

## **Repeat drink drivers: ending the cycle, is it an impossible dream?**

Wallace, D.

Consultant, Traffic Safety Guy

### **Abstract**

Unlike what some people contend, there is no silver bullet to end drink driving. Like the people committing it, impaired driving is a complex issue requiring a variety of tools to fight it. Some tools like checkpoints, roving patrols, and increased media advertisements are critical in deterring, as well as catching, impaired drivers. The factors that result in a social drinker committing a drinking offense versus those that cause a repeat offender to drive impaired are vastly different, and complicated. Different responses are needed depending on the person. For social drinkers, the arrest and conviction can stop the criminal behavior. For repeat offenders, a different response is needed. Who repeats and who does not can depend on, in large part, whether or not the person is alcohol dependent.

A new tool in the effort to stop repeat impaired driving are Alcohol Treatment Courts. Called DWI Court in the United States, a DWI Court specifically works with repeat/addicted offenders by implementing intensive supervision and long-term treatment to address the underlying problems and change the person's behavior so they do not repeat. This presentation discusses the role of DWI Court in ending repeat impaired driving, looking at: (1) the reasons for having a DWI Court; (2) where the idea of a DWI court was developed by looking at its precursor –Drug Treatment Courts; and (3) What a DWI Court is; how it works, and what the research says about its effectiveness.

### **Introduction**

Law enforcement officers in every country are arresting drink drivers, importantly they are usually arrested only once. Yet some people are arrested a second time, then a third, and then a fourth, and so it continues. While incarceration is the most common response to repeat drink drivers, incarcerating them does not change their behavior. While incarcerated, a drink driver is not drinking alcohol and then driving, thus society is protected during that time, but at some point, the person will be released. The person then returns to the same behavior, drinking and then driving while impaired (DWI) putting us all at risk.

A repeat DWI offender is typically either alcohol dependent, commonly known as an addict or alcoholic, or the person abuses alcohol. The response for these two kinds of individuals must be different, just as their reasons for drink driving differ. For the alcohol dependent individual, without changing the person's behavior, the outcome for that person is continued dependence on alcohol and continued peril to the citizens of that community. To end the cycle, something different has to be done. Fortunately this is not an impossible dream.

One effort finding success is a specialized court program called DWI Court or Drug/DWI Treatment Court. A DWI Court is a team based court dedicated to changing the behavior of the alcohol-dependent individuals arrested for drink driving by using long-term treatment and intensive supervision. The goal of DWI Court is to protect public safety and at the same time address the individual's root cause of drink driving: alcohol and other substance dependency.

### **The Decade of Action for Road Safety**

Globally, traffic crashes take the lives of 1.2 million people every year, with almost half being pedestrians, cyclists and motorcyclists. Between 20-50 million people are injured because of crashes. Without action, it is anticipated that by 2020, 1.9 million lives will be lost due to crashes. ("Road Traffic Injuries," 2013) Because of these deadly statistics, in March 2010, the United Nations proclaimed 2011-2020 as the *Decade of Action for Road Safety*. (*Improving Global Road Safety*, 2010) with "driving under the influence of alcohol and drugs" identified as one of the key risk factors for traffic crashes (*Improving Global Road Safety*, 2010, pp. 1, 5).

In the United States, 31% of all traffic fatalities involve a person driving impaired. (NHTSA, 2013) 1.28 million people are arrested annually for DWI (NHTSA, 2014) with most people learning from the arrest and conviction. While a significant reduction of arrests and fatalities from the 1980's, the current arrest and fatality numbers are still alarming. Additionally, one-third of those who are arrested are repeat offenders. (NHTSA, 2007) Clearly the customary actions to end drink driving didn't work with those people who are rearrested every year. When arrested for additional drink driving offenses, the response is typically to focus on punishment and incarceration, e.g. lengthening the amount time incarcerated for each conviction.

