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HARDCORE DRUNK DRIVING PROSECUTORIAL GUIDE

A Resource Outlining Prosecutorial Challenges, Effective Strategies and Model Programs

THE CENTURY COUNCIL

Distillers Fighting Drunk Driving & Underage Drinking

The Century Council *(TCC)* founded in 1991 and funded by distillers, is a national, independent, not-for-profit organization headquartered in Arlington, Virginia, chaired by the Honorable Susan Molinari. An independent National Advisory Board comprised of distinguished leaders in education, medicine, government, business, and other relevant disciplines assists TCC in the development of programs and policies to fight drunk driving and stop underage drinking.

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HARDCORE DRUNK DRIVING PROSECUTORIAL GUIDE

A Resource Outlining Prosecutorial Challenges, Effective Strategies and Model Programs

"Hardcore drunk drivers" are those who drive with a high blood alcohol concentration of .15 or above, who do so repeatedly, as demonstrated by having more than one drunk driving arrest, and who are highly resistant to changing their behavior despite previous sanctions, treatment or education.

SECTION I

PREFACE AND CHARACTERISTICS OF HARDCORE DRUNK DRIVING DEFENDANTS

PREFACE

In 2002, the National Association of State Judicial Educators and The Century Council's National Hardcore Drunk Driver Project convened a national panel to examine the judiciary's critical role in reducing hardcore drunk driving. At a judicial summit meeting in Washington, D.C., members of the panel — judges and judicial educators recognized as experts on the drunk driving issue — examined:

- The problem of hardcore drunk driving;
- The role of the judiciary in sentencing hardcore drunk drivers;
- Challenges and obstacles to effective sentencing of hardcore drunk drivers;
- Effective sanctions, strategies and programs to reduce hardcore drunk driving;
- Model programs and promising practices.

That judicial summit initiated an ambitious effort to produce a judicial reference resource to help judges more effectively adjudicate hardcore drunk driving cases. Specifically, the initiative produced the first of its kind, *"Hardcore Drunk Driving Judicial Guide: A Resource Outlining Judicial Challenges, Effective Strategies and Model Programs."* Approximately five thousand state and local judges received a copy of the *Hardcore Drunk Driving Judicial Guide.* Subsequent to its publication, over four thousand state and local judges attended workshops devoted to highlighting the effective strategies, tactics and programs contained in the Judicial Guide. This *"Hardcore Drunk Driving Prosecutorial Guide: A Resource Outlining Prosecutorial Challenges, Effective Strategies and Model Programs"* continues those earlier judicial education efforts' momentum. The *Prosecutorial Guide* helps coordinate judicial and prosecutorial DUI adjudication strategies by similarly exposing prosecutors to promising evaluation, monitoring, sentencing and treatment options.

This publication combines proven experiences with research in the field of hardcore drunk driving, highlights effective strategies, tactics and programs that can and have been implemented to reduce this dangerous problem. It is designed to serve as a resource for prosecutors as they address the complexities of reducing drunk driving in their communities.

Successful approaches to stop hardcore drunk driving require a comprehensive system providing for swift identification, certain punishment and effective treatment. The court community is uniquely positioned to lead the effort to reduce hardcore drunk driving through strong, consistent sentencing and creative, comprehensive sanctions. These measures not only punish the offender and protect the public but also promote behavioral changes leading to reduced recidivism.

OVERVIEW OF NATIONAL CRASH DATA

- Drunk Driving Fatalities (National Statistics): While alcohol-related traffic fatalities refer to those crashes that involve at least one driver, pedestrian, or cyclist with a Blood Alcohol Concentration *(BAC)* of .01 or higher, it is equally important to understand the impact of drunk drivers on our nation's roadways. Among the total motor vehicle traffic crashes in 2007, 12,998 people were killed in drunk driving crashes involving a driver with an illegal BAC (.08 or greater). That number represents 32.1% of the total 2007 traffic fatalities *(Source: NHTSA, 2008)*.

