a magistrate court and refiles in district court. If the State can establish that it has acted in order to preserve its right to appeal an order suppressing evidence, which is substantial proof of a material fact in the proceeding, and that it is not doing so for the purpose of delay, the six-month rule should commence six months after the date of arraignment, or waiver of arraignment[ ] on the indictment or information[,] or under any other applicable provision of Rule 5-604.

*Id.* ¶¶ 26-27 (citations omitted).

{12} In the case at hand, the State argued below that the nolle prosequi was filed under the dictates of *Heinsen,* because Defendant filed a motion to suppress. Defendant argues that *Heinsen* does not apply because the magistrate court had not granted Defendant's motion to suppress at the time that the State filed its nolle prosequi. Defendant argues that instead, the State dismissed the original proceeding after Defendant filed his motion to dismiss because at that point it became clear to the State that Defendant refused to plead guilty to the charges, making this case more akin to *Carreon. See Carreon,* 2006-NMCA-145, ¶ 1, 140 N.M. 779, 149 P.3d 95 (holding that the six-month rule was violated where the State filed a nolle prosequi about three weeks before the six-month rule ran and refiled the charges in district court based on a policy of the district attorney's office to dismiss and refile such DWI cases when it was determined that the case would not settle). Defendant also argues that the State's motive was to punish Defendant for filing a motion to suppress.

{13} In response to Defendant's arguments regarding *Carreon,* we find the case at hand distinguishable for several reasons. In this case, the State argued a reason for the nolle prosequi which had been specifically suggested by our Supreme Court, rather than a district attorney's policy of filing a nolle prosequi when it became clear that a case would not settle. *See id.* ¶ 10 (stating that this Court would "not comment on the propriety of the [State's] policy"). Further, while the State had claimed in *Carreon* that it did not become clear that the defendant ***346 **335** would not plead guilty in magistrate court until the date upon which it filed the nolle prosequi, there was no evidence in the record of any attempt to negotiate a plea during the prior five months. *Id.* ¶ 9. Additionally, and equally as significant, the State in *Carreon* waited until less than a month from the expiration of the six-month rule to file the nolle prosequi in magistrate court. *Id.* ¶¶ 1, 9. In the current case, the State filed the nolle prosequi less than two months after the six-month rule began to run, and after a motion to suppress had been filed at a pretrial hearing and was not ruled on at that time. Given that the district court stated on the record that it had stated on many occasions that the State should file nolle prosequis in magistrate court within sixty days of the date when the six-month rule began to run, and given that the magistrate court had not yet ruled on Defendant's motion to suppress, the State had a reason to file the nolle prosequi when it did because it was nearing sixty days from the date that the six-month rule began to run. These distinctions are significant, especially when one also considers *Heinsen.*

{14} We recognize, as Defendant points out, that there is a distinction between the present case and the facts in *Heinsen,* because in this case the magistrate court had not yet ruled on Defendant's motion to suppress, and thus, arguably, the procedure in this case was not used to preserve an appeal from such an adverse ruling. *Cf. Heinsen,* 2005-NMSC-035, ¶ 27, 138 N.M. 441, 121 P.3d 1040 (holding that a new six-month period begins to run after a nolle prosequi and new charges are filed "following a suppression order by a magistrate court," and stating that the Supreme Court construes Rule 5-604 to facilitate the State's challenge to a suppression order because it cannot create a right of appeal). Nonetheless, in the end, we find this distinction to be insignificant. At the point at which a motion to suppress is filed, the State is faced with a real possibility that it will have to nolle pros and refile the charges in district court, in which case filing the nolle prosequi before the motion to suppress is ruled on ultimately speeds up the criminal process, at least for defendants with meritorious grounds for suppression. Thus, the purpose behind the six-month rule, to avoid protracted prosecutions, is met when the State files a nolle prosequi before the motion is ruled on. As stated in *Bolton,* "[p]rosecutors may ordinarily do what they wish[,] unless there is a bad reason for what they do, in which event the court will supervise it in a way that might prevent the prosecution." 1997-NMCA-007, ¶ 11, 122 N.M. 831, 932 P.2d 1075. Given that our Supreme Court has decreed that the State has a valid, legal justification for filing a nolle prosequi and refiling charges in district court when the magistrate court suppresses evidence, we cannot say that the same procedure after a motion to suppress, but before a potential suppression order, transforms the State's motive into a "bad" or invalid one.

{15} Defendant also argues that allowing this procedure is contrary to the purposes of the Rules of Criminal Procedure, which "are intended to provide for the just determination of criminal proceedings[, and] shall be construed to secure simplicity in procedure, fairness in administration[,] and the elimination of unjustifiable expense and delay." Rule 5-101(B). Defendant argues that this procedure imposes extra expenses on both him and the district court. We understand and sympathize with Defendant's plight, but we read *Heinsen* to say that these expenses, as well as the delay, were not unjustifiable under the Rule 5-101(B) rubric. *See Heinsen,* 2005-NMSC-035, ¶ 28, 138 N.M. 441, 121 P.3d 1040 (recognizing that "[w]hile this procedure may be less convenient than a direct appeal, it is consistent with our constitution, statutes, and rules").

{16} Defendant further argues that under this procedure, the State could wait until just before the six-month rule ran in magistrate court to file a nolle prosequi and refile charges in the district court and then get an entirely new six-month period within which to bring charges, "merely because the defendant files a motion." While this situation arguably could occur, for example, if a defendant filed a motion to suppress toward the end of the six-month period or if the judge did not rule on the motion for a protracted period of time, we do not envision it being a common occurrence. Moreover, if there ***347 **336** were grounds to claim that the State did somehow file a nolle prosequi for an improper reason, even though it did so in response to a motion to suppress, we do not read *Heinsen* to preclude an analysis of "the conflict between the policies underlying the six-month rule and the prosecutor's discretion." *Id.* ¶ 26.

{17} Finally, Defendant argues that he loses one level of appeal when the State is allowed to nolle pros in magistrate court and refile in district court. However, we rejected this argument in *Ahasteen,* 1998-NMCA-158, ¶ 27, 126 N.M. 238, 968 P.2d 328. "Defendant's constitutional right to ... an appeal is satisfied by allowing him to appeal a conviction or adverse ruling to this Court." *Id.*

{18} This case is controlled by *Heinsen.* We are not persuaded that the State lacked a valid reason for filing the nolle prosequi in magistrate court and refiling the charges in district court. In this case, the



9-8

State, in essence, was preserving its right to appeal a suppression order. Thus, a new six-month period began to run in the district court and there was no violation of the six-month rule in this case.

**There Was Sufficient Evidence to Support the DWI Conviction**

[9] {19} In reviewing a claim of insufficient evidence, we must determine whether there is substantial evidence of either a direct or a circumstantial nature to support a verdict of guilt beyond a reasonable doubt with respect to every element essential to conviction. Substantial evidence is that which is acceptable to a reasonable mind as adequate support for a conclusion. We review the evidence in the light most favorable to the State, resolving all conflicts and indulging all permissible inferences to uphold a verdict of conviction. The test is not whether substantial evidence would support an acquittal, but whether substantial evidence supports the verdict actually rendered. In analyzing the evidence under that standard, we disregard conflicts in the evidence that would have supported a contrary verdict.

*State v. Sanchez,* 2001-NMCA-109, ¶ 14, 131 N.M. 355, 36 P.3d 446 (internal quotation marks and citations omitted).

{20} When reviewing the sufficiency of the evidence, "we do not reweigh the evidence or substitute our judgment for that of the [factfinder]." *State v. Neatherlin,* 2007-NMCA-035, ¶ 8, 141 N.M. 328, 154 P.3d 703. "Evidence of a direct or circumstantial nature is sufficient if a reasonable mind might accept [the evidence] as adequate to support a conclusion." *State v. Soto,* 2007-NMCA-077, ¶ 11, 142 N.M. 32, 162 P.3d 187 (alteration in original) (internal quotation marks and citation omitted), *cert. denied,* 2007-NMCERT-006, 142 N.M. 15, 162 P.3d 170. Whether there is sufficient evidence to support a conviction is a question of law which we review de novo. *Neatherlin,* 2007-NMCA-035, ¶ 8, 141 N.M. 328, 154 P.3d 703.

{21} Defendant was convicted of DWI under Section 66-8-102(A), which reads: "It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state." Our case law and our Supreme Court's Uniform Jury Instruction have phrased this statutory language as follows:

> A person is under the influence of intoxicating liquor if "as a result of drinking liquor [the driver] was less able to the slightest degree, either mentally or physically, or both, to exercise the clear judgment and steady hand necessary to handle a vehicle with safety to [the driver] and the public."

*Sanchez,* 2001-NMCA-109, ¶ 6, 131 N.M. 355, 36 P.3d 446 (alterations in original) (quoting UJI 14-4501 NMRA). The foregoing standard has the shorthand nomenclature of "impaired to the slightest degree."

{22} We have upheld convictions under the foregoing standard in cases analogous to the one at hand. *See Soto,* 2007-NMCA-077, ¶¶ 3-4, 34, 142 N.M. 32, 162 P.3d 187 (holding that there was sufficient evidence of DWI under the impaired-to-the-slightest-degree standard even though the officers observed no irregular driving, the defendant's behavior was not irregular, he was cooperative, and no field sobriety tests were conducted, given that the defendant "had red, bloodshot, and ***348 **337** watery eyes, as well as slurred speech and a very strong odor of alcohol on his breath," the defendant admitted drinking, the officers observed several empty cans of beer where the defendant had been, and the officers testified that he was definitely intoxicated); *State v. Gutierrez,* 1996-NMCA-001, ¶ 4, 121 N.M. 191, 909 P.2d 751 (holding that there was sufficient evidence to convict under Section 66-8-102(A) where "[the d]efendant was weaving into other traffic lanes; [the d]efendant narrowly missed hitting a truck; [the d]efendant smelled of alcohol and had bloodshot, watery eyes; [the d]efendant failed three field sobriety tests; [the d]efendant admitted drinking alcohol and smoking marijuana; and the officers believed that [the d]efendant was intoxicated"); *State v. Ruiz,* 120 N.M. 534, 535, 540, 903 P.2d 845, 846, 851

(Ct.App.1995) (upholding the district court's conclusion that there was sufficient evidence of DWI under the impaired-to-the-slightest-degree standard where the defendant's vehicle weaved out of its lane, the defendant had watery, bloodshot eyes, smelled of alcohol, had slurred speech, admitted drinking, and performed field sobriety tests with mixed results). In *Sanchez,* this Court affirmed a conviction where the proof that the defendant was under the influence of intoxicating liquor was "marginal at best." *Sanchez,* 2001- NMCA-109, ¶ 16, 131 N.M. 355, 36 P.3d 446.

[10] {23} Defendant argues, however, that the standard that the State only be required to prove that a defendant is impaired "to the slightest degree" is not found in the statute and asserts that the statute has been impermissibly broadened by judicial interpretation of the statute. Defendant argues that this standard allows conviction on less proof than that required for a conviction of DWI beyond a reasonable doubt. Defendant further argues that the wording in the statute and judicial interpretation of that language to mean "impaired to the slightest degree" creates an ambiguity and fails to provide the fair warning and guidance demanded of criminal laws under the Due Process Clauses of the United States and New Mexico Constitutions. U.S. Const. amends. VI, XIV; N.M. Const. art. II, § 18.

[11] {24} The particular problem Defendant has with the interpretation of the statutory language is that the factfinder is permitted to engage in ad hoc determinations as to a degree of impairment that allow standardless determinations of guilt, including determinations based on the unacceptable notion that anyone who takes a drink is impaired. These concerns, Defendant argues, require application of the rule of lenity and constitutionally require a fairer and more objective standard for the factfinder--a statute that gives a more narrow and specific warning of criminal behavior, together with a requirement of objective measurements of proof as to a degree of influence. Defendant cites *State v. Ramos,* 116 N.M. 123, 127, 860 P.2d 765, 769 (Ct.App.1993), for the general proposition, with which we do not disagree, that "a statute must provide fair and adequate warning to a person of ordinary intelligence of the conduct which is prohibited." However, Defendant does not argue that the statute itself is unconstitutionally vague or impermissibly broad, only that our cases have impermissibly broadened the statute. We review questions of statutory construction and questions of law de novo. *State v. Romero,* 2006-NMSC-039, ¶ 6, 140 N.M. 299, 142 P.3d 887, *cert. denied,* 549 U.S. 1265, 127 S.Ct. 1494, 167 L.Ed.2d 228 (2007); *State v. Duran,* 2005- NMSC-034, ¶ 19, 138 N.M. 414, 120 P.3d 836.

{25} The impaired-to-the-slightest-degree standard can be traced back to 1938 in New Mexico, when our Supreme Court construed for the first time a newly enacted statute forbidding driving while " 'under the influence of intoxicating liquor.' " *State v. Sisneros,* 42 N.M. 500, 506, 82 P.2d 274, 276 (1938) (quoting Section 11-802, N.M. Comp. Sts.1929). Prior to 1929, the only statute aimed at prohibiting comparable behavior forbade any person from driving " 'while in an intoxicated condition.' " *Id.* at 506, 82 P.2d at 277 (quoting Section 11-226, N.M. Comp. Sts.1929). The Court held that "[n]o doubt the difficulty of establishing intoxication caused the [L]egislature of 1929 to enact Sec. 11-802," which only required proof of the influence of intoxicating liquor. *Id.* The Court relied on the reasoning from a case from ***349 **338** another jurisdiction analyzing a similar change in statutes, which rejected an argument close to that of Defendant in the present case.

> It is appellant's claim that this means in effect under the influence of intoxicating liquor to the extent of impairing to an appreciable degree his ability to operate his car in the manner that an ordinarily prudent and cautious man, in the full possession of his faculties and using reasonable care, would operate a similar vehicle under similar conditions. It is the contention of the state, on the other hand, that the law means any influence of intoxicating liquor, however slight, and the tri-

al court instructed the jury on this latter theory.

....

The Penal Code of 1913 ... prohibited any person who is intoxicated from driving a motor vehicle.... In 1927 ... the language was changed so that it read under the influence of intoxicating liquor. Our Legislature, it will be seen, required at first that the offender should be under the influence of liquor to the point of actual intoxication, but evidently became convinced that many persons who had not yet arrived at that state were a menace to public safety when driving a motor vehicle, and in order so far as possible to remove danger from an admixture of liquor and gasoline provided that any person influenced by the former, without specifying the extent to which such influence must go, must himself abstain from using the latter in a motor vehicle.

It is a truism that a person who is even to the slightest extent under the influence of liquor, in the common and well-understood acceptation of the term, is to some degree at least less able, either mentally or physically or both, to exercise the clear judgment and steady hand necessary to handle as powerful and dangerous a mechanism as a modern automobile with safety to himself and the public. * * * The Legislature has placed no limitation on the extent of the influence required, nor can we add to their language.

Nor will it follow, as appellant seems to fear, that every man who has taken a drink falls within the ban of the statute. If that drink does not cause him to be influenced in the ordinary and well-understood meaning of the term, he is not affected by the law.