Globally, the percentage of alcohol-related traffic fatalities and the number of people arrested varies from country to country. On Australian roads, approximately 30% of the crashes involve alcohol. (WHO, 2013) In many other high-income countries, 20% of fatally injured drivers are driving with an illegal blood alcohol content (BAC). In low- and middle-income countries the percentage of the fatally injured drivers who were driving impaired can be anywhere between 33% and 69%. (Global Road Safety Partnership, 2007)

Drink driving is a complicated global problem. The reason a person drinks and then drives can be as varied as the number of people who do it. With any complicated issue, there must be a comprehensive response because what stops one person will not necessarily stop someone else. Strong legislation criminalizing DWI, vigorous enforcement of those laws with sobriety checkpoints and roving patrols, increased public education and the resulting negative societal attitudes can all have an impact on the 'social drinker.' But they rarely impact the alcohol dependent drink driver. A different response is required for the repeat offender, and if the person is alcohol dependent, addressing the root cause, the addiction, is the most effective way to change a person's behavior. DWI Court addresses the root cause and should be included in any comprehensive approach to end drink driving.

## **Changing the Alcohol Dependent Person's Behavior**

A common response by many people about those who are alcohol dependent is to suggest that the driver just “stop” drinking or using the substance. First and foremost it is important to understand that addiction is not about the lack of will power, or a moral failing. Addiction is recognized as a brain disease. (WHO, 2011) Any drug or alcohol use causes acute and temporary changes to a person's brain, prolong extensive use changes the brain in fundamental, destructive and long lasting ways. Thanks to scientific advances, scientists can now look into a brain and see the internal changes resulting from that use. The structure of the brain is dramatically changed resulting in a compulsive behavior to use the substance.

Behavioral change is hard, not just for addicts, but for most people in general. How many people make a New Year's resolution to lose weight or exercise more and then keep it? 25% people who make such a resolution give it up after one week and 60% do so within six months. (Schwartz, Gomes, and McCarty, 2010) People forget that changing any habit takes hard work. When a chemical substance that has altered a brain is added to the effort, it is even more difficult.

One factor used to determine if a person is an addict or alcoholic is if a person continues using the drug (including alcohol) despite knowing the health or social problems it causes. Another factor is the inability to cut down on the use. (“The Science of Drug Abuse and Addiction,” n.d.) Thus, an arrest, incarceration, societal condemnation or other similar actions are ineffective to create lasting change; using or drinking the substance becomes more important than breathing. For the alcoholic, “remaining addicted becomes easier than trying to change.” (DiClemente, 2003, p. 113). Treatment is the most effective way to change behavior for the long-term.

After decades of research and tens of thousands of patients at all levels of substance abuse and addiction, the science is clear that treatment works, but only if the person is present for a sufficient length of time. This research had two additional findings. First, the amount of time spent in treatment is a reliable predictor of the person's post treatment performance, with one year as the minimum effective duration to change a person's behavior for the long-term; and second, “coerced” patients still benefit from treatment and they tend to stay in treatment longer, thus receiving the full benefits of treatment. (Wallace, 2011) It is that last finding that demonstrates the need for a court intervention.

One of the most effective ways to keep a person in treatment is to have an external requirement, such as a court order. By using the authority of a judge to hold a repeat drink driver accountable and require treatment, the person understands that he or she has to attend the treatment sessions, and that failure to do so can have immediate negative consequences. This is not to indicate that a judge is performing the treatment or overruling a treatment provider's expertise, no, the judge is just enforcing the follow through while the person is in treatment and make sure the person follows the “rules.”

## **The Drug Court Model**

DWI Courts are based on the Drug Treatment Court model. Currently in 24 countries, (including Australia and New Zealand) and with over 2,800 drug courts in the United States alone, (“Working Together,” n.d.) Drug Treatment Courts are considered the most effective method to respond to the drug-addicted individual’s criminal activity and change that person’s behavior for a lifetime. The first Drug Court started in Miami, Florida in 1989, combining drug treatment professionals with the authority of a judge. It proved to be an effective combination and a new and more effective court program was created. (“Justice Professionals,” n.d.)