- Hardcore Drunk Drivers (National Statistics): Hardcore drunk drivers, those who drive at high BACs (0.15 or above), do so repeatedly as demonstrated by having more than one drunk driving arrest, and are highly resistant to changing their behavior despite previous sanctions, treatment or education. They continue to account for a disproportionate share of alcohol-related traffic fatalities each year. In 2007, 57% of alcohol-related fatal crashes involved a high BAC driver – a trend that has remained relatively unchanged for more than a decade *(Source: NHTSA/FARS, 2008)*. The median BAC level remains twice the legal limit at 0.16, and 46% of drivers with a prior DWI[1] conviction in the past three years involved in a fatal vehicle crash had a BAC level of 0.15 or higher *(Source: NHTSA/FARS, January 2009)*.

Compared with drivers who have not consumed alcohol, drivers with BACs of .15 or above are 380 times as likely to be involved in a single-vehicle fatal crash *(Source: Zador, P.L. Alcohol related relative risk of fatal driver injuries in relation to driver age and sex. Journal of Studies on Alcohol 52(4):302-310, 1991)*. Furthermore, when looking at drunk driving fatalities, in 2007 high BAC drivers accounted for 67% of the drunk driving fatalities on our nation's roadways *(Source: NHTSA/FARS, 2008)*.

[1] The DWI acronym is used throughout this guide for convenience and consistency, although some states use other terminology, such as DUI *(driving under the influence)* that can, in some states, refer to different levels of offense severity.

Not surprisingly, compared with first-time driving-under-the-influence arrests, *repeat* offenders tend to have higher rates of alcoholism and alcohol-related problems, more frequent non-traffic criminal offenses and more severe mental health problems.

A study of 126 hardcore DWI offenders incarcerated in an Ohio prison *(Siegal et al, 2000)* found 98 percent had histories of alcohol abuse and 75 percent were alcohol dependent. They all had been previously arrested for DWI.

CHARACTERISTICS OF HARDCORE DRUNK DRIVERS

When communities become dedicated to fighting hardcore drunk driving, it is important to first understand the shared characteristics of these offenders. The Siegal study's overarching purpose was to analyze the hardcore drunk drivers' behaviors, attitudes and characteristics. Subsequent studies' findings closely mirrored and confirmed the Siegal study's original findings *(See D.L. Gasperin and W.L. White, Recognizing, Managing and Containing the "Hardcore Drinking Driver", 2007)*.

Siegal conducted 126 qualitative interviews with felony DUI offenders at Ohio's dedicated DUI prison facility. The all male sample was predominantly white (78%) with an average age of 35.7 years. Many lacked a stabilizing relationship (42% were separated or divorced). 44% had less than a high school education. Contrary to popular conceptions about hardcore drunk drivers, 77% were employed full time with 57% being employed in the building trades industry (this is an important statistic because many DUI offenders tell their court they are unemployed and cannot therefore afford court-imposed treatment or sanction costs).

Hardcore drunk drivers cross-pollinate and are heavily involved in the justice system. Siegal study offenders had a mean number of 29 arrests (for all types of offenses, not exclusive to DUI arrests), 25 convictions, 7.6 DUI arrests and 7.1 DUI convictions. This is significant because it further illustrates that DUI offenses are not victimless crimes. Moreover, if courts can positively change these hardcore DUI offenders' long term behaviors, the broader criminal justice community stands to benefit.

Alcohol abuse was established in 98% of the Siegal study participants. 60% also had a history of drug abuse. 69% experienced a psychiatric disorder sometime in their lifetime. Amazingly, 62% had never attended a driver intervention program and one third had never entered into an alcohol or drug program. It is unlikely all of these offenders were never ordered to enroll in a driver intervention or alcohol-drug program. It is more likely explained by courts' failure to monitor offenders to ensure they complied with court orders.