*Id.* at 506-07, 82 P.2d at 277-78 (quoting *Hasten v. State*, 35 Ariz. 427, 280 P. 670 (1929)) (internal quotation marks omitted). Agreeing with this analysis in *Hasten,* our Supreme Court defined "under the influence" to mean "to the slightest degree, ... less able, either mentally or physically or both, to exercise the clear judgment and steady hand necessary to handle as powerful and dangerous a mechanism as a modern automobile with safety to himself and the public." *Id.* at 507, 82 P.2d at 278 (internal quotation marks and citation omitted).

{26} First, we note that it was our Supreme Court which construed "under the influence" in *Sisneros,* and thus we must follow that construction. *See State v. Carlos,* 2006-NMCA-141, ¶ 17, 140 N.M. 688, 147 P.3d 897 (stating that this Court follows applicable precedents of our Supreme Court). Further, we determine that the language "under the influence of intoxicating liquor" in Section 66-8-102(A) gives fair and adequate notice that the standard first set forth in *Sisneros* is the proper measure for "under the influence." The statute gives notice, according to the plain meaning of the word "influence," that the Legislature intends to criminalize a condition less than intoxication, but "influenced" to any degree by alcohol, no matter how slight. *See Webster's New College Dictionary* 569 (1995) (defining the verb "influence" as "[t]o cause a change in the character, thought, or action of"). We point out that the Legislature has not amended Section 66-8-102(A) after our Supreme Court construed "under the influence" in *Sisneros,* which further suggests that *Sisneros* properly construed the Legislature's intent. *See State Farm Mut. Auto. Ins. Co. v. Progressive Specialty Ins. Co.,* 2001-NMCA-101, ¶ 17, 131 N.M. 304, 35 P.3d 309 (relying to some degree on the Legislature's lack of an amendment, after a judicial interpretation of a statute, to bolster the conclusion that the interpretation was correct). Thus, the judicial formulation of less able, to the slightest ***350 **339** degree, to exercise the clear judgment and steady hand necessary to handle a vehicle with safety is a proper construction of Section 66-8-102(A). We disagree with Defendant's argument that the judicial interpretation of the statute is more broad than the Legislature intended.

[12] {27} Defendant also complains that the "slightest degree" interpretation of Section 66-8-102(A), when combined with the lack of objective proof that Defendant was affected by alcohol, such as a blood or breath test, allows a conviction on less evidence than proof beyond a reasonable doubt,

thereby violating Defendant's due process rights. We reject this argument. The Legislature intended to allow a conviction under these circumstances, even without a breath or blood alcohol content test, and nothing about allowing a conviction under these circumstances lowers the standard of proof. The lack of blood or breath test results does not invalidate a conviction under Section 66-8-102(A). Scientific proof of Defendant's blood or breath alcohol content is not required. The Legislature criminalized driving a vehicle within the State of New Mexico when the driver "is under the influence of intoxicating liquor." § 66-8-102(A). The Legislature was not concerned with the amount of alcohol in the defendant's body when enacting Subsection (A); rather, it was concerned with the effect or influence of the alcohol on the defendant's ability to drive. That there was no scientific proof or, as Defendant puts it, "objective proof" to measure the level or degree of influence of alcohol does not mean that there was a conviction on less than sufficient evidence to prove guilt beyond a reasonable doubt. Given the testimony as to Defendant's driving behavior, physical condition, admission of drinking, and performance on the field sobriety tests, the factfinder could rely on common knowledge and experience to determine whether Defendant was under the influence of alcohol. *See State v. Baldwin,* 2001-NMCA-063, ¶ 16, 130 N.M. 705, 30 P.3d 394 (pointing out that a factfinder can rely on "human experience" in deciding whether a defendant was under the influence and could "drive an automobile in a prudent manner"); *Sanchez v. Wiley,* 1997-NMCA- 105, ¶¶ 2, 19, 124 N.M. 47, 946 P.2d 650 (holding that a witness could rely on his knowledge in testifying that the defendant was "drunk"). We are not persuaded by Defendant's argument that the impaired-to-the-slightest-degree standard combined with the fact that no "objective" evidence of the effect alcohol is having on driving is required to prove that Defendant was "under the influence" of alcohol violates due process or allows a conviction on less than proof beyond a reasonable doubt.

{28} We are also unpersuaded that the impaired-to-the-slightest-degree standard is so broad as to fail to give fair and adequate notice to a person of what constitutes a violation of the statute. Little question exists in our mind that drivers are well aware that the risk of a DWI investigation and arrest increases when the driver's breath smells of alcohol, or when the driver has bloodshot, watery eyes. Particularly when combined with driving behavior indicating unsafe driving or violation of driving laws, we believe that drivers are well aware that these conditions place the driver at substantial risk of a DWI investigation and arrest. While it may well be true that not everyone who takes a drink is impaired to a culpable degree, unless and until the Legislature changes the wording of Section 66-8-102(A), the statute and case law permit a factfinder to consider established indicators of impaired driving as shown by the State here. *See Sisneros,* 42 N.M. at 506-07, 82 P.2d at 277-78 (relying on *Hasten,* stating that "[a] person who has taken a drink of intoxicating liquor is not necessarily under its influence"). We are not prepared to invalidate the *Sisneros* standard on the ground that a driver who has consumed intoxicating liquor may not readily recognize the point at which his or her ability to drive is affected or impaired to a culpable degree. Further, we see no constitutional due process bar, and Defendant has not cited even remotely analogous authority which would indicate that any such bar exists that would forbid a factfinder from determining DWI guilt under Section 66- 8-102(A) and the *Sisneros* standard based on indicators of impaired driving. Nor do we see an ambiguity that would require application of the rule of lenity. *See* ***351**340State v. Ogden,* 118 N.M. 234, 242, 880 P.2d 845, 853 (1994) ("The rule of lenity counsels that criminal statutes should be interpreted in the defendant's favor when insurmountable ambiguity persists regarding the intended scope of a criminal statute.").

{29} We hold that sufficient evidence supports the verdict. Disregarding the contrary evidence, the evidence which supports a reasonable inference that

Defendant was under the influence of alcohol includes that the officer observed Defendant veer over the shoulder line three times, Defendant smelled of alcohol and had bloodshot and watery eyes, Defendant admitted drinking, Defendant showed signs of intoxication during the field sobriety tests, including that he swayed, he did not follow the officer's instructions on any of the tests, he lifted his arms away from his side during the one-leg stand test, and he "failed to maintain the stance" during the walk-and-turn test, and the officer believed Defendant was under the influence of alcohol. Additionally, even though Defendant testified that he did not refuse to take any test, the officer testified that Defendant said he did not want a DWI on his record, and the district court could have inferred from this statement a consciousness of guilt. The court could have disregarded Defendant's testimony that he weaved while driving because he was distracted by his cell phone, as well as his testimony that he was not impaired and that his performance on at least one of the field sobriety tests was affected by his back condition. Based on the foregoing, we conclude that Defendant's conviction is based on substantial evidence that Defendant was under the influence of intoxicating liquor while driving.

**CONCLUSION**

{30} Defendant's convictions for DWI and failure to maintain a traffic lane are affirmed.

{31} **IT IS SO ORDERED.**

WE CONCUR: A. JOSEPH ALARID and MICHAEL E. VIGIL, Judges.

143 N.M. 341, 176 P.3d 330, 2008-NMCA-008

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**66-8-102.3. Imposing a fee; interlock device fund created.**

A. A fee is imposed on a person convicted of driving while under the influence of intoxicating liquor or drugs pursuant to Section 66-8-102 NMSA 1978 or adjudicated as a delinquent on the basis of Subparagraph (a) of Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978 or a person whose driver's license is revoked pursuant to the provisions of the Implied Consent Act [66-8-105 NMSA 1978], in an amount determined by rule of the traffic safety bureau of the department of transportation not to exceed one hundred dollars ($100) but not less than fifty dollars ($50.00) for each year the person is required to operate only vehicles equipped with an ignition interlock device in order to ensure the solvency of the interlock device fund. The fee shall not be imposed on an indigent person. The fee imposed by this subsection shall be collected by the vendor who provides an ignition interlock device to the person. The vendor shall remit the fees collected on a quarterly basis to the traffic safety bureau of the department of transportation.

B. The "interlock device fund" is created in the state treasury. The fee imposed pursuant to Subsection A of this section shall be distributed to the fund by the traffic safety bureau of the department of transportation.

C. All money in the interlock device fund is appropriated to the traffic safety bureau of the department of transportation to cover the costs of installing and removing and one-half of the cost of leasing ignition interlock devices for indigent people who are required, pursuant to convictions under Section 66-8-102 NMSA 1978 or adjudications on the basis of Subparagraph (a) of Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978 or driver's license revocations pursuant to the provisions of the Implied Consent Act or as a condition of parole, to install those devices in their vehicles. Indigency shall be determined by the court, the parole board or a probation and parole officer.

D. Any balance remaining in the interlock device fund shall not revert to the general fund at the end of any fiscal year.

E. The interlock device fund shall be administered by the traffic safety bureau of the department of transportation. No more than five percent of the money in the interlock device fund in any fiscal year shall be expended by the traffic safety bureau of the department of transportation for the purpose of administering the fund.

Supreme Court of New Mexico.
STATE of New Mexico, ex rel., Robert M. SCHWARTZ, Second Judicial District Attorney, Petitioner,
v.
Hon. Roderick T. KENNEDY, Judge of the Metropolitan Court, Respondent,
and
Greg Baca and Ray Holguin, Real Parties in Interest.
**No. 22904.**

Oct. 18, 1995.

Following administrative revocation of defendants' driver's licenses for failing or refusing blood-alcohol content tests, the Bernallilo County, Metropolitan Court, Roderick T. Kennedy, J., dismissed aggravated driving while intoxicated (DWI) charges against them on double jeopardy grounds. State petitioned for writ of superintending control directing trial judge to withdraw dismissals of charges. The Supreme Court, Franchini, J., held that: (1) question of whether state was barred from prosecuting an individual for DWI once that individual had been subjected to administrative hearing for driver's license revocation based on same offense was one of great public importance requiring the use of Supreme Court's power of superintending control; (2) administrative license revocation hearings and criminal prosecutions for DWI were separate proceedings for purposes of double jeopardy analysis; and (3) for both defendants, the conduct precipitating the separate proceedings consisted of the same offense; but (4) driver's license revocation under Implied Consent Act is not punishment for purposes of double jeopardy clause.

Petition for writ of superintending control granted.

West Headnotes

**[1] Courts 106 ⇐207.1**

106 Courts
106VI Courts of Appellate Jurisdiction
106VI(A) Grounds of Jurisdiction in General
106k207 Issuance of Prerogative or Remedial Writs
106k207.1 k. In General. Most Cited Cases

Question of whether the state is barred on double jeopardy grounds from prosecuting an individual for driving while intoxicated (DWI) once the individual has been subjected to an administrative hearing for driver's license revocation based on same offense as criminal charge is one of great importance requiring that Supreme Court use its power of superintending control. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15, art. 6, § 3; NMSA 1978, §§ 66-8-102, subd. D, 66-8-112, subd. F.

**[2] Courts 106 ⇐207.1**

106 Courts
106VI Courts of Appellate Jurisdiction
106VI(A) Grounds of Jurisdiction in General
106k207 Issuance of Prerogative or Remedial Writs
106k207.1 k. In General. Most Cited Cases

Supreme Court's power of superintending control is the power to control course of ordinary litigation in inferior courts. Const. Art. 6, § 3.

**[3] Courts 106 ⇐207.1**

106 Courts
106VI Courts of Appellate Jurisdiction
106VI(A) Grounds of Jurisdiction in General
106k207 Issuance of Prerogative or Remedial Writs
106k207.1 k. In General. Most Cited Cases

Supreme Court's power of superintending control is an extraordinary power, hampered by no specific rules or means for its exercise, so general and comprehensive that its complete and full extent and use



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have not been fully known and exemplified; it is unlimited, being bounded only by the exigencies which call for its exercise. Const. Art. 6, § 3.

**[4] Courts 106 ⚿207.1**

106 Courts
106VI Courts of Appellate Jurisdiction
106VI(A) Grounds of Jurisdiction in General
106k207 Issuance of Prerogative or Remedial Writs
106k207.1 k. In General. Most Cited Cases

Supreme Court has traditionally limited its exercise of power of superintending control to exceptional circumstances, such as cases in which the remedy by appeal seems wholly inadequate or where otherwise necessary to prevent irreparable mischief, great, extraordinary, or exceptional hardship, or costly delays and unusual burdens of expense. Const. Art. 6, § 3.

**[5] Courts 106 ⚿207.1**

106 Courts
106VI Courts of Appellate Jurisdiction
106VI(A) Grounds of Jurisdiction in General
106k207 Issuance of Prerogative or Remedial Writs
106k207.1 k. In General. Most Cited Cases

Supreme Court may exercise its power of superintending control even when there is a remedy by appeal, where it is deemed to be in the public interest to settle the question involved at the earliest moment. Const. Art. 6, § 3.

**[6] Double Jeopardy 135H ⚿24**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk24 k. Administrative or Non-Judicial Proceedings; Prison Discipline. Most Cited Cases

Driver's license revocations pursuant to Implied Consent Act, based on conduct of either failing blood-alcohol test or refusing to take one, are not "punishment" for purposes of double jeopardy analysis, and thus do not prohibit subsequent prosecution, even though they will have some deterrent effect on drunk drivers; such revocations serve legitimate nonpunitive goal of protecting public from drunk drivers and are therefore remedial, not punitive. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15; NMSA 1978, §§ 66-8-107, subd. A, 66-8-112, subd. F.

**[7] Double Jeopardy 135H ⚿2**

135H Double Jeopardy
135HI In General
135Hk2 k. Constitutional and Statutory Provisions. Most Cited Cases

Due to the similarity of the federal and New Mexico double jeopardy clauses, Supreme Court has consistently construed the state clause as providing the same protections offered by the federal clause. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15.

**[8] Double Jeopardy 135H ⚿1**

135H Double Jeopardy
135HI In General
135Hk1 k. In General. Most Cited Cases

Double Jeopardy Clause protects against three distinct abuses: a second prosecution for the same offense after acquittal, second prosecution for same offense after conviction, and multiple punishments for same offense. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15.

**[9] Double Jeopardy 135H ⚿28**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk28 k. Multiple Sentences or Punishments. Most Cited Cases

Double Jeopardy Clause not only protects against imposition of two punishments for same offense, but also protects criminal defendants against being twice placed in jeopardy for such punishment.

U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15.

**[10] Double Jeopardy 135H ⚿26**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk26 k. Simultaneous Proceedings; Multiplicity. Most Cited Cases

**Double Jeopardy 135H ⚿28**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk28 k. Multiple Sentences or Punishments. Most Cited Cases
Double Jeopardy Clause protects the accused from multiple punishments in separate proceedings for same offense. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15.

**[11] Double Jeopardy 135H ⚿28**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk28 k. Multiple Sentences or Punishments. Most Cited Cases
Multiple punishment analysis under Double Jeopardy Clause entails three factors: whether state subjected defendant to different proceedings, whether conduct precipitating separate proceedings consisted of one offense or two offenses, and whether the penalties in each of the proceedings may be considered "punishment" for purposes of Double Jeopardy Clause. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15.