Drug Courts use long-term treatment along with intensive supervision to require a participant to attend treatment and stay clean and sober. With regular and random drug and alcohol testing, announced and unannounced home and work visits and frequent appearances in court, participants are monitored closely to ensure they remain sober and comply with all of the judge’s orders. If the participants comply with the program’s requirements, they are rewarded (incentives) for their actions, when participants fail to comply, there are consequences (sanctions). It is the incentives and sanctions imposed in a quick and fair fashion that guide participants to change their behavior, while the treatment providers address a number of issues and deal with the underlying addiction. Accountability and Treatment are the yin and yang to successful and long-term behavior change.

Since the implementation of the first Drug Court, more research has been published on the benefits of Drug Courts than any other criminal justice program, and the research consistently concludes that Drug Courts work. Drug Courts return drug-addicted individuals to society as law-abiding citizens and they do it at a cost less than the traditional court system. As noted by Dr. Douglas Marlowe, J.D., Ph.D., Chief of Science, Law & Policy for the National Association of Drug Court Professionals (NADCP): “We know beyond a reasonable doubt that Drug Courts significantly reduce drug use and crime and do so with substantial cost savings.” (Marlowe, 2010)

In 1995, a New Mexico Drug Court judge applied the Drug Court model to repeat drink drivers and successfully changed their behavior. Recognizing that alcohol is a drug, the judge believed that this model would work for a different population—alcohol-addicted individuals who drink and then drive. (Wallace, 2011) From that one court in 1995, DWI Courts have grown in number across the United States, with 673 DWI Courts as of December 31, 2013. (“How Many Drug Courts are there?,” n.d.) DWI Courts are now responding to the criminal behavior of repeat drink drivers and making a difference.

## **DWI Court in Action**

DWI Courts follow *Defining Drug Courts: The Key Components* (NADCP, 1997) and *Guiding Principles of DWI Courts* (NADCP, 2005). These documents lay out the basic principles and structure of a DWI Court. Additionally, in the United States, DWI Courts operate within a post-conviction model. This concept is supported in a resolution by Mothers Against Drunk Driving (MADD) stating: “MADD recommends that DUI/DWI

Courts should not be used to avoid a record of conviction and/or license sanctions.” (“DUI/DWI Courts,” n.d.) In the United States, DWI Courts are also endorsed by:

- The American Judges Association (AJA)
- The Governor’s Highway Safety Association (GHSA)
- The International Association of Chiefs of Police (IACP)
- National Alcohol Beverage Control Association (NABCA)
- National Association of Prosecutor Coordinators (NAPC)
- National District Attorneys Association (NDAA)
- National Sheriff’s Association (NSA)

A critical distinction of DWI Courts and the traditional court system is the DWI Court team. 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 comprise the “DWI Court Team,” and the team uses a cooperative approach to systematically change an participant’s behavior.

Intensive supervision is a hallmark of a DWI Court. In a DWI Court a participant is tested on a regular and a random basis, testing for alcohol and other drugs. With a positive test, the person is quickly brought before the court. There are also scheduled and unscheduled home and work visits. If the participant is not at work when required, or not at home if a curfew has been imposed, there are consequences. If a person is late to an appointment, whether it is at the courthouse, for treatment, or some other appointment, the person is quickly located and brought before the court to face a range of graduated sanctions. The intensive level of supervision is necessary as it is the rapid response where the offender is held accountable that gets a participant’s attention. The person begins to learn that when he or she does not follow through, there are consequences for that decision. Additionally, the reverse is true—when the person does something right, there are positive reinforcements given, so the person understands what behavior is expected.