More recently, in 2006-07, The Century Council in cooperation with the National Drug Court Institute and DUI courts across the country, conducted novel research involving clients

of DUI courts around the country. The research was based on perceived-deterrence theory, that is, the likelihood that a drunk driver will continue to engage in this illegal activity is directly related to their perception of risk of being caught, arrested and convicted for their behavior, the perceived certainty of receiving sanctions for such actions, and the magnitude of the sanctions imposed. Surveying actual DUI court clients provided insights into their perceptions of being caught and sanctioned, including what sanctions would motivate them the most to change their behavior and thus prevent recidivism. The research also explored perceptions of effective deterrence and outcome strategies to prevent incidents of repeat drunk driving behavior.

The research confirms substantial anecdotal evidence that hardcore drunk drivers believe it is likely drinking drivers will be stopped by authorities. 95% believed that if a drinking driver was stopped they will be arrested and 97% believed it is likely that those arrested will be convicted.

Interestingly, when hardcore drunk drivers were asked to reflect back to their first DUI conviction, 81% thought that more severe sanctions after their first DUI conviction would have made them change their behavior to prevent their being arrested and convicted again. Moreover, longer sentences, stiffer fines and ignition interlocks are perceived by them as being the most effective initiatives and interventions in stopping drunk driving. Aside from legal consequences, family and friends top the list of reasons why hardcore drunk drivers stop drinking and driving.

QUESTIONS WORTHY OF CONSIDERATION REGARDING HARDCORE DRUNK DRIVERS

All court system partners should continually ask three compelling questions when tackling hardcore drunk driving in our communities:

1. *Why do previously convicted drunk driving offenders continue to drive drunk?* There are probably many answers, but according to the Siegal study interviews of hardcore drunk drivers, previously convicted drunk drivers continue to drive drunk *because they can*. Hardcore drunk drivers are risk takers who believe they can beat the system.

2. *Suspending disbelief momentarily, if your court community had unlimited resources dedicated to solving their community's hardcore drunk driving dilemma, what would those resources and programs look like?* Often, court system partners mistakenly assume they lack the necessary resources to create effective evaluation, monitoring, sentencing and treatment programs. As this *Prosecutorial Guide*

demonstrates, some of the most innovative and effective court system strategies were borne out of frustration and necessity and required little or no additional resources.

3. ***What are local prosecutors and interested stakeholders truly trying to achieve with drunk driving case adjudications?*** This is perhaps the most important threshold question we should continuously ask. In short, positively changing drunk drivers' long term behavior should be the ultimate goal of these case adjudications. This *Prosecutorial Guide* later discusses how prosecutors, in conjunction with court system stakeholders, can construct evaluation, treatment, sanctions and monitoring programs that are proven to reduce drunk driving offenders' recidivism.

Comprehensive countermeasures to target the hardcore drunk driving population are critical and have been cited by the National Highway Traffic Safety Administration *(NHTSA)* as an immediate need on which the nation should focus. Strides are indeed being made as more successful tactics and programs are implemented in the fight against hardcore drunk driving.

Here the focus is on how prosecutors, in coordination with other court system partners, can best contribute to those efforts.

SECTION II

PROSECUTORIAL INITIATIVE

THE ACTIVE ROLE OF THE PROSECUTING ATTORNEY

A prosecutor has the responsibility of a minister of justice and not simply that of an advocate *(Model Rule 3.8, Model Rules of Professional Conduct, American Bar Association).* This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. However, the dignity and honor of the profession call for compliance with a higher standard of conduct, one of professionalism *(National Prosecution Standards, Professionalism Commentary, National District Attorneys Association).*

Prosecutors have a unique role in the fight against hardcore drunk driving in their jurisdictions. They have an ethical obligation to see that justice is served in the prosecution of every alcohol related offense. Prosecutors must also view these cases with an eye towards what can be done to protect the public. Other considerations include severity of the charges, restrictions on the offender, rehabilitation and facilitation of long term behavior change. All of this must begin with an understanding of what constitutes a hardcore drunk driving offense, as discussed in the opening section of this monograph.

Hardcore drunk drivers may be difficult to detect, difficult to prosecute and difficult to properly sanction and treat. Often those who are apprehended know how to manipulate the judicial system's weak spots and avoid appropriate sanctions and treatment. As a result, each case must be reviewed on an individual basis, looking at the unique factors and characteristics for swift identification of the hardcore drunk driving defendant. The continuing analysis of these factors together with the events leading to arrest must carry through to sentencing.