**[12] Double Jeopardy 135H ⚿24**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk24 k. Administrative or Non-Judicial Proceedings; Prison Discipline. Most Cited Cases
For purposes of multiple punishment analysis under Double Jeopardy Clause, an administrative proceeding to revoke a person's driver's license for refusal to submit to a chemical test is entirely separate and distinct from the proceeding to determine guilt or innocence as to the crime of driving while intoxicated (DWI). U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15.

**[13] Double Jeopardy 135H ⚿21**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk21 k. In General. Most Cited Cases

**Double Jeopardy 135H ⚿23**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk23 k. Civil or Criminal Nature. Most Cited Cases
Parallel actions, instituted at about the same time and involving the same criminal conduct, constitute separate proceedings for double jeopardy purposes; thus, a civil action aimed at exacting at exacting a penalty and a criminal prosecution arising out of the same offense constitute two separate proceedings when pursued separately and concluded at different times. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15.

**[14] Double Jeopardy 135H ⚿135**

135H Double Jeopardy
135HV Offenses, Elements, and Issues Foreclosed
135HV(A) In General
135Hk132 Identity of Offenses; Same Offense
135Hk135 k. Proof of Fact Not Required for Other Offense. Most Cited Cases
The *Blockburger* test to determine whether two statutory violations constitute two offenses or only one for double jeopardy purposes is whether each provision requires proof of a fact the other does



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not; if each statute requires proof of an element not contained in the other, the offenses are two separate crimes and double jeopardy does not bar multiple punishment. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15.

**[15] Double Jeopardy 135H ⚿24**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk24 k. Administrative or Non-Judicial Proceedings; Prison Discipline. Most Cited Cases
Statute setting out elements necessary for revoking driver's license based on refusal to submit to chemical test for intoxication does not require proof of an element not contained in statute defining aggravated driving while intoxicated (DWI) charge; thus, these statutes define the same offense for purposes of double jeopardy analysis. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15; NMSA 1978, §§ 66-8-102, subd. D(3), 66-8-112, subd. F.

**[16] Double Jeopardy 135H ⚿24**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk24 k. Administrative or Non-Judicial Proceedings; Prison Discipline. Most Cited Cases
Statute setting out elements necessary for revoking driver's license based on failure of blood-alcohol content test does not require proof of an element not contained in statute defining aggravated driving while intoxicated (DWI) charge; thus, these statutes define the same offense for purposes of double jeopardy analysis. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15; NMSA 1978, §§ 66-8-102, subd. D(1), 66-8-112, subd. F.

**[17] Double Jeopardy 135H ⚿23**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk23 k. Civil or Criminal Nature. Most Cited Cases
Traditionally, for purposes of double jeopardy analysis, jeopardy does not attach in proceedings in which only a civil penalty can be imposed, because the risk to which the Double Jeopardy Clause refers is not present in proceedings that are not essentially criminal; thus, a legislature may impose both a criminal and a civil sanction in respect to the same act or omission without violating Double Jeopardy Clause. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15.

**[18] Double Jeopardy 135H ⚿23**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk23 k. Civil or Criminal Nature. Most Cited Cases
Double jeopardy analysis based on distinction between criminal and civil proceedings is not well suited to the context of humane interests safeguarded by Double Jeopardy Clause's proscription of multiple punishments; the determination whether a given civil sanction constitutes "punishment" in the relevant sense requires a particularized assessment of the penalty imposed and the purposes that penalty may be fairly said to serve. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15.

**[19] Double Jeopardy 135H ⚿23**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk23 k. Civil or Criminal Nature. Most Cited Cases
A civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is "punishment" for purposes of double jeopardy analysis; therefore, a defendant who already has been punished in a criminal prosecution may not be subjected to an additional civil sanction to the extent that the second sanction may not fairly be characterized as remedial, but only as

a deterrent or as retribution. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15.

**[20] Double Jeopardy 135H ⚷21**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk21 k. In General. Most Cited Cases

**Double Jeopardy 135H ⚷24**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk24 k. Administrative or Non-Judicial Proceedings; Prison Discipline. Most Cited Cases

**Double Jeopardy 135H ⚷25**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk25 k. Fines, Penalties, and Forfeitures. Most Cited Cases
The *Halper* proportionality or "compensation for loss" analysis appears to permit a finding of double jeopardy only in those rare cases in which the government imposes a criminal penalty and a civil monetary penalty that is not rationally related to the government's loss; the test is inappropriate for determining the punitive nature of a tax or determining whether a nonmonetary civil penalty such as an administrative license revocation is punishment for double jeopardy purposes. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15.

**[21] Double Jeopardy 135H ⚷23**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk23 k. Civil or Criminal Nature. Most Cited Cases

**Double Jeopardy 135H ⚷24**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk24 k. Administrative or Non-Judicial Proceedings; Prison Discipline. Most Cited Cases
In determining what purposes are served by civil sanctions against motorists who fail blood-alcohol content test or refuse to take it, in connection with double jeopardy analysis, Supreme Court evaluates the government's purpose in enacting the legislation, rather than the effect of the sanctions on the defendant. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15; NMSA 1978, §§ 66-5-33.1, 66-8-111, subds. B, C(1), 66-8-112, subd. F.

**[22] Double Jeopardy 135H ⚷22**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk22 k. Particular Proceedings. Most Cited Cases
When an individual fails to adhere to standards set by government for participation in a regulated activity or occupation, the government generally may bar the individual from participation in that activity or occupation without implicating double jeopardy, so long as the sanction reasonably serves regulatory goals adopted in the public interest. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15.

**[23] Double Jeopardy 135H ⚷22**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk22 k. Particular Proceedings. Most Cited Cases
By revoking a conditionally granted license because of noncompliance with conditions governing its issuance, the government intends to protect public from licensees who are unfit to participate in the regulated activity or occupation; thus, such revocation is not "punishment" for double jeopardy purposes, but rather is remedial insofar as it serves the interests of enforcing regulatory compliance and

protecting the public. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15.

**[24] Automobiles 48A ⚿130**

48A Automobiles
48AIV License and Regulation of Chauffeurs or Operators
48Ak130 k. Control and Regulation in General. Most Cited Cases
New Mexico state government regulates activity of driving on state's highways in the interest of public's safety and general welfare.

**[25] Double Jeopardy 135H ⚿24**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk24 k. Administrative or Non-Judicial Proceedings; Prison Discipline. Most Cited Cases
The fact that an administrative sanction imposed under a regulatory scheme has some incidental deterrent effect does not render that sanction "punishment" for purposes of double jeopardy analysis. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15.

**[26] Double Jeopardy 135H ⚿25**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk25 k. Fines, Penalties, and Forfeitures. Most Cited Cases
Monetary sanctions, such as fines or forfeitures, are qualitatively different from other types of administrative sanctions, for double jeopardy purposes, because of their distinctly punitive purposes. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15.

**[27] Double Jeopardy 135H ⚿24**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk24 k. Administrative or Non-Judicial Proceedings; Prison Discipline. Most Cited Cases
The deterrent effect of administrative license revocation is incidental to government's purpose of protecting public from licensees who are incompetent, dishonest, or otherwise dangerous; therefore, administrative license revocation is not motivated by a punitive purpose for purposes of double jeopardy analysis. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15.

**[28] Double Jeopardy 135H ⚿25**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk25 k. Fines, Penalties, and Forfeitures. Most Cited Cases
For purposes of double jeopardy analysis, a monetary sanction must be described as having a deterrent or retributive purpose if it is not designed to compensate government for its losses. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15.

**[29] Double Jeopardy 135H ⚿24**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk24 k. Administrative or Non-Judicial Proceedings; Prison Discipline. Most Cited Cases

**Double Jeopardy 135H ⚿25**

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk25 k. Fines, Penalties, and Forfeitures. Most Cited Cases
Because of the inherent differences between regulatory sanctions, such as license revocations, and monetary sanctions, such as fines or forfeitures, different standards of "punishment" should be applied when evaluating each distinct type of sanction for double jeopardy purposes; sanctions will not be deemed "punishment" in this regard if they are reasonably calculated to constitute a rough com-



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pensatory remedy, reasonably serve regulatory goals adopted in the public interest, or provide treatment for persons unable to care for themselves. U.S.C.A. Const.Amend. 5; Const. Art. 2, § 15.

****1047 *622** Robert M. Schwartz, District Attorney, Steven S. Suttle, Assistant Chief Deputy District Attorney, Albuquerque, for Petitioner.

Tom Udall, Attorney General, Frederic S. Nathan, Jr., Assistant Attorney General, Santa Fe, for Respondent.

Roderick T. Frechette, II, Albuquerque, for Real Parties in Interest.

Campbell, Pica, Olson & Seegmiller, Paul DeMuro, Albuquerque, Freedman, Boyd, Daniels, Peifer, Hollander, Guttman & Goldberg, P.A., Gary Nelson, Albuquerque, for NMCDLA.

## OPINION

FRANCHINI, Justice.

1. In this case we answer the question whether a conviction for driving while intoxicated (DWI), NMSA 1978, § 66-8-102 (Repl.Pamp.1994), following the revocation of the defendant's driver's license in a civil proceeding for failing or refusing a chemical test for blood-alcohol content administered pursuant to the Implied Consent Act, NMSA 1978, §§ 66-8-105 to -112 (Repl.Pamp.1994), constitutes double jeopardy. We conclude that double jeopardy is not implicated by this process because an administrative driver's license revocation under the Implied Consent Act does not constitute "punishment" for the purposes of the Double Jeopardy Clause.

## I. FACTS

2. In November 1994 Greg Baca and Gary Holguin were arrested for DWI, in separate incidents, by officers of the Albuquerque Police Department. Baca submitted to a breath test to determine his blood alcohol content. Because Baca's test revealed that his blood alcohol content was in excess of .08 percent, the Motor Vehicle Division (MVD) of the New Mexico Department of Transportation revoked his driver's license pursuant to the Implied Consent Act, § 66-8-112(F). Holguin refused to submit to a chemical test to determine his blood alcohol content. Because Holguin refused to take the test, the MVD revoked his driver's license pursuant to the Implied Consent Act, § 66-8-112(F).

****1048 *623** 3. Baca and Holguin were each charged with aggravated DWI, § **66-8-102( D)**.[FN1] These charges were dismissed by the Honorable Roderick T. Kennedy of the Bernallilo County Metropolitan Court on the grounds that the Double Jeopardy Clauses of the United States and New Mexico Constitutions prohibit the State from seeking to punish individuals twice in separate proceedings for a single act of driving while intoxicated, once by revoking their driver's licenses in administrative proceedings under the Implied Consent Act, and a second time in criminal prosecutions under Section 66-8-102.

> FN1. Baca was charged under Section **66-8-102( D)**(1), and Holguin was charged under Section **66-8-102( D)**(3). Section **66-8-102( D)** states:
>
> D. Aggravated driving while under the influence of intoxicating liquor or drugs consists of a person who:
>
> (1) has an alcohol concentration of sixteen one-hundredths or more in his blood or breath while driving any vehicle within this state;
>
> (2) has caused bodily injury to a human being as a result of the unlawful operation of a motor vehicle while driving under the influence of intoxicating liquor or drugs; or
>
> (3) refused to submit to chemical testing,



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> as provided for in the Implied Consent Act [66-8-105 to 66-8-112 NMSA 1978], and in the judgment of the court, based upon evidence of intoxication presented to the court, the person was under the influence of intoxicating liquor or drugs.

4. On behalf of the State, Robert Schwartz, the Second Judicial District Attorney, petitioned this Court to issue a writ of superintending control to Judge Kennedy (Respondent), directing him to withdraw his dismissals of the charges against Baca and Holguin. The question whether double jeopardy prohibits the State from subjecting an accused drunk driver to both an administrative driver's license revocation proceeding and a criminal prosecution was briefed for the State by the Attorney General, by Baca and Holguin as the real parties in interest, and by the New Mexico Criminal Defense Lawyer's Association as amicus curiae for Respondent.

5. The parties presented oral argument on the petition June 14, 1995, and that same day we issued a writ from the bench ordering Respondent to vacate the dismissals and to reinstate the cases on his docket. This opinion contains the Court's rationale for granting the writ of superintending control.

## II. WRIT OF SUPERINTENDING CONTROL

[1] 6. We first address the question why the Court entertained this petition for writ of superintending control. Baca and Holguin insist that the State should follow normal appellate procedure. Ordinarily the State would appeal Respondent's rulings to the district court. *See* SCRA 1986, 7-703 (Supp.1995). In the event of an unfavorable ruling by the district court, it could appeal to the Court of Appeals, *see* SCRA 1986, 12-102(B) (Cum.Supp.1995), and eventually petition for writ of certiorari, *see* SCRA 1986, 12-502 (Cum.Supp.1995). Baca and Holguin argue that their cases are more appropriately reviewed through appeals, and therefore contend that this Court should not grant immediate review by way of writ. *See* SCRA 1986, 12-504(C)(1) (Cum.Supp.1995) ("If it appears to a majority of the court that the petition [for writ of superintending control] ... concerns a matter more properly reviewable by appeal ... it may be denied without a hearing.").

[2][3] 7. This Court, under authority granted by the New Mexico Constitution, has "superintending control over all inferior courts." N.M. Const. art. VI, § 3. "The power of superintending control is the power to control the course of ordinary litigation in inferior courts." *District Court v. McKenna,* 118 N.M. 402, 405, 881 P.2d 1387, 1390 (1994) (quoting *State v. Roy,* 40 N.M. 397, 421, 60 P.2d 646, 661 (1936)), *cert. denied,* --- U.S. ----, 115 S.Ct. 1361, 131 L.Ed.2d 218 (1995). In *Roy* we observed:

> The power of superintending control is an extraordinary power. It is hampered by no specific rules or means for its exercise. It is so general and comprehensive that its complete and full extent and use have practically hitherto not been fully and completely known and exemplified. *It is unlimited, being bounded only by the exigencies which call for its exercise.*

****1049 *624** 40 N.M. at 422, 60 P.2d at 662 (emphasis added) (quoting Annotation, *Superintending Control and Supervisory Jurisdiction of the Superior Over the Inferior or Subordinate Tribunal,* 51 L.R.A. 33, 111 (Burdett A. Rich ed. 1901)); *see also McKenna,* 118 N.M. at 405, 881 P.2d at 1390 ("[O]ur jurisdiction under superintending control seemingly is boundless....").

[4][5] 8. We have traditionally limited our exercise of the power of superintending control to exceptional circumstances, such as cases in which "the remedy by appeal seems wholly inadequate ... or where otherwise necessary to prevent irreparable mischief, great, extraordinary, or exceptional hardship [, or] costly delays and unusual burdens of expense." *McKenna,* 118 N.M. at 405, 881 P.2d at

1390 (alterations in original) (quoting *State ex rel. Transcontinental Bus Serv., Inc. v. Carmody,* 53 N.M. 367, 378, 208 P.2d 1073, 1080 (1949) (citation omitted)). Nonetheless, we may exercise our power of superintending control "even when there is a remedy by appeal, where it is deemed to be in the public interest to settle the question involved at the earliest moment." *State ex rel. Townsend v. Court of Appeals,* 78 N.M. 71, 74, 428 P.2d 473, 476 (1967); *see also State Racing Comm'n v. McManus,* 82 N.M. 108, 110, 476 P.2d 767, 769 (1970) (holding that questions "of great public interest and importance" may require this Court to use its power of superintending control).