During the intensive supervision the person is also participating in individualized intensive treatment. At the outset, each person in DWI Court receives a clinical screening and assessment to develop a clinically sound treatment plan. It is critical to have an individualized treatment plan that is reviewed and revised over the length of the supervision. It is this combination of responses, the intensive supervision and the intensive long-term treatment, that provides the complete package and encourages a person to change his behavior.

## **The Research on DWI Courts**

Because DWI Courts have not been in existence as long as Drug Courts, the research is not as extensive. However, as more research is completed, it is demonstrating that DWI Courts also work, if the court follows the DWI Court model.

Initially, the first studies questioned the benefit of DWI Courts. However, after examining the courts studied and the research methods used, serious concerns were raised on the research. Many of the courts evaluated in the early research did not follow the DWI Court model or the *10 Guiding Principles of DWI Courts* and many of the evaluations had serious methodological shortcomings. (Marlowe, Festinger, Arabia, Croft, Patapis, & Dugosh, 2009) The latest studies that have evaluated DWI Courts examined courts that follow the model and the research had a methodological rigor. Those evaluations determined that, like Drug Courts, DWI Courts work.

According to a 2008 study, three Michigan DWI Courts were effective in reducing recidivism and reducing drug and alcohol use while using less criminal justice system resources to accomplish these goals. In one of the courts studied, during a 2-year period, the traditional court DWI offenders 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 DWI charge than the DWI Court participants. (Carey, Fuller, & Kissick, 2008)

A strong evaluation of a Wisconsin DWI Court found that recidivism rates for new offenses were significantly lower for those participants in a DWI Court than the comparison group. The DWI Court sample group consisted of 3<sup>rd</sup>-time DWI offenders who were diagnosed as alcohol-dependent. (Hiller, Saum, Taylor, Watson, Hayes, & Samuelson, 2009)

The National Highway Traffic Safety Administration (NHTSA) funded an evaluation of three DWI Courts in Georgia and determined that these courts were more effective in reducing recidivism. Repeat drink drivers who graduated from the program were up to 65% less likely to be arrested for a new DWI offense, and for all participants, whether or not they graduated, they had a recidivism rate of 15% versus a recidivism rate of up to 35% in the traditional court program. (Fell, Tippetts, & Langston, 2011)

## **Conclusion**

For over a century, people have been drinking too much alcohol and then trying to drive. For over a century, these drivers have been killing other drivers, pedestrians, bicyclists, and any number of individuals that use the roads and highways. For decades, drink driving was done without concern or consideration of the consequences, it was just one of those things people did, and it was an accident when someone was killed.

That attitude has changed and in many societies it is no longer accepted behavior. Laws have been strengthened, law enforcement officers are vigorously enforcing those laws, the courts are holding drink drivers accountable and the message is shared with all that drinking alcohol and then driving is not an accident, it is a crime with consequences. Yet, even with those changes, it still continues.

What is now recognized is that one size will not fit everyone. There have been significant reductions of the social drinkers who put others at risk by drinking and driving. For social drinkers, those strong laws, increased enforcement, public education and societal condemnation had positive reactions; people are making plans beforehand, obtaining a designated driver or not drinking and driving. The crime still occurs, but the numbers are decreasing.

However, one group that has been more of a challenge is repeat drink drivers. They hear the social message, they know the changes in the laws and suffer the consequences of an arrest and conviction, and then they do the crime again, and again, and again. It is time to understand that a new approach is needed with these individuals.

DWI Court is that new approach. It holds repeat drink drivers accountable and at the same time gets the support and treatment that is needed for them to change their behavior. Using long-term treatment and intensive supervision the participant is guided through a process of change and personal growth. Using incentives and sanctions to change behavior and treatment to understand where the behavior comes from and what to do about it, DWI Courts are seeing lives changed and families restored. DWI Courts are returning broken individuals to society as law-abiding citizens who are ready to do their part to save lives and share the message that drink driving kills and must stop.

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