However, effective prosecution of the hardcore drunk driving defendant cannot be done in a vacuum. Reliable communication, rapport building and collaboration among all allied criminal justice professionals are also imperative to fair and just dispositions of these cases. Together with judges, defense counsel, probation officers and treatment professionals, critical information and options can be explored which may otherwise have been overlooked or never properly addressed. The development and facilitation of these relationships will be discussed in detail later in this section.

Prosecutors need to be aware that an "assembly line" or "business as usual" approach to these cases will diminish any attempt to address the individual issues and problems surrounding this defendant. It may also preclude the examination of the options available by which a change in behavior may be effectuated. Although prosecutors do not see themselves as social workers or treatment facilitators, the hardcore drunk driving defendant is most likely a recidivist waiting to re-offend if his case is not handled in a comprehensive manner. It is important for prosecutors to remember that with many hardcore drunk driving defendants prior sentencing options did not work and the critical question is "Why?" Prosecutors do have a vested interest in preventing recidivism and as such should seek creative and effective case-specific sentencing options that will address these issues. Sanction options are discussed in further detail in *Section III*.

This concept of individualizing the hardcore drunk driver does not suggest that the prosecution of the charges should in any way be compromised nor should the offender's prior alcohol convictions be minimized. Prosecutors must maintain their discretion in developing an appropriate disposition for presentation to the court. Prosecutors should at all costs maintain the integrity of the alcohol prosecution and, as such, the offender's actions, blood alcohol content, and prior behavior should be analyzed and incorporated into any sanction options. The goals and objectives of the prosecution of hardcore drunk drivers should always remain the same but the individual outcomes should be unique to the defendant.

IMPLEMENTING THE MULTIDISCIPLINARY APPROACH

Identifying, addressing and neutralizing the hardcore drunk driver takes teamwork. The prosecutor can be more effective in his goal of keeping the community safe by finding, developing and utilizing partners in the battle for safe roads. The most obvious first partners are fellow prosecutors.

CONNECTING WITH FELLOW PROSECUTORS

Cooperation and communication among prosecutors' offices can foster relationships that will allow prosecutors to do their jobs better and do them longer. Attrition is a reality in DWI prosecution. Teamwork and relationship building interoffice can improve and retain prosecutors in this area.

Start small. Communicate with the prosecutors in offices within the surrounding area. Identify which prosecutors are assigned to handle DWI cases in that jurisdiction. Find out if there are common problems, issues and available services. In addition, establish contact with the state's prosecutors association and Traffic Safety Resource Prosecutor. All of these statewide prosecutor resources can provide training, answers to legal questions, brief banks, newsletters and even sometimes a DWI list serve.

Nationally, the National District Attorney's Association supports the National Traffic Law Center *(NTLC)*. NTLC has a website at *http://www.ndaa.org/apri/programs/traffic/ntlc_home.html* and has numerous publications available for free via download. Everything from *Basic Trial Techniques for Prosecutors* to *Defense Challenges to Breath Testing* to *Toxicology to Collision Reconstruction* is addressed in these publications. Plus, both the NTLC and the state's prosecutor association maintain information on common defense witnesses. They can be sounding boards for best ideas and worst problems.

CONNECTING WITH LAW ENFORCEMENT

Sometimes one of the biggest gaps to bridge is the one between the prosecutor and law enforcement. In order to develop a working relationship, invite police officers to office trainings and be available to attend useful germane police trainings as they arise. A prosecutor who has sat in on a class on how to administer a breath test is two steps ahead of everyone else in the courtroom.

Reach out to the agency most active in DWI arrests and set a meeting with the commanding officer. Explain that the office is looking to focus efforts on the most dangerous of DWI defendants and ask what their problems have been with these hardcore drunk driving offenders. Explain the policies and workings of the prosecutor's office. The creation of an environment of teamwork and trust will increase the effectiveness of case processing, preparation and prosecution.