9. The question whether the State is barred from prosecuting an individual for DWI (DWI) once the individual has been subjected to an administrative hearing for driver's license revocation based on the same offense as the criminal charge is one of great public importance requiring the use of our power of superintending control. New Mexico has a serious problem with drunk drivers, with one of the highest rates in the nation of DWI-related fatalities. Our citizens are obviously concerned by this dangerous situation, and through their elected representatives have established a system providing punishment for drunk drivers along with remedial measures for the protection of the population. Respondent's ruling has placed this system in doubt. Under Respondent's ruling, the State would essentially be unable to prosecute defendants charged with DWI because in almost every case the driver's license revocation hearing precedes the corresponding criminal prosecution. Trial courts throughout the state are in a position of uncertainty regarding how to proceed with DWI prosecutions, and some courts have chosen to follow Respondent's lead by dismissing such cases on double jeopardy grounds. In order to provide a prompt and final resolution to this troubling question we agreed to consider the petition for writ of superintending control.

## III. DOUBLE JEOPARDY ANALYSIS

10. New Mexico's two-tier approach to DWI cases came about as a result of federal efforts to encourage states to decrease the prevalence of drunk drivers on the nation's highways. In 1983, Congress established a program that allowed the Secretary of Transportation to "make grants to those States which adopt and implement effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol." 23 U.S.C. § 408(a) (1988). To qualify for a basic incentive grant, a State must adopt a program providing for the prompt suspension of the driver's license of any individual whom a law enforcement officer has probable cause to stop for an alcohol-related traffic offense, and who is determined by a chemical test to be intoxicated or who refuses to submit to such a chemical test. 23 C.F.R. § 1309.5(a)(1) (1995). The legislatures of thirty-seven states, perhaps inspired by the availability of federal funding for alcohol-traffic-safety programs, have provided for the administrative suspension or revocation of an individual's license to drive when the individual has been arrested for DWI and has either refused to take or failed a chemical test. Respondent, however, ruled that this scheme, in which individuals suspected of drunk driving are subject to having their driver's licenses revoked in an administrative proceeding, as well as criminal prosecution for the same underlying act, violates the Double Jeopardy Clauses of the Fifth Amendment of the United States Constitution and Article II, Section 15 of the New Mexico Constitution.

****1050 *625** 11. We note that Respondent is not alone in his ruling. Trial courts in over a dozen states, as well as at least one Ohio Court of Appeals panel, have also concluded that this scheme violates the federal Double Jeopardy Clause. *See State v. Gustafson,* No. 94 C.A. 232, 1995 WL 387619 (Ohio Ct.App. 7 Dist., June 27, 1995) (unpublished opinion, subject to Ohio Sup.Ct.R. for Reporting Ops. R.2 (Anderson 1995)), *appeal allowed,* 73 Ohio St.3d 1427, 652 N.E.2d 800 (1995); *but see State v. Miller,* No. 2-94-32, 1995 WL 275770 (Ohio Ct.App. 3 Dist., May 12, 1995) (holding that

trial court may prosecute defendant for driving under the influence of alcohol following administrative license revocation imposed for testing over the legal limit without violating Double Jeopardy Clause) (unpublished opinion, subject to Ohio Sup.Ct.R. for Reporting Ops. R.2 (Anderson 1995)); *see also Drunk Driving Defense Succeeds in More States,* 95 Law.Wkly. USA 422 (May 22, 1995) (listing cases).

[6] 12. Most appellate courts that have considered the question, however, have concluded that the scheme does not violate the Double Jeopardy Clause. *See, e.g., United States v. Bulloch,* 994 F.2d 844 (8th Cir.1993) (table) (text available in Westlaw, 1993 WL 177690); *State v. Zerkel,* 900 P.2d 744, 746 (Alaska Ct.App.1995); *State v. Nichols,* 169 Ariz. 409, 413-414, 819 P.2d 995, 999-1000 (Ct.App.), *review denied* (Ariz. Dec. 3, 1991); *Baldwin v. Department of Motor Vehicles,* 35 Cal.App.4th 1630, 42 Cal.Rptr.2d 422, 430 (1995); *Ellis v. Pierce,* 230 Cal.App.3d 1557, 282 Cal.Rptr. 93, 95-96, *review denied* (Sept. 4, 1991); *Freeman v. State,* 611 So.2d 1260, 1261 (Fla.Ct.App.1992) (per curiam), *review denied,* 623 So.2d 493 (Fla.), *and cert. denied,* 510 U.S. 957, 114 S.Ct. 415, 126 L.Ed.2d 361 (1993); *State v. Higa,* 79 Hawai'i 1, 7, 897 P.2d 928, 934 (1995); *State v. Maze,* 16 Kan.App.2d 527, 825 P.2d 1169, 1174 (1992); *Butler v. Department of Pub. Safety and Corrections,* 609 So.2d 790, 796 (La.1992); *State v. Savard,* 659 A.2d 1265, 1268 (Me.1995); *Johnson v. State,* 95 Md.App. 561, 622 A.2d 199, 205-06 (1993); *State v. Hanson,* 532 N.W.2d 598, 602 (Minn.Ct.App.), *review granted* (Minn. Aug. 9, 1995); *State v. Young,* 3 Neb.App. 539, 530 N.W.2d 269, 278, *review sustained,* (Neb. May 11, 1995); *Schreiber v. Motor Vehicles Div.,* 104 Or.App. 656, 802 P.2d 706, 706 (per curiam), *review denied,* 311 Or. 266, 810 P.2d 855 (1991); *State v. Strong,* 158 Vt. 56, 605 A.2d 510, 514 (1992). The question before this Court obviously is the subject of nationwide controversy. After reviewing the Supreme Court's recent opinions concerning the Double Jeopardy Clause, we conclude that the courts that have found that administrative license revocations are punitive have misread those Supreme Court opinions. To the contrary, for the reasons discussed below, driver's license revocations pursuant to the Implied Consent Act are not "punishment" for the purposes of double jeopardy analysis.

### *A. General Principles of Double Jeopardy Analysis.*

[7] 13. The Fifth Amendment provides "... nor shall any person be subject for the same offense to be twice put in jeopardy of life and limb...." U.S. Const. amend. V. The New Mexico Constitution similarly provides "... nor shall any person be twice put in jeopardy for the same offense...." N.M. Const. art. II, § 15. Due to the similarity of the Federal and State Double Jeopardy Clauses, this Court consistently has construed and interpreted the state clause as providing the same protections offered by the federal clause. *See Swafford v. State,* 112 N.M. 3, 7 n. 3, 810 P.2d 1223, 1227 n. 3 (1991); *State v. Rogers,* 90 N.M. 604, 606, 566 P.2d 1142, 1144 (1977). Therefore, when we refer to the "Double Jeopardy Clause" in the context of this case, our analysis is identical for both the federal and state clause. We reserve the question, however, whether the New Mexico Double Jeopardy Clause, under circumstances other than the multiple punishment doctrine, provides greater protection than the federal clause.

[8][9] 14. The Double Jeopardy Clause "protects against three distinct abuses: a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and multiple punishments for the same offense." *United States v. Halper,* 490 U.S. 435, 440, 109 S.Ct. 1892, 1897, 104 L.Ed.2d 487 (1989); *see also* ****1051*626***Swafford,* , 112 N.M. at 7, 810 P.2d at 1227 (same (quoting *North Carolina v. Pearce,* 395 U.S. 711, 717, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969))). Here we are concerned with the third of these protections, the protection against multiple punishments. As the Ninth Circuit Court of Appeals



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has recently noted, "at its most fundamental level [the Double Jeopardy Clause] protects an accused against ... repeated attempts to exact one or more punishments for the same offense." *United States v. $405,089.23 U.S. Currency,* 33 F.3d 1210, 1215 (9th Cir.1994), *opinion amended on denial of rehearing,* 56 F.3d 41 (9th Cir.), *and petition for cert. filed,* 64 U.S.L.W. (U.S. Aug. 28, 1995). The Double Jeopardy Clause not only protects against the imposition of two punishments for the same offense, but also protects criminal defendants against being twice placed in jeopardy for such punishment. *Witte v. United States,* 515 U.S. 389, ----, 115 S.Ct. 2199, 2204, 132 L.Ed.2d 351 (1995) ("[T]he Double Jeopardy Clause 'prohibits merely punishing twice, or attempting a second time to punish criminally for the same offense.' ") (quoting *Helvering v. Mitchell,* 303 U.S. 391, 399, 58 S.Ct. 630, 633, 82 L.Ed. 917 (1938)).

[10][11] 15. The Supreme Court has held that the Double Jeopardy Clause protects the accused from multiple punishments in separate proceedings for the same offense. *Department of Revenue v. Kurth Ranch,* 511 U.S. 767, ----, 114 S.Ct. 1937, 1945, 128 L.Ed.2d 767 (1994) ("A defendant convicted and punished for an offense may not have a nonremedial civil penalty imposed against him for the same offense in a separate proceeding."). Multiple punishment analysis thus entails three factors: (1) whether the State subjected the defendant to separate proceedings; (2) whether the conduct precipitating the separate proceedings consisted of one offense or two offenses; and (3) whether the penalties in each of the proceedings may be considered "punishment" for the purposes of the Double Jeopardy Clause.

### *B. Whether the Administrative Revocation Hearing and the Criminal Prosecution are Separate Proceedings.*

[12][13] 16. We first address the question whether the administrative revocation hearing and the criminal prosecution are separate proceedings. This Court has recognized that an administrative proceeding to revoke a person's driver's license for refusal to submit to a chemical test "is entirely separate and distinct from the proceeding to determine the guilt or innocence of the person" as to the crime of DWI. *In re McCain (Commissioner of Motor Vehicles v. McCain),* 84 N.M. 657, 662, 506 P.2d 1204, 1209 (1973). The revocation hearing and the criminal action are parallel actions. The civil action is pursued independently of the criminal action, the two actions are tried at different times before different factfinders, and the actions are resolved by separate judgements. "The Supreme Court has made clear that parallel actions, instituted at about the same time and involving the same criminal conduct, constitute *separate* proceedings for double jeopardy purposes." *$405,089.23 U.S. Currency,* 33 F.3d at 1217. Accordingly, "a civil action aimed at exacting a penalty and a criminal prosecution arising out of the same offense constitute two separate proceedings when pursued separately and concluded at different times." *Savard,* 659 A.2d at 1267 (citing *Kurth Ranch,* 511 U.S. at ---- n. 21, 114 S.Ct. at 1947 n. 21). The administrative license revocation and criminal prosecution are pursued separately and concluded at different times. Therefore, for the purposes of double jeopardy analysis, we conclude that a criminal prosecution for DWI is a separate proceeding from the action taken to suspend the defendant's driver's license.

### *C. Whether Violation of the Implied Consent Act and Violation of Section 66-8-102 are Separate Offenses.*

[14] 17. The second factor under multiple punishment analysis is whether the conduct precipitating the revocation hearing and the criminal prosecution consists of one offense or two offenses. We apply the test established in *Blockburger v. United States,* 284 U.S. 299, 304, 52 S.Ct. 180, 182, 76 L.Ed. 306 (1932), to determine whether the two statutory violations are one offense for double jeopardy purposes. *See Swafford,* 112 N.M. at 8, 810 P.2d at 1228 (adopting *Blockburger**1052 *627* test). In

*Blockburger,* the Supreme Court stated that:

> [W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact the other does not.

*Blockburger,* 284 U.S. at 304, 52 S.Ct. at 182; *see also United States v. Dixon,* 509 U.S. 688, ---- - - ---, 113 S.Ct. 2849, 2859-60, 125 L.Ed.2d 556 (1993) (reaffirming use of *Blockburger* same-elements test for determining what constitutes same offense for double jeopardy purposes). The *Blockburger* test focuses the inquiry on whether each statute requires proof of an element that is not contained in the other. If each statute requires proof of an element not contained in the other, then the offenses are two separate crimes and double jeopardy does not bar multiple punishment. *Blockburger,* 284 U.S. at 304, 52 S.Ct. at 182; *Dixon,* 509 U.S. at ----, 113 S.Ct. at 2856.

18. In one of the cases dismissed by Respondent, the defendant refused to submit to a chemical test; in the other case, the defendant failed the chemical test. We analyze these situations independently to determine whether each statute requires proof of an additional fact that the other does not.

[15] 19. We first examine Holguin's case, in which the suspected drunk driver refused to submit to a chemical test. The Implied Consent Act, § 66-8-112(F), sets out the elements that the hearing officer must find before revoking the driver's license of a person who has refused to submit to a chemical test.[FN2] The hearing officer must find that the law enforcement officer had reasonable grounds to believe the driver was driving a motor vehicle while under the influence of intoxicating liquor; that the driver was arrested; and that the driver refused to submit to the test upon request of the law enforcement officer after the law enforcement officer advised the driver that his or her failure to submit to the test could result in the revocation of the driver's privilege to drive.

FN2. Section 66-8-112(F) provides:

> F. The department shall enter an order sustaining the revocation or denial of the person's license or privilege to drive if the department finds that:
>
> (1) the law enforcement officer had reasonable grounds to believe the driver was driving a motor vehicle while under the influence of intoxicating liquor or drug;
>
> (2) the person was arrested;
>
> (3) this hearing is held no later than ninety days after notice of revocation; and
>
> (4) the person either refused to submit to the test upon request of the law enforcement officer after the law enforcement officer advised him that his failure to submit to the test could result in the revocation of his privilege to drive or that a chemical test was administered pursuant to the provisions of the Implied Consent Act and the test results indicated an alcohol concentration of eight one-hundredths or more if the person is twenty-one years of age or older or an alcohol concentration of two one-hundredths or more if the person is less than twenty-one years of age.
>
> If one or more of the elements set forth in Paragraphs (1) through (4) of this subsection are not found by the department, the person's license shall not be revoked.

20. The DWI statute provides that a person may be convicted of aggravated driving while under the influence of intoxicating liquor if the trial court finds that the person "refused to submit to chemical testing, as provided for in the Implied Consent Act" and that the person was under the influence of intoxicating liquor. Section **66-8-102( D)**(3). A violation of Section **66-8-102( D)**(3) is predicated on a



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failure to submit to a chemical test as required under the Implied Consent Act, with the additional requirement that the court must find that the person refusing the chemical test was in fact driving under the influence of intoxicating liquor. The civil revocation statute, § 66-8-112(F), does not require proof of an element not contained in the aggravated DWI charge, § **66-8-102( D)**(3). We conclude that Section 66-8-112(F) and Section **66-8-102( D)**(3) constitute the same offense under the *Blockburger* same-elements test.

