

## DO DWI COURTS WORK?

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*DWI courts are increasing in number exponentially across the country. Modeled after the effective approach of drug courts, DWI court evaluations appear to show impressive results on reducing recidivism—but is the research right?*

### The Role of DWI Courts

DWI courts focus on the high-risk drinking driver—those individuals who are repeat offenders or have a blood alcohol content (BAC) of .15 or greater. These people are unable to live a productive life without alcohol, and more important, they are a significant threat to others on the road. Repeat DWI offenders are involved in disproportionately more crashes when compared to all drivers on the road. They are overrepresented in fatal crashes, and they have a greater risk of involvement. These people are consumed by the need to drink and, unfortunately, then they drive, with tragic results. Traditional sentencing efforts have not changed the behavior of these individuals. The DWI court was created to change behavior by providing accountability with intensive supervision and long-term treatment.

Recognized and supported by Mothers Against Drunk Driving (MADD), the Governor’s Highway Safety Association (GHSA), and the Highway Safety Committee of the International Association of Chiefs of Police (IACP) as a useful tool against impaired driving, DWI courts are becoming a staple in the criminal justice system. Showing promising results on recidivism, the growth of these courts across the nation is gaining momentum. In 2004 there were 176 DWI courts—86 designated DWI and 90 “hybrid” drug/DWI courts. (Hybrid drug/DWI courts started as drug courts, then added a separate track or docket for DWI offenders.) As of December 31, 2007, there were 110 designated DWI courts and 286 hybrid drug/DWI courts for a total of 396. That is a 233 percent increase in three years (see Huddleston, Marlowe, and Casebolt, 2007; Huddleston et al., 2004).

### The Need to Evaluate Effectiveness

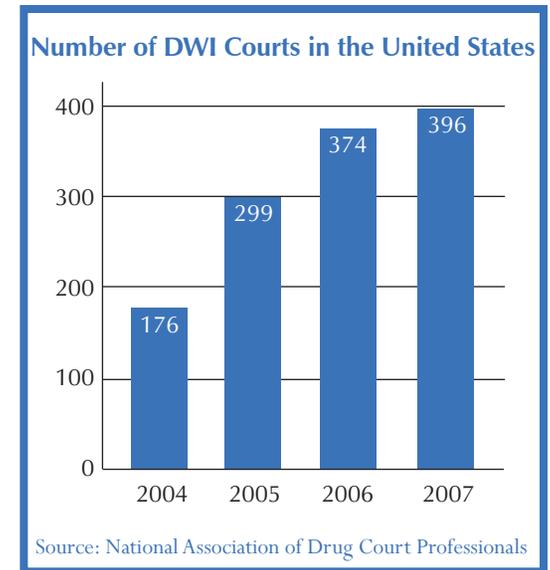
With this dramatic increase comes increased scrutiny. Do DWI courts really work?<sup>1</sup> Will they have an impact in each community where they are created? Are they cost-

effective? In today’s climate of doing more with less, whenever money is spent by any governmental or corporate entity, this question arises: Is it being spent wisely? One key way to determine the answer is with a thorough evaluation that can withstand intense scrutiny.

DWI courts evolved out of the proven drug court model. It is now accepted that drug courts are the most effective and efficient way to change a person’s drug-

addicted behavior, from a person addicted to drugs to a person free of the addiction living a productive life in society.<sup>2</sup> A number of scientific studies demonstrate that conclusion. However, it took years of stop-and-go evaluations before their findings were accepted in the scientific community as valid. Many of the earlier studies did not withstand critical review. Without that scientific support, the public questioned the validity of drug courts, and thus they lacked the support needed. While those questions have now been answered, it was a long process, and the lessons learned from the drug-court-evaluation process may be helpful to DWI courts.

Recognized DWI courts implement a post-conviction model, and they follow the ten guiding principles as released by the National Association of Drug Court Professionals (NADCP, n.d.). Guiding principle no. 9 examines the importance of evaluating the court and the program. According to that principle, to convince the community, including the parties involved in the process, that a DWI court is effective, there must be a “credible” evaluation to determine if the program is a success, if it is a failure, or if it needs to change a particular aspect. A thorough evaluation helps the DWI court team accept the changes they have to make for the good of the program and the community, and it provides the needed documentation to not only retain but also increase community support.



### 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.**

Source: National Drug Court Institute, “The Ten Guiding Principles of DWI Courts.”