CONNECTING WITH THE COURTS

This process can be the most intimidating. In many jurisdictions, the concept of judicial independence and the prohibition against ex parte communications during the pendency of a criminal action have hindered the lines of communication among prosecutors and the courts. However, like prosecutors, judges have long struggled to balance society's goals and interests with the individual offender and the need for sanctions. Thus most would see the value in identifying, addressing and neutralizing the hardcore drunk driver. Public safety concerns are integral to the administration of justice. As a result, the courts can be one of the strongest and most effective of partners on the team.

There are avenues open to draw the court into a meaningful dialogue about this public safety issue. For example, does the jurisdiction have a DWI Court? Modeled on the success of Domestic Violence Courts and Drug Treatment Courts, the modern DWI court centralizes the prosecution of drunk drivers in a jurisdiction. They are dedicated to changing the behavior of high-risk impaired drivers, such as those with a blood alcohol content of .15 or higher or a prior DWI conviction, by specifically addressing their addiction, i.e. hardcore drunk drivers.

DWI Courts are predicated upon the judge, prosecutor, defense lawyer, law enforcement officer, probation officer, and treatment provider working together as a team to develop the most effective response based on the needs of the offender while ensuring the public's safety on roads and highways. Recent research has highlighted the success of DWI Courts in changing the behavior of the nation's most dangerous impaired drivers. According to a 2007 study by the Michigan Supreme Court, DWI offenders sentenced to traditional probation were nineteen times more likely to be re-arrested for a DWI charge than a DWI Court participant.

CONNECTING WITH PROBATION AND PAROLE

Drunk drivers often receive some form of post-conviction supervision. The fear of the partners in the process is that the defendant will reoffend and cause greater damage or mayhem. Additionally many offenders do not have other criminal records or are living useful productive lives aside from their choice to drink and drive. Thus they sometimes do not appear to be appropriate candidates for incarceration. Post-release supervision can be effective and successful, under certain conditions.

The first step again is opening the lines of communication. Contact the probation and parole offices in the jurisdiction. Request a meeting with the local supervisors to better understand the criteria involved in developing terms and conditions for the hardcore drunk driver. In addition, inquire as to when and why or maybe more importantly, why aren't DWI probationers or parolees revoked for bad behavior or arrests. Often the post-supervision partners are saddled with high caseloads and low resources just like other segments of the criminal justice system. Review a sample set of special terms and conditions of probation or parole with the supervisor. These conditions can be a jumping off point for discussions about how to handle specific hardcore drunk driving defenses. In addition, obtain sample terms from other surrounding jurisdictions. Advising post-release supervisors about what other systems do to minimize recidivism may stir some changes in how they treat sentenced defendants.

CONNECTING WITH OTHER PARTNERS

One of the most significant sanctions the hardcore drunk driver faces is the loss of his driving privileges. Many suspensions or revocations are mandatory and are ordered by the court as a pre-trial measure or post-conviction requirement. While ordered by the court, in reality this sanction is generally administered by the State Department of Motor Vehicles *(DMV)*. Additionally, many statutory schemes include discretionary licensing events wholly determined and implemented administratively and independent of the criminal proceedings. Thus, the state's DMV must be brought onto the team to help bring pressure to bear on the hardcore drunk driver.

More and more states are also employing some type of mandatory assessment or treatment component in their sentencing scheme. It is far more likely than not that the hardcore drunk driver has an alcohol or substance abuse problem. Punishing the individual without attempting to identify and address one of his root problems is far less likely to succeed. Typically the treatment providers have little real knowledge of what the hardcore drunk driver actually did or what happened in court. Their information is usually based on the offenders reporting which may be less than complete and forthright. The prosecutor should learn what criteria the provider uses to assess and treat the defendant. Both can benefit from a more complete understanding of each other's role in the process and thus can more effectively deal with the problem drunk driver.