[16] 21. In the Baca case, the defendant failed the chemical test. The Implied Consent Act, § 66-8-112(F), provides that the hearing officer may revoke the driver's license of a person if the officer finds that the law enforcement officer had reasonable grounds to believe the driver was driving a ****1053 *628** motor vehicle while under the influence of intoxicating liquor; that the driver was arrested; that a chemical test was administered pursuant to the provisions of the Implied Consent Act; and the test results indicated an alcohol concentration of eight one-hundredths or more if the person is over twenty-one years old. The DWI statute, § 66-8-102(C), provides that a person may be convicted of driving while under the influence of intoxicating liquor if the person is over twenty-one years old and is shown to have had an alcohol concentration of eight one-hundredths or more in his or her blood or breath. The elements of these two offenses are identical; the criminal charge does not require proof of facts which the civil revocation action would not have required to be proven. Accordingly, we conclude that the criminal charge for DWI under Section 66-8-102(C) is based on the same offense underlying a Section 66-8-112(F) driver's license revocation action.

### *D. Whether Driver's License Revocation Under the Implied Consent Act is Punishment for the Purposes of the Double Jeopardy Clause.*

22. Our determinations that the license revocation hearing and criminal prosecution for DWI are separate proceedings, and that license revocation under the Implied Consent Act and criminal prosecution for DWI are the same offense, do not end our analysis. The Double Jeopardy Clause bars multiple *punishments* for the same offense in separate proceedings. We now direct our discussion to the third factor in multiple punishment analysis: whether an implied consent driver's license revocation is "punishment" for the purposes of the Double Jeopardy Clause.

[17] 23. Traditionally, jeopardy does not attach in proceedings in which only a civil sanction can be imposed, because "the risk to which the Clause refers is not present in proceedings that are not 'essentially criminal.' " *Breed v. Jones,* 421 U.S. 519, 528, 95 S.Ct. 1779, 1785, 44 L.Ed.2d 346 (1975). Thus a legislature "may impose both a criminal and a civil sanction in respect to the same act or omission" without violating the Double Jeopardy Clause. *Helvering v. Mitchell,* 303 U.S. 391, 399, 58 S.Ct. 630, 633, 82 L.Ed. 917 (1938); *see also United States v. One Assortment of 89 Firearms,* 465 U.S. 354, 359, 104 S.Ct. 1099, 1103, 79 L.Ed.2d 361 (1984) (same); *United States v. Ward,* 448 U.S. 242, 250, 100 S.Ct. 2636, 2642, 65 L.Ed.2d 742 (1980) (same).

24. In *United States v. Halper,* 490 U.S. 435, 446, 109 S.Ct. 1892, 1900, 104 L.Ed.2d 487 (1989), the Supreme Court addressed the questions "whether and under what circumstances a civil penalty may constitute punishment for the purposes of the Double Jeopardy Clause." *Halper* concerned a manager of a medical services provider who made sixty-five false claims to Medicare, causing the government to overpay the company $585. *Id.* at 437, 109 S.Ct. at 1895. The manager was convicted on sixty-five counts of violating the federal criminal false claims statute, 18 U.S.C. § 287 (1988), and received a sentence of two years imprisonment and a fine of $5,000. *Id.* The government subsequently sued the manager under a similar civil false claims statute, 31 U.S.C. §§ 3729-3731 (1982 & Supp. II 1984), seeking fines of $2,000 per count, for a total



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monetary sanction of $130,000. *Halper,* 490 U.S. at 438, 109 S.Ct. at 1896.

[18][19] 25. In *Halper,* the Supreme Court decided that double jeopardy analysis based on the distinction between criminal and civil proceedings is an approach that is "not well suited to the context of the 'humane interests' safeguarded by the Double Jeopardy Clause's proscription of multiple punishments." *Id.* at 447, 109 S.Ct. at 1901. The Court explained:

> This constitutional protection is intrinsically personal. Its violation can be identified only by assessing the character of the actual sanctions imposed on the individual by the machinery of the state.
>
> In making this assessment, the labels "criminal" and "civil" are not of paramount importance. It is commonly understood that civil proceedings may advance punitive as well as remedial goals, and, conversely, that both punitive and remedial goals may be served by criminal penalties.... [T]he determination whether a ****1054 *629** given civil sanction constitutes punishment in the relevant sense requires a particularized assessment of the penalty imposed and the purposes that penalty may be fairly said to serve. Simply put, a civil as well as a criminal sanction constitutes punishment when the sanction as applied in the individual case serves the goals of punishment.
>
> These goals are familiar. We have recognized in other contexts that punishment serves the twin aims of retribution and deterrence. Furthermore, "[r]etribution and deterrence are not legitimate nonpunitive governmental objectives." From these premises, it follows that a civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment, as we have come to understand the term. We therefore hold that under the Double Jeopardy Clause a defendant who already has been punished in a criminal prosecution may not be subjected to an additional civil sanction to the extent that the second sanction may not fairly be characterized as remedial, but only as a deterrent or retribution.

*Id.* at 447-49, 109 S.Ct. at 1901-02 (footnotes and citations omitted).

[20] 26. The Supreme Court concluded that the fine of $130,000 was "a sanction overwhelmingly disproportionate to the damages" the manager had caused. *Id.* at 449, 109 S.Ct. at 1902. The penalty bore "no rational relation to the goal of compensating the Government for its loss, but rather appear[ed] to qualify as 'punishment' in the plain meaning of the word," *id.,* and thus constituted a second punishment in violation of double jeopardy, *id.* at 452, 109 S.Ct. at 1903. The Court stated, however, that the test applied in *Halper* was directed to "the rare case, the case such as the one before [the Court], where a fixed-penalty provision subjects a prolific but small-gauge offender to a sanction overwhelmingly disproportionate to the damages he has caused." *Id.* at 449, 109 S.Ct. at 1902. This proportionality or "compensation for loss" analysis thus appears to be limited to the "rare case" in which the government imposes a criminal penalty and a civil monetary penalty that is not rationally related to the government's loss. *See, e.g., Manocchio v. Kusserow,* 961 F.2d 1539, 1542 (11th Cir.1992) (holding that *Halper* 's analysis contrasting government's loss with monetary damages does not apply when monetary damages are not awarded); *Higa,* 897 P.2d at 932-33 (holding that *Halper* test, comparing civil penalty and the government loss, does not apply in case challenging criminal prosecution for DWI on double jeopardy grounds following administrative revocation of driver's license); *Johnson,* 622 A.2d at 205 (holding that *Halper* only "applies to instances where the government attempts to extract from a person who has committed a punishable act, preceded or followed by criminal prosecution, a monetary penalty 'related to the goal of making the government whole' ") (quoting *Halper,* 490 U.S. at 451, 109

S.Ct. at 1903).

27. For example, in *Department of Revenue v. Kurth Ranch* the Supreme Court addressed the question whether the Double Jeopardy Clause prevented the State of Montana from prosecuting an individual for possession of marijuana with intent to sell and later imposing a tax on the drugs at a rate of ten percent of the value of the drugs or $100 per ounce of marijuana, whichever was greater. 511 U.S. at ----- - ----, 114 S.Ct. at 1941-42. The critical issue before the Court was whether Montana's drug tax constituted a second punishment under the Double Jeopardy Clause for conduct already punished criminally. *Id.* at ----, 114 S.Ct. at 1944. The Court noted that:

> [T]ax statutes serve a purpose quite different from civil penalties, and *Halper* 's method of determining whether the exaction was remedial or punitive "simply does not work in the case of a tax statute." Subjecting Montana's drug tax to *Halper* 's test for civil penalties is therefore inappropriate.

*Id.* at ----, 114 S.Ct. at 1948 (quoting with approval *id.* at 1950 (Rehnquist, C.J., dissenting)). Accordingly, the Court did not apply the "compensation for loss" test used in *Halper* to determine whether the tax was punitive, but rather looked to whether the tax ***630 **1055** "depart[ed] so far from normal revenue laws as to become a form of punishment." *Id.*

28. Just as the "compensation for loss" test is an inappropriate standard to apply for judging the punitive nature of a tax, it likewise is inappropriate for determining whether a nonmonetary civil penalty such as administrative license revocation is punishment for double jeopardy purposes. We conclude, however, that although the test set out in *Halper* does not apply to the present case, the general principles espoused in *Halper* do inform our determination whether a particular nonmonetary civil penalty is "punishment." *See id.* at ----, 114 S.Ct. at 1946; *Manocchio,* 961 F.2d at 1542; *Higa,* 897 P.2d at 933. Thus, in order to determine whether the revocation of a driver's license under the Implied Consent Act is punishment for double jeopardy purposes, we must make a "particularized assessment of the penalty imposed and the purposes that penalty may be fairly said to serve." *Halper,* 490 U.S. at 448, 109 S.Ct. at 1901. If the penalty may be fairly characterized only as a deterrent or as retribution, then the revocation is punishment; if the penalty may be fairly characterized as remedial, then it is not punishment for the purposes of double jeopardy analysis. *Id.* at 448-49, 109 S.Ct. at 1901-02.

29. We now examine the procedure and penalties under the Implied Consent Act to determine the purposes those penalties might fairly be said to serve. Under the Act, when a person is arrested for DWI, the arresting officer may request that the person submit to a chemical test for the purpose of determining the alcohol content of his or her blood. Section 66-8-107. If the driver refuses to permit chemical testing, or is over twenty-one years old and submits to a chemical test and has a result that indicates a blood-alcohol concentration of .08 or more, or is under twenty-one years old and submits to a chemical test and has a result that indicates a blood-alcohol concentration of .02 or more, the officer must serve the driver with immediate written notice of revocation and of right to a hearing by the MVD. Section 66-8-111.1. At the time of notice the officer takes the person's driver's license and issues a temporary license valid for twenty days. If the person requests a hearing, the temporary license remains valid until the date the MVD issues the order following that hearing. *Id.*

30. The law enforcement officer then sends the person's driver's license to the MVD along with a signed statement stating the officer's reasonable grounds to believe the arrested person had been driving a motor vehicle in New Mexico while under the influence of intoxicating liquor and that the person either refused to submit to a chemical test after being advised that failure to submit could result in revocation of his or her privilege to drive, or sub-

mitted to a chemical test and the test results exceeded the statutory limits for blood-alcohol content. Section 66-8-111(B)-(C). The MVD revokes the person's driving privilege upon receipt of the officer's statement, or if the person has requested a hearing, upon receipt of the hearing officer's ruling that revocation is proper. *See* Section 66-8-112. The revocation is for a period of ninety days if the driver is over twenty-one and failed the chemical test, § 66-8-111(C)(1), for a period of six months if the driver is under twenty-one and failed the chemical test, § 66-8-111(C)(2), for a period of one year if the person had previously had his or her driver's license revoked under the Implied Consent Act, § 66-8-111(C)(3), or for a period of one year if the person refused to take the chemical test, § 66-8-111(B). If the person requests a hearing and his or her driver's license is revoked following that hearing, the decision of the hearing officer may be appealed to the district court. Section 66-8-112(G).

31. Drivers who lose their license for the first time under the Implied Consent Act for the first time may apply for a limited license thirty days after the date of revocation if they provide the MVD with proof of insurance, proof of employment or enrollment in school, and proof of enrollment in an approved DWI course and an approved alcohol screening program. NMSA 1978, § 66-5-35(B) (Repl.Pamp.1994). The revoked license may be reinstated following the term of revocation upon application to the MVD and the payment of a fee of $100. NMSA 1978, § 66-5-33.1 (Repl.Pamp.1994).

****1056 *631** [21] 32. In short, the penalty imposed on Baca for failing the chemical test for blood-alcohol content was the revocation of his driver's license for a period of ninety days. *See* Section 66-8-111(C)(1). Holguin's license was revoked for one year for refusing to take the chemical test. *See* Section 66-8-111(B). Each of the defendants is subject to a $100 fee for reinstatement of his driver's license upon completion of their respective terms of revocation. *See* Section 66-5-33.1. In order to ascertain whether these sanctions are punitive we must look at the purposes that the sanctions actually serve. *Halper*, 490 U.S. at 447 n. 7, 109 S.Ct. at 1901 n. 7. We make this determination by evaluating the government's purpose in enacting the legislation, rather than evaluating the effect of the sanction on the defendant. *See Doe v. Poritz*, 142 N.J. 1, 662 A.2d 367, 396 (1995) ("What counts ... is the purpose and design of the statutory provision, its remedial goal and purposes, and not the resulting consequential impact ... that may inevitably, but incidentally, flow from it."). As the Supreme Court stated in *Kurth Ranch*, "whether a sanction constitutes punishment is not determined from the defendant's perspective, as even remedial sanctions carry the 'sting of punishment.' " 511 U.S. at ---- n. 14, 114 S.Ct. 1937, 1945 n. 14 (quoting *Halper*, 490 U.S. at 447 n. 7, 109 S.Ct. at 1901 n. 7).

33. We believe it significant that the operation of automobiles on public highways is an activity that is regulated by the government. The government regulates many activities, including driving, participation in government programs such as Medicare, and participation in certain professions such as the practice of law or medicine. A critical element of this government regulation is the requirement that participants obtain licenses to pursue the regulated activity or occupation. As one court has stated:

> The rationale for this system of regulation is that the public is exposed to an unacceptable risk of harm if the activity or occupation is performed incompetently, recklessly, dishonestly, or with intent to injure. Under these regulatory schemes, a person must obtain a license to pursue the regulated activity or occupation, and the government possesses the power to revoke the license of someone whose conduct demonstrates his or her unfitness to continue in that activity or occupation....
>
> In many instances, the conduct that demonstrates a person's unfitness to pursue the regulated activity or occupation is also potentially criminal. Nevertheless, courts have traditionally declared that administrative action to revoke a license is

> distinct from any possible criminal prosecution, and administrative revocation of the person's license is not considered punishment for a crime.

*Zerkel,* 900 P.2d at 752 (footnote omitted).