### Validity of DWI Court Studies Questioned

Over the past few years, a number of DWI courts have completed evaluations demonstrating effectiveness through reduced recidivism and increased monetary savings. One court reported the recidivism rate for its graduates to be 13 percent versus 33 percent for nonparticipants. Another one had 4 percent for the graduates versus 25 percent for the nonparticipants. Clearly, this indicates a significant impact. But are these studies scientifically valid? Can they stand up to a thorough scientific evaluation? The apparent answer is no. These studies provide a look at the court, but there is generally insufficient information in the majority of evaluations to sustain a critical examination to determine the efficacy. This does not mean DWI courts do not work, it just means that we do not know enough because of the quality of the research.

A recent meta-analysis of a large number of DWI court evaluations found that the vast majority of the studies did not follow proper scientific protocols. The paper, which is pending peer review, examined 41 published and nonpublished evaluations, looking not so much at the results, but at whether the studies were scientifically defensible. Of the 41, it found only one study that could be rated “good” and four others rated “marginally acceptable” in their methodological rigor (Marlowe et al., in press). In other words, these studies were sufficiently thorough to withstand a critical review. The same team also evaluated a study in Michigan that came out after

the meta-analysis’s cut-off date and did an update, which is also pending peer review (Marlowe and Zold-Kilbourn, in press). It found the later study to be a “good” study.<sup>3</sup>

The remaining studies did not meet the criteria set up for scientific rigor for a variety of reasons. One of the shortcomings listed in the meta-analysis was that the studies included a DWI court’s first year, or that there was an evaluation of an immature program that has been active for a very short period. For any DWI court, the first year is a shake-out period where the team members learn what does and does not work. To consider that time period does not provide a true picture of a DWI court’s effectiveness over the longer term.

A second shortcoming was to only use DWI court graduates in the comparison—excluding individuals that were dropped out of the program or absconded. This is similar to taking only “A” students in a school, and then comparing them to another school with all of the students included. To provide a true picture, it is important to look at all of the participants that started the program and then compare them to a similar group not participating in a DWI court.

Finding a proper comparison group can be difficult, but it is critical to a quasi-experimental (or an experimental) study. One possible comparison group is the people that are eligible for DWI court who did not participate because of a long waiting list. Furthermore, it can be useful at times to compare the graduates to the nongraduates when trying to determine what factors may have resulted in individuals not completing the program. However, when comparing the program itself to other courts, all of the participants should be included.

Bleeding of conditions was a third shortcoming found by the meta-analysis. “Bleeding” is when the comparison court uses the same facilities and programs, such as intensive supervision or increased treatment, even though it is not considered a DWI court. That will not demonstrate the benefits of a DWI court versus a traditional court.

The conclusion reached by the meta-analysis was that there are promising indications that DWI courts make a difference—they reduce recidivism, and they save money. However, not enough rigorous evaluations have been conducted to validate the preliminary conclusions. To use a legal analogy, the case has not been proven beyond a reasonable doubt.

### Who Are the Repeat DWI Offenders?

Repeat DWI offenders typically share the following characteristics:

- **White, male, under 40, single**
- **High school or less education, non-white-collar employment**
- **A blood alcohol concentration (BAC) of .18 or greater at arrest**
- **On average, two or three prior DWI offenses, several prior “other traffic” citations**
- **More prior criminal offenses than first offenders**
- **Generally drink beer, in bars and at home**
- **Often alcohol-dependent and have personality and psychosocial problems, including:**
  - **Verbal hostility**
  - **Assault-prone**
  - **Sensation seeking**
  - **Impulse expression**
  - **Personal problems**
  - **Low levels of responsible values and compatibility with parents**

Source: National Highway Transportation Safety Administration

### Measures of Effectiveness

How do we know whether DWI courts “work”? A true outcome-evaluation study requires at the very least a randomized selection of participants. However, with a judicial expectation of individualized justice, among other considerations, this is not an option. This does not mean that a quality evaluation is not possible; it means that other avenues must be used, such as performance measurement. With this type of evaluation, there are a few key questions that should be considered initially:

- What is the retention rate for participants?
- How long do the participants maintain sobriety?
- What is the participants’ recidivism rate?