PARTNERS IN PREVENTION

New York State recently made an effort to create a broad sharing of knowledge and goals regarding DWI offenses. The New York State Governor's Traffic Safety Committee contacted all of the various organizations and agencies that affect the course of an impaired driver through the criminal justice system. Together they created a plan. Police officers, prosecutors, judges, court attorneys, defense attorneys, magistrates, treatment counselors and treatment providers attended a two day conference to discuss their roles. The agenda followed the chronological course of a defendant. All speakers for the conference were given six basic DWI scenarios to work with. Each addressed how they handle an impaired driver, an intoxicated driver, a mid BAC driver, a high BAC driver, an intoxicated driver with prior convictions and an intoxicated driver who maims or kills. Presenters were asked to try to maximize audience involvement and questions as they taught.

Treatment providers discovered how and why offenders are arrested. Police officers and treatment providers then heard from three prosecutors from different parts of the state and a court attorney about how these cases are handled in court. Next the New York DMV's assessment and treatment program gave an explanation of how they get clients and what they require of them. The day ended with a short session on the new technology available to find and monitor offenders. Agencies currently using license plate readers, ignition interlock and Secure Continuous Remote Alcohol Transmitter *(SCRAM®)* detailed the various pros and cons of new technology.

The next morning started out with the state Agency responsible for the oversight of treatment providers leading a discussion of the ways and means to provide treatment to offenders. For the judges, prosecutors, defense attorneys and police officers this session was an eye opener. For the treatment providers it was a unique opportunity to compare certification requirements, assessment consistency, treatment plans and state oversight. Just as the providers left the conference enriched with useful knowledge of how the offender gets into the system, all of the actors on the front end learned what really happens when an offender is required to get into

a program. Next, Probation used case examples to show both offender supervision and the violation process. Finally, the DMV detailed how and why they take people's licenses.

The benefits of this type of interaction extend beyond simply educating each other and providing a consistent effort to combat the issue of drunk driving. For many, it was the first time all of the various partners were ever in the same room. Contacts were made and information was exchanged that could then be used to develop appropriate dispositions for hardcore drunk drivers in their jurisdictions.

CONNECTING WITH THE PUBLIC

Lastly, considering that the overall stratagem of DWI prosecution in general is deterrence, the final partner to enlist is society. Taking the hardcore drunk driver off the road once he is a hardcore drunk driver is obviously necessary. Preventing him from starting the car in the first place is the best solution. Using the partners' resources, strategic use of the available media can sometimes pay the greatest dividends.