[22][23] 34. When an individual fails to adhere to the standards set by the government for participation in a regulated activity or occupation, the government generally may bar the individual from participation in that activity or occupation without implicating double jeopardy, so long as the sanction reasonably serves regulatory goals adopted in the public interest. *See Emory v. Texas State Bd. of Medical Examiners,* 748 F.2d 1023, 1026 (5th Cir.1984) ("[R]evocation of privileges voluntarily granted is 'characteristically free of the punitive criminal element.' ") (quoting *Helvering,* 303 U.S. at 399 n. 2, 58 S.Ct. at 633 n. 2). By revoking a conditionally granted license because of noncompliance with the conditions governing its issuance, the government intends to protect the public from licensees who are unfit to participate in the regulated activity or occupation. *See, e.g., In re Nelson,* 79 N.M. 779, 784, 450 P.2d 188, 193 (1969) (per curiam) (disciplinary action taken against attorney was for "the protection of the public, the profession, and the administration of justice, and not the punishment of the person disciplined"); *United States v. Hudson,* 14 F.3d 536, 541-42 (10th Cir.1994) (disbarment of banking officials from further banking activities for mismanagement and illegal operation of several banks was "a means of protecting the integrity of the banking system and the interests of the depositors," and served "a legitimate remedial purpose"); *United States v. Furlett,* 974 F.2d 839, 844 (7th Cir.1992) (trading bar on commodities broker accused of fraudulent commodities trading served "to ensure the integrity of the markets and protect[**1057 *632 ][ ] them from people like [the defendant]," and thus was remedial rather than punitive); *Manocchio,* 961 F.2d at 1542 (exclusion of physician from participation in Medicare programs for making fraudulent claim was remedial); *United States v. Bizzell,* 921 F.2d 263, 267 (10th Cir.1990) (debarment of employee from participation in federal housing program for filing false statements was "strictly remedial"); *Loui v. Board of Medical Examiners,* 78 Hawai'i 21, 889 P.2d 705, 711 (1995) (suspension of doctor's medical license for one year after conviction for attempted sexual abuse and kidnapping was "designed to protect the public from unfit physicians" and served "legitimate nonpunitive governmental objectives"); *Alexander v. Louisiana State Bd. of Medical Examiners,* 644 So.2d 238, 244 (La.Ct.App.1994) (suspension of doctor's medical license after conviction for bank robbery was designed to protect public and was not punishment for purposes of double jeopardy), *cert. denied,* 649 So.2d 423 (La.), *cert. denied,* 516 U.S. 813, 116 S.Ct. 64, 133 L.Ed.2d 26 (1995); *Cocco v. Maryland Comm'n on Medical Discipline,* 384 A.2d 766, 768-69 (Md.Ct.Spec.App.1978) ( "[D]isciplinary proceedings against a professional have the unique purpose of protecting the public from the results of a professional's improper conduct, incompetence or unscrupulous practices."), *aff'd in part, rev'd in part sub nom. Unnamed Physician v. Commission on Medical Discipline,* 285 Md. 1, 400 A.2d 396, *cert. denied,* 444 U.S. 868, 100 S.Ct. 142, 62 L.Ed.2d 92 (1979); *In re Oxman,* 496 Pa. 534, 437 A.2d 1169, 1172 (1981) ("[T]he primary purpose of professional disciplinary proceedings is to protect the public."), *cert. denied,* 456 U.S. 975, 102 S.Ct. 2240, 72 L.Ed.2d 849 (1982). Thus courts have repeatedly held that revocation of a license for violation of the laws governing the licensed activity or occupation is not "punishment," but rather is remedial insofar as it serves the interests of enforcing regulatory compliance and protecting the public.

[24] 35. The New Mexico state government regulates the activity of driving on the state's highways in the interest of the public's safety and general welfare. *Johnson v. Sanchez,* 67 N.M. 41, 48, 351 P.2d 449, 453 (1960). The suspension of an individual's license to drive based on failure of a chemical test for blood-alcohol content or refusal to take the chemical test serves the legitimate nonpunitive

purpose of protecting the public from the dangers presented by drunk drivers and helps enforce regulatory compliance with the laws governing the licensed activity of driving. *See, e.g., Bierner v. State Taxation and Revenue Dep't,* 113 N.M. 696, 699, 831 P.2d 995, 998 (Ct.App.1992) (stating that the Implied Consent Act protects the "public by promptly removing from the highways those who drive while intoxicated"); *Ellis,* 282 Cal.Rptr. at 94 ("Appellate courts have repeatedly described the goals of the statute as twofold: the immediate purpose is to obtain the best evidence of blood-alcohol content, and the long-range purpose is to reduce highway injuries by inhibiting intoxicated persons from driving."); *Freeman,* 611 So.2d at 1261 ("[T]he purpose of the statute providing for revocation of a driver's license upon conviction of a licensee for driving while intoxicated is to provide an administrative remedy for public protection and not for punishment of the offender."); *Higa,* 897 P.2d at 933 ("[T]he purpose of the administrative revocation process is not to 'punish' those in [the defendant's] position; it is to safeguard the public and reduce traffic fatalities caused by those driving under the influence of alcohol."); *Maze,* 825 P.2d at 1174 ("Our State's interest is to foster safety by temporarily removing from public thoroughfares those licensees who have exhibited dangerous behavior, which interest is grossly different from the criminal penalties that are available in a driving under the influence prosecution."); *Butler,* 609 So.2d at 797 ("The statute's primary effect is remedial; it removes those drivers from our state highways who have been proven to be reckless or hazardous."); *Young,* 530 N.W.2d at 278 ("The purpose of enacting the license revocation procedure under [the Implied Consent Law] was to protect the public by getting people with drinking propensities off the road...."); *Strong,* 605 A.2d at 513 ("The summary suspension scheme serves the rational remedial purpose of protecting public safety by quickly removing potentially dangerous drivers ****1058 *633** from the roads."). We conclude that the administrative driver's license revocation provision of the Implied Consent Act may be fairly characterized as remedial, and therefore it is not punishment for the purposes of double jeopardy analysis.

36. Respondent and others, however, stress that license revocation is also punitive in nature. They therefore conclude that license revocation constitutes punishment for the purposes of double jeopardy analysis. Respondent emphasizes the phrase from *Halper,* "[A] civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment." 490 U.S. at 448, 109 S.Ct. at 1902. He contends that the sections of the Implied Consent Act providing for the revocation of a driver's license if the driver either refuses to take a chemical test or if the results of the chemical test show a blood-alcohol content of .08 or greater serve the purposes of punishment insofar as they deter individuals from DWI. Respondent further contends that our appellate courts have recognized the deterrent purpose of the Implied Consent Act in cases such as *McKay v. Davis,* 99 N.M. 29, 30, 653 P.2d 860, 861 (1982) (stating that "[t]he Implied Consent Act is intended to deter driving while intoxicated and to aid in discovering and removing the intoxicated driver from the highway"); *Bierner,* 113 N.M. at 699, 831 P.2d at 998 (stating that administrative driver's license revocations further "the purpose of punishing and deterring violations of Section 66-8-102(A)"); and *Cordova v. Mulholland,* 107 N.M. 659, 660, 763 P.2d 368, 369 (Ct.App.) (stating that purpose of Implied Consent Act "is to deter individuals from driving while under the influence and endangering the lives and property of others"), *cert. denied,* 107 N.M. 546, 761 P.2d 424 (1988). Respondent concludes that administrative driver's license revocation under the Implied Consent Act is punitive because the sanction serves the purpose of deterring individuals from driving while intoxicated and thus cannot be said to be solely remedial. *See Gustafson,* 1995 WL 387619, at *12 (holding that the existence of a deterrent purpose in Ohio's implied consent law compelled finding that sanction of license revocation was punishment for purposes of double

jeopardy).

[25] 37. It is incontrovertible that the sanction of driver's license revocation will have some deterrent effect on drunk drivers. *See, e.g., Mackey v. Montrym,* 443 U.S. 1, 18, 99 S.Ct. 2612, 2621, 61 L.Ed.2d 321 (1979) ("[T]he very existence of the summary sanction of [driver's license suspension] serves as a deterrent to drunken driving."); *Zerkel,* 900 P.2d at 756 ("It is obvious that deterrence of misconduct will be one practical effect of any regulatory scheme that allows the government to revoke a license to drive motor vehicles or pursue a livelihood."); *Savard,* 659 A.2d at 1268 ("[W]e acknowledge that any [driver's license] suspension may have a deterrent effect on the law-abiding public...."). However, the fact that the regulatory scheme has some incidental deterrent effect does not render the sanction punishment for the purposes of double jeopardy analysis. As one court has noted,

> It is obvious that deterrence of misconduct will be one practical effect of any regulatory scheme that allows the government to revoke a license that authorizes a person to drive motor vehicles or pursue a livelihood. But this deterrent purpose does not mean that administrative revocation of these licenses is "punishment" for purposes of the double jeopardy clause.

*Zerkel,* 900 P.2d at 756; *see also Nichols,* 819 P.2d at 998 ("[T]he fact that a statute designed primarily to serve remedial purposes incidentally serves the purposes of punishment as well does not mean that the statute results in punishment for double jeopardy purposes."); *Butler,* 609 So.2d at 797 ("While this court recognizes that the Implied Consent Law ... is to some extent deterrent and thus of a punitive nature because the statute attempts to discourage the repetition of criminal acts, this court has previously stated that the deterrence may be a valid objective of a regulatory statute.").

[26][27][28] 38. We do not believe that the Supreme Court, by stating that "a civil sanction that cannot be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or ****1059 *634** deterrent purposes, is punishment," was holding that any administrative sanction that has a deterrent effect is punishment for double jeopardy purposes. We find the Supreme Court's opinion in *Kurth Ranch* instructive on this point. There the Court explained that monetary sanctions, such as fines or forfeitures, are qualitatively different from other types of administrative sanctions because of their distinctly punitive purposes. *Kurth Ranch,* 511 U.S. at ----, 114 S.Ct. at 1946 (distinguishing between fines, which are motivated by punitive purposes, and taxes, which are "motivated by revenue-raising rather than punitive purposes"). Administrative revocation of a license to engage in an activity or occupation is fundamentally different than a monetary sanction. The deterrent effect of administrative license revocation is incidental to the government's purpose of protecting the public from licensees who are incompetent, dishonest, or otherwise dangerous. Therefore, administrative license revocation generally is not motivated by a punitive purpose. A monetary sanction, on the other hand, *must* be described as having a deterrent or retributive purpose if it is not designed to compensate the government for its losses. *Halper,* 490 U.S. at 449-50, 109 S.Ct. at 1902.

39. The Court went on to state in *Kurth Ranch* that, "while a high tax rate *and deterrent purpose* lend support to the characterization of the drug tax as punishment, these features, in and of themselves, do not necessarily render the tax punitive." 511 U.S. at ----, 114 S.Ct. at 1947 (emphasis added). Thus the fact that the sanction in question may have some deterrent purpose does not, standing alone, render the sanction punishment for double jeopardy purposes.

[29] 40. Because of the inherent differences between regulatory sanctions, such as license revocations, and monetary sanctions, such as fines or forfeitures, different standards of "punishment" should be applied when evaluating each distinct

type of sanctions. As Professor Mary M. Cheh has explained,

> In th[e] context [of nonmonetary civil sanctions], any definition of punishment must enable us to distinguish between punishment on the one hand and regulation or treatment on the other. Common experience and common sense dictate that a criminal conviction for aggravated assault should not bar a departmental proceeding to suspend the police officer for the same conduct, or that a conviction for bribery should not prevent the dismissal of a housing inspector for accepting bribes. Indeed, if we allowed the fact of a previous conviction to bar administrative action against an individual for the same conduct, felons would enjoy immunity from regulation to which others are not subject. Moreover, history suggests that the multiple punishments against which double jeopardy protects are those traditionally associated with criminal proceedings, such as fines and incarceration.
>
> The conventional definition of punishment is thus inadequate here. That definition equates punishment with a burden imposed in response to an offense against legal rules and for the purpose of rehabilitation, deterrence, incapacitation, or retribution. Under that definition, regulation can be, and often is, punishment.
>
> For double jeopardy purposes, then, sanctions will not be deemed to be "punishment" if they are reasonably calculated to constitute a rough compensatory remedy, reasonably serve regulatory goals adopted in the public interest, or provide treatment for persons unable to care for themselves. As *Halper* itself indicated, however, the courts actually must determine, on a case-by-case basis, whether a given burden is reasonably calculated to achieve and actually does achieve the non-punishment goals of recompense, regulation, or treatment.

Mary M. Cheh, *Constitutional Limits on Using Civil Remedies to Achieve Criminal Law Objectives: Understanding and Transcending the Criminal-Civil Law Distinction,* 42 Hastings L.J. 1325, 1378-79 (1991) (footnotes omitted).

41. We conclude that a regulatory sanction is not "punishment" simply because the sanction has some deterrent effect on those who might otherwise violate the standards of the regulatory body. The Alaska Court of ****1060 *635** Appeals reached this same conclusion in a recent case, stating that

> when the legislature employs a licensing scheme to regulate a profession or an activity affecting the public health or safety, a statute that authorizes a regulatory body to revoke these licenses is "remedial" for double jeopardy purposes even though the law serves to deter licensees from engaging in conduct that is inconsistent with their duties as licensees or that is inconsistent with the public welfare.

*Zerkel,* 900 P.2d at 756. The Chief Judge of the Court, in a concurring opinion, explained that, "the sanction of suspending or revoking a license for noncompliance with the conditions governing its very issuance or continued existence necessarily bears an inherent relationship to the remedial goal of restoring regulatory compliance." *Id.* at 758 (Bryner, C.J., concurring). Accordingly, the revocation or suspension of a license issued by the government to engage in an activity or occupation will be deemed remedial "so long as the revocation or suspension is based on conduct that bears a direct relation to the government's regulatory goals." *Id.* at 757; *see also* Cheh, *supra,* at 1379 (opining that "sanctions will not be deemed to be 'punishment' if they ... reasonably serve regulatory goals adopted in the public interest").

42. Applying this standard to administrative driver's license revocation pursuant to the Implied Consent Act, we note that license revocation under the Act is based either on a test revealing the driver's excessive blood-alcohol level or refusal to take a chemical test for blood-alcohol content in violation of Section 66-8-107(A).[FN3] When a driver has

failed a chemical test, he or she has been shown to have operated a vehicle under dangerous conditions. When a driver has refused to take a chemical test, he or she has failed to obey one of the conditions for licensure-willingness to consent to a chemical test for blood-alcohol content under certain circumstances. The legislative goal in instituting the Implied Consent Act is to provide the public with safe roadways. *See* 23 U.S.C. § 408(a) (encouraging States to adopt and implement programs such as the Implied Consent Act in order "to reduce traffic safety problems resulting from persons driving while under the influence of alcohol"); 23 C.F.R. § 1309.2 (1995) (encouraging States to adopt and implement programs such as the Implied Consent Act in order to "significantly reduce crashes resulting from persons driving while under the influence of alcohol"). We conclude that-despite its deterrent effect-revocation of a person's driver's license based on the conduct of either failing a blood-alcohol test or refusing to take a chemical test under the circumstances stated in Section 66-8-107 is consistent with the government's goals in implementing the Implied Consent Act and is therefore remedial, not punitive, for the purposes of the Double Jeopardy Clause.

FN3. Section 66-8-107(A) reads in part:

> Any person who operates a motor vehicle within this state shall be deemed to have given consent ... to chemical tests of his breath or blood or both ... for the purpose of determining the drug or alcohol content of his blood if arrested for any offense arising out of the acts alleged to have been committed while the person was driving a motor vehicle while under the influence of an intoxicating liquor or drug.

## IV. CONCLUSION

43. We hold that administrative driver's license revocation under the Implied Consent Act does not constitute "punishment" for the purposes of the Double Jeopardy Clause. Respondent is ordered to vacate the dismissals of the charges against Baca and Holguin of aggravated DWI and to reinstate the cases on his docket.

**44. IT IS SO ORDERED.**

BACA, C.J., and RANSOM, FROST and MINZNER, JJ., concur.
N.M.,1995.
State ex rel. Schwartz v. Kennedy
120 N.M. 619, 904 P.2d 1044

END OF DOCUMENT

# Full Text of SB0585



SB0585 Enrolled LRB095 04709 DRH 30937 b

AN ACT concerning transportation.

**Be it enacted by the People of the State of Illinois, represented in the General Assembly:**

Section 5. The Illinois Vehicle Code is amended by changing Sections 6-206.2 and 6-303 as follows:

(625 ILCS 5/6-206.2)

Sec. 6-206.2. Violations relating to an ignition interlock device.

(a) It is unlawful for any person whose driving privilege is restricted by being prohibited from operating a motor vehicle not equipped with an ignition interlock device to operate a motor vehicle not equipped with an ignition interlock device.