However, the question “Does the DWI court work?” is only the beginning of the analysis. It is also important to dig deeper and evaluate which aspects of the DWI court program work. This more sophisticated examination is just as crucial. For example, how effective is each incentive and sanction? If an incentive is not effective, should it be used? Of course not. The same is true with any sanction imposed. And then the follow-up question must be asked: “Are the results worth the costs?” Or said another way, what are the costs and benefits for that incentive or

sanction? Doing a thorough evaluation will provide answers to all of these questions. However, to get the answers, the data must be there from the beginning—when the participant enters the program.

As an example, when examining how long a person maintains sobriety, providing all positive results (when there is a BAC result with the test) can be beneficial in demonstrating a lack of sobriety—however, also documenting all negative results (no BAC result with the test) will give the evaluator useful information on any trends with the participants. Positive results would include missed tests or tampered ones—essentially any test that calls into question the validity of the person’s sobriety. Having this detailed information will allow the DWI court to demonstrate the average length of sobriety for the participants, as well as to show any trends of the participants over time with the program. Presumably, there would be fewer positive test results as the participants progress through the program. If there is an unexpected spike in the trend, that will allow the court to adjust its program.

Additionally, when collecting any information during the participant’s progress, there must be dates attributed to each entry. This will provide critical information on the effectiveness of the program. Just saying that the participant attended 12 treatment sessions is insufficient. Does that mean those 12 were in a year, i.e., once a month; once a week; or possibly even 12 days in a row? Date stamps can provide important information on the quality of the treatment, such as whether it worked and how much effort was required with the participant. Any case management system (CMS) or management information system (MIS) should require the date and time to be included with any court or treatment events that are entered into the system.

### Factors to Consider

To give a complete answer to these questions, and the others that will be raised, it is vital that the program data be complete so it can be compiled and compared. As more DWI courts are being created in every state, now is the time to ensure that proper criteria are considered at the start. This way when an evaluation is done, it is one that can withstand scientific scrutiny and prove its effectiveness. A number of questions must be asked to get the needed answers. A number of factors also need to be considered—ones that need to be collected while the participant is in the program and afterward.

Some guidelines for the data that should be collected include the following<sup>4</sup>:

1. All events and the activities should be tracked by date.
2. Programs can use paper to track these variables, but an automated system is preferred.
3. There are both client level and program level data elements that require tracking.
4. Baseline data should be collected on criminal history, alcohol use (including frequency, duration and any other drug(s) of choice), and personal information (including employment, education history, and family relationships). This information should be collected throughout the program and again at the completion to document changes.
5. Addiction severity should be measured at program admission as well as intervals during the program and at completion to document improvement.
6. Exit interviews are valuable for both absconders and graduates.

Fortunately, there is assistance in ensuring complete information is captured from the beginning. Software programs have been designed that can be implemented by any court to ensure all data are collected. Today, many MIS programs can be downloaded from the Web, and some states have set up Web-based systems for DWI courts. A review of each of the MIS programs is appropriate to ensure that all of the information is collected and entered by each team member, with an appropriate date stamp.

Only through proper documentation can the evaluator provide a thorough study—one that will stand up to a rigorous examination at a later time. With any evaluation, the quality of it will depend on the data collected. “Garbage in, garbage out” is a familiar saying to everyone, but that does not decrease its validity. With a complete and thorough evaluation based on all of the data, the DWI court will be able to go to the community and demonstrate beyond a reasonable doubt that DWI courts are an effective tool. The courts will be able to prove they reduce the recidivism of the hardcore DWI offenders, they save money, and ultimately, they make the community a safer place to live.

## RESOURCES

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## ENDNOTES

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<sup>1</sup> When using the term “DWI courts” in this article, it includes the 286 hybrid drug/DWI courts that have a separate DWI tract or docket, as well as the 110 designated DWI courts.

<sup>2</sup> Four independent meta-analyses have now concluded that drug courts significantly reduce crime rates an average of approximately 7 to 14 percentage points. In some evaluations the effects on crime were as high as 35 percentage points. A recent study of nine adult drug courts in California reported that rearrest rates over a four-year period were 29 percent for drug court clients (and only 17 percent for drug court graduates) as compared to 41 percent for similar drug offenders who did not participate in drug court.

<sup>3</sup> The Michigan study determined that the three DWI courts examined had a significant effect in reducing recidivism, alcohol, and drug use and used fewer criminal justice resources in the process (see Michigan State Court Administrative Office and NPC Research, 2007).

<sup>4</sup> See Heck, 2006: 25. While this publication discusses all drug courts, it is just as applicable to DWI courts and provides an extensive list of important data elements to be maintained by a drug court (see Heck, 2006: Appendix B).