(a-5) It is unlawful for any person whose driving privilege is restricted by being prohibited from operating a motor vehicle not equipped with an ignition interlock device to request or solicit any other person to blow into an ignition interlock device or to start a motor vehicle equipped with the device for the purpose of providing the person so restricted with an operable motor vehicle.

(b) It is unlawful to blow into an ignition interlock device or to start a motor vehicle equipped with the device for the purpose of providing an operable motor vehicle to a person

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whose driving privilege is restricted by being prohibited from operating a motor vehicle not equipped with an ignition interlock device.

(c) It is unlawful to tamper with, or circumvent the operation of, an ignition interlock device.

(d) Except as provided in subsection (c)(17) of Section 5-6-3.1 of the Unified Code of Corrections or by rule, no person shall knowingly rent, lease, or lend a motor vehicle to a person known to have his or her driving privilege restricted by being prohibited from operating a vehicle not equipped with an ignition interlock device, unless the vehicle is equipped with a functioning ignition interlock device. Any person whose driving privilege is so restricted shall notify any person intending to rent, lease, or loan a motor vehicle to the restricted person of the driving restriction imposed upon him or her.

(d-5) A person convicted of a violation of this Section is guilty of a Class A misdemeanor ~~subsection shall be punished by imprisonment for not more than 6 months or by a fine of not more than $5,000, or both~~.

(e) (Blank). ~~If a person prohibited under paragraph (2) or paragraph (3) of subsection (c-4) of Section 11-501 from driving any vehicle not equipped with an ignition interlock device nevertheless is convicted of driving a vehicle that is not equipped with the device, that person is prohibited from driving any vehicle not equipped with an ignition interlock~~



~~device for an additional period of time equal to the initial time period that the person was required to use an ignition interlock device.~~

(Source: P.A. 91-127, eff. 1-1-00; 92-418, eff. 8-17-01.)

(625 ILCS 5/6-303) (from Ch. 95 1/2, par. 6-303)

Sec. 6-303. Driving while driver's license, permit or privilege to operate a motor vehicle is suspended or revoked.

(a) Any person who drives or is in actual physical control

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of a motor vehicle on any highway of this State at a time when such person's driver's license, permit or privilege to do so or the privilege to obtain a driver's license or permit is revoked or suspended as provided by this Code or the law of another state, except as may be specifically allowed by a judicial driving permit, family financial responsibility driving permit, probationary license to drive, or a restricted driving permit issued pursuant to this Code or under the law of another state, shall be guilty of a Class A misdemeanor.

(b) The Secretary of State upon receiving a report of the conviction of any violation indicating a person was operating a motor vehicle during the time when said person's driver's license, permit or privilege was suspended by the Secretary, by the appropriate authority of another state, or pursuant to Section 11-501.1; except as may be specifically allowed by a probationary license to drive, judicial driving permit or restricted driving permit issued pursuant to this Code or the



law of another state; shall extend the suspension for the same period of time as the originally imposed suspension; however, if the period of suspension has then expired, the Secretary shall be authorized to suspend said person's driving privileges for the same period of time as the originally imposed suspension. ~~; and if the~~

(b-3) When the Secretary of State receives a report of a conviction of any violation indicating ~~was upon a charge which indicated~~ that a vehicle was operated during the time when the person's driver's license, permit or privilege was revoked, ~~:~~ except as may be allowed by a restricted driving permit issued pursuant to this Code or the law of another state, ~~:~~ the Secretary shall not issue a driver's license to that person for an additional period of one year from the date of such conviction ~~indicating such person was operating a vehicle during such period of revocation~~.

(b-5) When the Secretary of State receives a report of a conviction of any violation indicating a person was operating a motor vehicle that was not equipped with an ignition interlock device during a time when the person was prohibited from

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operating a motor vehicle not equipped with such a device, the Secretary shall not issue a driver's license to that person for an additional period of one year from the date of the conviction.

(c) Any person convicted of violating this Section shall serve a minimum term of imprisonment of 10 consecutive days or



30 days of community service when the person's driving privilege was revoked or suspended as a result of:

(1) a violation of Section 11-501 of this Code or a similar provision of a local ordinance relating to the offense of operating or being in physical control of a vehicle while under the influence of alcohol, any other drug or any combination thereof; or

(2) a violation of paragraph (b) of Section 11-401 of this Code or a similar provision of a local ordinance relating to the offense of leaving the scene of a motor vehicle accident involving personal injury or death; or

(3) a violation of Section 9-3 of the Criminal Code of 1961, as amended, relating to the offense of reckless homicide; or

(4) a statutory summary suspension under Section 11-501.1 of this Code.

Such sentence of imprisonment or community service shall not be subject to suspension in order to reduce such sentence.

(c-1) Except as provided in subsection (d), any person convicted of a second violation of this Section shall be ordered by the court to serve a minimum of 100 hours of community service.

(c-2) In addition to other penalties imposed under this Section, the court may impose on any person convicted a fourth time of violating this Section any of the following:

(1) Seizure of the license plates of the person's



vehicle.

(2) Immobilization of the person's vehicle for a period of time to be determined by the court.

(d) Any person convicted of a second violation of this Section shall be guilty of a Class 4 felony and shall serve a minimum term of imprisonment of 30 days or 300 hours of community service, as determined by the court, if the revocation or suspension was for a violation of Section 11-401 or 11-501 of this Code, or a similar out-of-state offense, or a similar provision of a local ordinance, a violation of Section 9-3 of the Criminal Code of 1961, relating to the offense of reckless homicide, or a similar out-of-state offense, or a statutory summary suspension under Section 11-501.1 of this Code.

(d-1) Except as provided in subsection (d-2) and subsection (d-3), any person convicted of a third or subsequent violation of this Section shall serve a minimum term of imprisonment of 30 days or 300 hours of community service, as determined by the court.

(d-2) Any person convicted of a third violation of this Section is guilty of a Class 4 felony and must serve a minimum term of imprisonment of 30 days if the revocation or suspension was for a violation of Section 11-401 or 11-501 of this Code, or a similar out-of-state offense, or a similar provision of a local ordinance, a violation of Section 9-3 of the Criminal Code of 1961, relating to the offense of reckless homicide, or



a similar out-of-state offense, or a statutory summary suspension under Section 11-501.1 of this Code.

(d-3) Any person convicted of a fourth, fifth, sixth, seventh, eighth, or ninth violation of this Section is guilty of a Class 4 felony and must serve a minimum term of imprisonment of 180 days if the revocation or suspension was for a violation of Section 11-401 or 11-501 of this Code, or a similar out-of-state offense, or a similar provision of a local ordinance, a violation of Section 9-3 of the Criminal Code of 1961, relating to the offense of reckless homicide, or a similar out-of-state offense, or a statutory summary suspension under Section 11-501.1 of this Code.

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(d-4) Any person convicted of a tenth, eleventh, twelfth, thirteenth, or fourteenth violation of this Section is guilty of a Class 3 felony, and is not eligible for probation or conditional discharge, if the revocation or suspension was for a violation of Section 11-401 or 11-501 of this Code, or a similar out-of-state offense, or a similar provision of a local ordinance, a violation of Section 9-3 of the Criminal Code of 1961, relating to the offense of reckless homicide, or a similar out-of-state offense, or a statutory summary suspension under Section 11-501.1 of this Code.

(d-5) Any person convicted of a fifteenth or subsequent violation of this Section is guilty of a Class 2 felony, and is not eligible for probation or conditional discharge, if the revocation or suspension was for a violation of Section 11-401



or 11-501 of this Code, or a similar out-of-state offense, or a similar provision of a local ordinance, a violation of Section 9-3 of the Criminal Code of 1961, relating to the offense of reckless homicide, or a similar out-of-state offense, or a statutory summary suspension under Section 11-501.1 of this Code.

(e) Any person in violation of this Section who is also in violation of Section 7-601 of this Code relating to mandatory insurance requirements, in addition to other penalties imposed under this Section, shall have his or her motor vehicle immediately impounded by the arresting law enforcement officer. The motor vehicle may be released to any licensed driver upon a showing of proof of insurance for the vehicle that was impounded and the notarized written consent for the release by the vehicle owner.

(f) For any prosecution under this Section, a certified copy of the driving abstract of the defendant shall be admitted as proof of any prior conviction.

(g) The motor vehicle used in a violation of this Section is subject to seizure and forfeiture as provided in Sections 36-1 and 36-2 of the Criminal Code of 1961 if the person's driving privilege was revoked or suspended as a result of a violation listed in paragraph (1), (2), or (3) of subsection

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(c) of this Section or as a result of a summary suspension as provided in paragraph (4) of subsection (c) of this Section.

(Source: P.A. 94-112, eff. 1-1-06.)

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# DEFENSE PERSPECTIVE OUTLINE
# KANSAS DUI COMMISSION

1. Goals
   a. Protect public safety
   b. Full, fair and constitutional determinations
   c. Efficient administration
   d. Rehabilitation
      1. Alcohol use
      2. Personal success - job, driving, expungement
2. Decay - look back
   a. Rehabilitation
   b. Prior changes of look back - people base decision on prior law
   c. Fixed number of years if no intervening DUIs
   d. With expungement
3. Expungement - should be re-authorized
   a. Statutory factors can limit - judicial discretion
   b. Could make ineligible if subsequent DUIs
4. Videos should be required
   a. Equipment fund could be utilized
5. House arrest
   a. Revive for 3rd offenses
   b. Rehabilitation enhanced because in real life situation
   c. Maintenance of job
   d. Support of family
6. Stationary shelter defense - realize impaired and stop driving
7. Judicial discretion in sentencing - factors
   a. Rehabilitation
   b. Treatment
   c. Length of time between priors
   d. Impact on victim
   e. Family support
   f. Creditors
   g. Employment
   h. High publicity cases

i. Aggravated DUI unnecessary
    1. Already dealt with other statutes

8. Interlock should mandated rather than suspension
    a. Suspension despaired impact on rural areas
    b. Ability to work - support family and pay creditors
    c. Rehabilitation enhanced
    d. They will drive anyway
9. Impaired to slightest degree
    a. Public safety not affected
    b. Internal possession - guise to promote prohibitions
    c. Disproportionately affect rural areas
    d. Vague standard - unconstitutional?
10. Administrative issues
    a. Let courts handle for failure and refusal. Exceptions:
        1. Under 21
        2. CDL
    b. Issues under 8-1020(h)
        1. Lawful arrest
        2. Lawful stop and detention
        3. Reliable procedures
        4. Machine properly working
        5. Acquittal or dismissal of criminal case
    c. Time limit for deciding
    d. Expand discovery - law enforcement reports
    e. Blood collector and tester subpoena
11. Driver's license
    a. Interlock
    b. Hardship
    c. Expand restrictions - to and from court, jail, care of disabled person to 2nd degree
    d. Proof of completion of treatment
12. Drug per se and prima facia drugs - internal possession
    a. Metabolites - no enhancing, depressing, or altering
        1. Marijuana - 30 days
        2. Over the counter confused with metabolite
            A. Amoxicillin and tonic water - false positive for cocaine
            B. Sesame seed - false positive for cocaine
    b. Prescription meds legal

c. Constitution - guise for drug enforcement without warrant
d. No affect on safe driving
e. Cost
f. Effect on professions (doctors, nurses, pilots)

13. Officers should not be permitted to draw blood
    a. Safety issues
    b. HIV
    c. Inadequate training
    d. Unsanitary conditions
    e. Committee has already recommended criminalizing refusal
14. Cost
15. HGN - Witte
16. Unfair impact on rural populations
    a. No public transportation
    b. Longer traveling
    c. People better known locally - local control
17. Refusal - criminal offense
18. Separate criminal offense - not alternative method for DUI convict
19. Cost - changes are too expensive
    a. Jail alternatives
        1. House arrest
        2. SCRAM
    b. Law enforcement personnel
    c. If fewer courts - greater case load

To Athena Andaya for Kansas DUI Commission
From Douglas E. Wells

September 30, 2009

Dear Commission,

I am enclosing written testimony I have provided to the Senate Judiciary Committee on Senate Bill 287 on February 13, 2008 and written testimony I have provided to the House Judiciary Committee concerning House Bill 2263 on February 16, 2009. I would offer these to the Committee as part of the defense perspective on the issues discussed in these bills. I would request that these be distributed during the presentation of the defense perspective on October 2. Thank you for your cooperation.

Sincerely,

Douglas E. Wells

DEW/teb

February 16, 2009

To: House Judiciary Committee

From: Douglas E. Wells

Re: HB 2263

Dear Committee,

The following letter is submitted as written testimony pertaining to the above referenced bill. This bill makes massive changes in the area of DUI law without the benefit of an interim committee to study the impact of these changes. I will address some significant problems that I have with the proposed legislation. I am the vice president for the Kansas Association of Criminal Defense Lawyers (KACDL). We are opposed to House Bill 2263. My analysis includes the following:

1. **The cost of the bill is too great:**

Increasing mandatory terms of minimum incarceration, increasing the maximum term of incarceration, increasing the severity of the crime, and creating new crimes will substantially increase the cost of incarceration for county jails and the state correction system. During a time of this budget crisis, we cannot increase the mandatory cost of incarceration in the creation of new crimes or in the upgrading of penalties for modified or existing crimes.

2. **Impaired to the slightest degree standard:**

This proposal changes the long standing DUI law from under the influence to a degree that renders a person incapable of safely driving a vehicle, to a standard of under the influence to a degree that impairs a person's ability to safely operate a vehicle to the slightest degree. This change of the philosophy applies to driving under the influence of alcohol, drugs, or the combination of alcohol and drugs. This

change is inappropriate for a number of reasons, including the following:

a. Impairment to the slightest degree sets the standard too low, particularly when there is no requirement for proof of actual unsafe driving. The current standard of incapability of safe driving properly requires a demonstrable effect on a person's ability to safely drive. Merely requiring impairment to the slightest degree does not show a meaningful or significant enough effect on driving to justify incarceration, loss of driving privileges, expensive litigation, and classification of our citizens as a criminals.

b. Impaired to the slightest degree is vague, is capable of objective definition, and does not provide sufficient notice to the public as to the unlawfulness of activity. To the contrary, existing law that requires incapability of safe driving, does provide the public with notice of what illegal conduct is.

c. Prescribed and over-the-counter drugs affect the human body or they would not be prescribed or taken. Coffee contains a drug, caffeine, that can affect the human body. If you establish a standard that makes even the slightest effect of a drug a criminal act while driving, the courts and penal institutions will be over run with our citizens being classified as criminals while otherwise doing what is perfectly legal. A higher standard of misconduct is necessary, incapability of safe driving, rather than impairment to the slightest degree.

d. This bill provides that the mere presence of a drug or metabolite in the body is not a per se violation if it is prescribed by a doctor. (This will be discussed more later) Even though the presence of a drug or

metabolite in the body does not make it a per se violation if prescribed by a doctor, this does not eliminate the ability of a person to violate the law when a drug or metabolite causes them to be impaired to the slightest degree. Even though the proposed legislation creates a defense for a per se violation when the medication is prescribed by authorized drug prescribers, the prima facia evidence provisions provide that a prima facia case that a person is under the influence to the slightest degree is provided if there is any evidence of a controlled substance or the metabolite. The defense of a prescribed medication being a legal defense should be provided across the board for all DUI offenses rather than making a person a criminal for taking a prescribed drug that has some slight effect on them.

e. This bill appears designed to promote alcohol and drug prohibition of the traveling public. If prohibition is desired, it should be confronted directly rather than indirectly in the guise of establishing the illegality of impairment to the slightest degree.

f. Kansas is a substantially rural and agricultural state. Taxi cab service and public transportation are not available throughout a majority of the state and is not readily accessible through many other parts of the state. A bill designed to eliminate impairment to the slightest degree would disproportionately punish people who do not have access to public transportation or taxi cab service.

3. **Creation of per se drug offenses:**

Under the DUI statute, a new category of crime of driving under the influence of drugs or any metabolite thereof in the person's body is created. There are no

numerical requirements for the amount of the drug or metabolite that are required to be found in the body. There is no requirement that the drug or metabolite have an active effect on a person's physical or mental abilities. There is no requirement that the existence of this drug affect the safe operation of the vehicle. The mere existence of the drug or its metabolite while driving becomes illegal. Problems include the following:

a. There is no scientific evidence that existence of a drug metabolite impairs a person physically or mentally. There is no scientific evidence that existence of a metabolite has any effect on the ability of a person to safely drive. Proper exercise of the police powers of the state require that the proposed illegal act have some negative effect on the public safety.

b. Existence of a drug at low levels has no effect on a person's ability to safely operate a vehicle or on a person's abilities physically or mentally. No levels are established for this per se drug offense. Before a per se drug offense should be created, pharmacological and forensic studies should be required to show levels of impairment and their effect on abilities to safely drive.

c. Metabolites of some drugs can be in the body for extended periods of time even though they have no impairing effects on the body. For instance, marijuana metabolites can stay in the body for more than 30 days. These metabolites do not affect the human body. They merely show prior use of marijuana. The purpose of the DUI statutes, to keep the roads safe, is not accomplished by measurement of metabolites.

d. The personnel and financial cost for this newly created crime of drugs or their metabolites becoming a per se crime is

substantial during these difficult financial governmental times. Forensic laboratories are already overworked and understaffed. Their services will be more required upon the establishment of this per se drug offense. Substantial new criminals will be created even without a showing of the effect of a drug or its metabolite on the safe operation of a vehicle. This will increase the cost of incarceration, probation monitoring, post-release supervision, and treatment.

e. The preclusion of a per se violation for drugs or metabolites in the body if the drug is prescribed by a person licensed to practice medicine, surgery, dentistry, and podiatry is incomplete. An osteopath can prescribe medication but that profession is not included within the definition of permitted prescribing entities. Various emergency, nurse, and hospital personnel administer drugs that may not be covered by this exclusion from responsibility from the per se drug and metabolite offense. This exception to criminal responsibility should be applied to all of the drug subsections of the DUI statutes.

f. Over-the-counter drugs and compounds which contains drugs, such as coffee, soda pop, and other foods or beverages, are not excluded as a substance for which criminal liability can be established by this per se drug section. These legal compounds produce metabolites as the body metabolizes these substances. For instance, amoxicillin and tonic water can cause false positive tests for cocaine. Many other legal substances can be unwittingly taken by our driving public that will cause them to become criminals after being subjected to laboratory analysis of their bodily fluids.

4. **The creation of new crimes and penalties is unnecessary.**

a. Crimes already exist to punish persons convicted of activity described under the proposed aggravated DUI provisions of this bill, section 1. The crimes of involuntary manslaughter-DUI and vehicular homicide address the situation of a person who dies following an accident with a person under the influence. Aggravated battery, being injured by the deadly weapon of an automobile by a person who is DUI, already exists. Enhanced punishment for a person transporting a child already exists in the current DUI law. Naturally, all of the DUI penalties under K.S.A. 8-1567 still exist. Penalties exist for the other statutes referred to in the aggravated DUI statute. The aggravated DUI statute is unnecessary.

b. If aggravating conditions or facts arise during the commission of a DUI or other crime that already exists, the court has the authority to impose more than the minimum sentence for crimes that already exist. Under existing laws, the court has discretion to address factors that include the harm to other people, damage to property, criminal history, and unsuitability for rehabilitation in assessing the penalty. If enhanced penalties are sought, penalties should be adjusted under existing laws rather than creating duplicities and confusing new laws that have already been addressed.

c. Diversion is eliminated as a possibility for an aggravated DUI. A prosecutor should be permitted to extend the offer of a diversion under appropriate circumstances. A legislature cannot anticipate all circumstances that could arise.

d. House arrest should be permitted when appropriate circumstances exist. It is prohibited for many of the newly formed crimes described as aggravated DUI. The court should be able to consider the circumstances of the offense, the rehabilitation of the offender, the family needs of the offender, the job of the offender, and other considerations that make house arrest appropriate for specific individuals. House arrest permits a person to work in situations where work release is not viable or available. The cost is typically paid by the defendant. House arrest is less costly than work release. House arrest permits a person to remain involved with their family and to provide family support, both economically and through the care of the family members.

5. **Increased terms of the confinement:**

a. Increased terms of mandatory minimum confinement are financially disadvantagous to the government during lean budgetary times.

b. Mandatory minimum terms of incarceration deny the judiciary to exercise its discretion in crafting punishment that is appropriate for the situation. A judge has greater knowledge of the facts, circumstances, treatment, likelihood for success, and likelihood for failure, and the family needs of the person convicted. Presumptive minimum sentences can be established but there should be flexibility to deviate from the presumptive sentence.

6. **Increased terms of driver's license suspension:**

a. Greater driver's license suspension creates a greater unemployed population of our

state. An unemployed society creates a bigger financial drain on our public assets and promotes a less productive society. Many people who cannot drive, cannot work. Less suspension followed by interlock requirements makes more sense. (see HB 2315.)

b. K.S.A. 8-1020 should also be modified, especially if driver's license penalties are increased. K.S.A. 8-1020(h) should be modified to require that an arrest or custodial taking be lawful so that people are not taken into custody or arrested improperly, unconstitutionally, or based upon discriminatory practices. See Martin v. Kansas Department of Revenue, 285 Kan. 625 (2008). K.S.A. 8-1020(h)(2) should be modified to permit the raising of issues that the breath test equipment was not properly working and should be changed to provide that testing procedures did not comply with the KDHE requirements. The licensee should be permitted discovery of law enforcement officer reports that include the alcohol drug influence report, narrative reports, accident reports, and test machine repair and maintenance documents in addition to discovery that is already permitted by K.S.A. 8-1020(e) and (f). These changes are necessary in light of the substantial effect that the prolonged loss of a driver's license can have on a person, whether driving is a privilege or a right.

7. **Prima facia changes:**

a. Existence of any controlled substance or metabolite of a controlled substance now will be considered prima facia evidence that a person is under the influence of drugs to a degree that they could not safely operate. I refer you to paragraph 3 of the written testimony and incorporate these statements herein.

b. Changes in the prima facia evidence section, K.S.A. 8-1005, are not supported by scientific evidence. A person's ability to safely drive is not impaired at .04. The effect of these changes is to create a new level of intoxication of .04 rather than the .08 level that is currently established. This limit of .04 is too low to have legal significance. This limit of .04 is not described in any other location of our DUI law other than for commercial drivers driving a commercial vehicle.

8. **Determination of "serious injury":**

Section 2 (w) permits a law enforcement officer to define what "serious injury" is. This would violate the administrative procedures act, which places that responsibility in the hands of an administrative hearing officer and later in the hands of a judge, if judicial review is sought.

9. **Preliminary breath test:**

Refusing to take a preliminary breath test is now admissible at trial. Mandatory minimum fines are established. If these changes are made, the legislatively enacted advisory should be mandatory. It makes no sense to require an advisory and to say that the failure to give the notice is not a defense.

10. **Lifetime look back:**

a. The legislature should impose a non-lifetime look back period. Prior occurrences should be permitted to decay. It is unfair to punish someone for activities that are too old so that they do not indicate a pattern or practice of conduct.

b. It is unfair to enhance penalties based upon activities that occurred before the enhancements were made for a lifetime look back period. A prior offense enhances a

current conviction even when the elements of the prior offense are different than the elements for the current offense. The look back period should be affected only to the commencement of the legislative change that required a lifetime look back if a lifetime look back is retained.

11. **Criminalization of under 21 breath test result:**

Possession or consumption of alcohol is already a crime. Criminalizing a breath test result is duplicitous.

12. **Conclusion:**

The changes proposed herein are too costly, already covered in existing law to a substantial degree, are not scientifically supported and are unfair. This bill is opposed by me.

Some changes are appropriate, however. Changes in K.S.A. 8-1020 should be made as outlined in paragraph 6b. Further discovery in driver's license hearings should be permitted as enumerated in paragraph 6b. The lifetime look back period should be eliminated. The advisory for a preliminary breath test should be made mandatory.

Sincerely,

Douglas E. Wells

DEW/teb

February 23, 2009

To: Senate Judiciary Committee

From: Douglas E. Wells on behalf of the Kansas Association of Criminal Defense Lawyers

Re: SB 278 Opponent hearing 02-24-09 at 9:30

Dear Committee,

The purpose of this letter is to describe our opposition to much of Senate Bill 278, although parts of it I do support. I am a private practicing attorney who represents people accused of driving under the influence. I am the Vice President of the Kansas Association of Criminal Defense Lawyers (KACDL). My comments are as follows:

1. **Establishment of Kansas Highway Safety Commission:**

I support this provision. This will allow more meaningful conversation and discussion among all disciplines. It is very important that defense attorneys be permitted to participate, as this bill provides. There should be a sunset term for this committee.

2. **Elimination of house arrest for 3rd offenders:**

It must be remembered that there is a lifetime look back. House arrest should be maintained for 3rd offenders, subject to the discretion of the court. If the bill changes are approved, no court could order house arrest for a 3rd offender. The court should be able to exercise its discretion on issues of house arrest for 3rd and 4th offenders based on factors that include, but are not limited to the following factors: whether treatment has been obtained, length of time between convictions, family needs, work needs, suitability or unsuitability of work release, and other factors deemed appropriate. It is inappropriate to eliminate judicial discretion. Work release may not be a viable option for all people. House arrest may be the only manner that a person may be able to keep



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their job. It makes no sense to not enable a person to keep their job so that they will have a greater chance of being successful and alcohol free as a result of that success.

3. **Electronic reporting of arrests and filing of charges:**

This methodology assumes that a person who is charged will become guilty. This violates the concept that the government must meet its burden of proof beyond a reasonable doubt to show each and every element of the crime is true. It violates constitutional considerations of confrontation cross-examination, and equal protection, since DUI accused are treated differently than other people accused of violating the law. This bill establishes a presumption of guilt.

Already insurance carriers are gaining access to information that they should not be gaining access to in the establishment of rates. For instance, insurance companies are gaining access to the reporting of non-moving violations to the Department of Revenue and are basing rates on those revelations of a person's conviction of a non-moving violation even though the law says they cannot. Access to records showing that a mere charge has been filed or that a ticket has been issued could improperly be used by persons or companies who should not have or use this information who can severely damage an innocent accused's rights, assets, and reputation. There are no safeguards in this bill limiting access to this information. There are no penalties for improperly using this information.

Under this bill, once an arrest for DUI occurs, it is reported. Under this bill, once complaint for DUI is filed, it is reported. Once the conviction occurs, it is reported. These are all reporting events that arise following the occurrence of the event. If a charge is not pursued, there is no event to trigger the reporting of this activity because a non-event occurred, the failure to file charges for reasons determined by the prosecutor. It is unlikely that the non-filing of charges, a passive and non-occurring event, will generate the deletion or elimination of

the arrest that has previously been reported from the record. Similarly, if a case is amended or dismissed, it is unlikely that it will be reported to eliminate the arrest and complaint filing that was previously reported. This means that the reputation and record of the person who was not found guilty will be forever tarnished due to the unlikelihood that someone will report a non-occurring event to clean up the record of a person.

A person is branded as a criminal once a report is made that they were arrested or charged with a DUI. We should not brand our citizens as criminals unless they are convicted. It is human nature to view a person as a criminal if they are accused and to treat them as a subclass citizen accordingly.

This section of the bill will subject governmental entities to a liability for failing to correctly report the non-filing, dismissal of charges, or finding of non-guilt. This could cause expenditure of substantial sums in defending lawsuits and paying judgments. A governmental entity would have very little way of knowing when they needed to sanitize a person's record because they are required to report a non-occurring event. In spite of this, they would have to establish systems that would monitor charges on an ongoing basis so that a reporting would be timely to protect themselves from civil liability. This all costs money that our government units don't have now.

4. **Conclusion:**

The establishment of the Commission is a good idea. Changing house arrest laws and reporting arrests and filing of charges is a bad idea. The latter should not be enacted.

Sincerely,

Douglas E. Wells

DEW/teb

My name is Brian Leininger and I am an attorney in private practice in Overland Park, KS. The large majority of my practice is the defense of DUI and related cases. I have been in private practice in this capacity for about eight years. My other work experience includes prosecuting DUI cases for about eight years for the Wyandotte County District Attorney's Office and the City of Prairie Village. I also served as General Counsel to the Kansas Highway Patrol for nearly five years. In that position I completed a great deal of police DUI training, including becoming qualified to administer the Standardized Field Sobriety Tests and completing the training to be a Drug Recognition Expert. While employed by the KHP I served on Attorney General Stovall's task force to revamp the DUI laws.

My purpose in addressing this commission is to give my opinion on a few topics being entertained. First, I understand it is being considered to criminalize driving while having an inert metabolite of a drug in one's body. I understand the idea behind this proposal. Cases involving driving under the influence of a drug can be difficult, and this would make it easier. However, in making it easier to convict the few who really are endangering others by driving while impaired by drugs, this law would criminalize the behavior of thousands of people who are endangering nobody. Drug metabolites can be found in the urine of people who are hours, days or weeks removed from drug use and are not impaired. If the purpose of the DUI laws is to remove impaired drivers from the road and punish or rehabilitate them, this law goes too far. Someone who smoked marijuana or used a prescription anti-anxiety drug a week before driving is endangering nobody. To punish that person equally with someone who really is endangering other drivers is simply unfair.

Similarly unfair is the possible proposal to criminalize driving while impaired by alcohol to the slightest degree, even when the driver is driving in a perfectly safe manner. Again, this casts a net so broad that it catches those behaving innocently as well as those behaving dangerously. This proposal effectively would make it illegal to drink any measurable amount of alcohol before driving.

The final topic I would like to address is ignition interlock devices (IID). My opinion is that the more widespread use of these devices as an option to lengthy suspensions would be a great improvement. The purpose behind administrative suspensions is safety. However, we all know that a great percentage of suspended drivers continue to drive. I believe this is precipitated by the fact that we live in a rural state with very few transit options, even in the cities. IID would assure the goal of safety while allowing people to keep their jobs and care for their families. Of course there are going to be people who drive cars not equipped with the IID, and nobody could argue with stiff penalties for those who do. I believe, however, that the vast majority of people who have gone to the effort and considerable expense of installing this device are going to use it and not take the risk of driving without it. Alternatively, if the person did not want the IID he or she could opt for a full suspension.