SECTION III

APPLICATION OF INFORMATION TO THE PROSECUTION OF HARDCORE DRUNK DRIVING

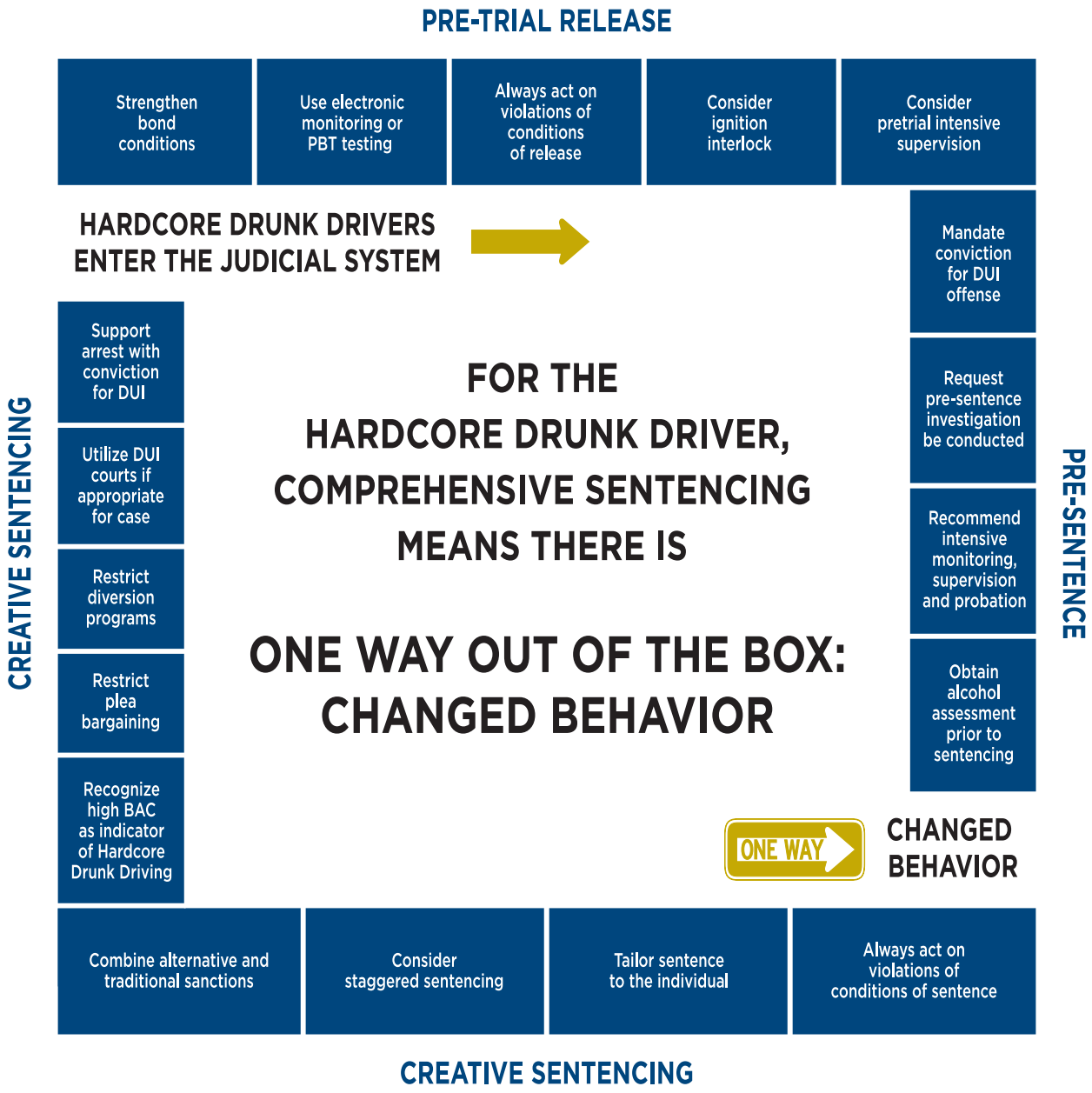
EFFECTIVE SANCTION STRATEGIES FOR THE HARDCORE DRUNK DRIVER: BUILDING THE BOX

So, how can prosecutors help judges and the larger justice system combat hardcore drunk driving? Research and the experience of judges reveal that certain, consistent and coordinated sanctions are key to reducing hardcore drunk driving, with certainty and consistency having greater impact than severity. Alternative sentencing methods, DWI courts and sentences tailored to each offender can have a profound effect on an offender's ability to avoid re-offending *(Jones and Lacey 1998)*.

No one sanction or strategy is successful unless used in conjunction with other measures. It is the coordination of a variety of measures that prove most effective. For example, the combination of home confinement with electronic monitoring, intensive supervision, treatment, and an alcohol interlock can be quite effective in controlling the hardcore drunk driver. But the overseeing agencies need to coordinate their initiatives and communicate information and problems with compliance.

Prosecutors do not have to wait until a sentencing hearing in order to request the court impose sanctions for hardcore drunk drivers. Effective sanctioning should begin upon arrest in order to ensure compliance with bond conditions and to identify hardcore drunk drivers.

SENTENCING BOX



PRE-TRIAL RELEASE

- Pre-trial release conditions: Many hardcore drunk driving defendants often re-offend between the time of arrest and the date of trial on that offense. A host of alternatives are available to deal with the hardcore drunk driving defendant during that time which will address the concerns public safety while permitting the offender to avoid incarceration. These alternatives include making use of technology such as ignition interlock, SCRAM® devices, global positioning *(GPS)* devices, as well as conditions and restrictions that might include day reporting centers and license restrictions.

In South Dakota, individuals who have been arrested for second offense driving under the influence charges are required as a condition of bond to demonstrate complete abstinence from alcohol by blowing into a preliminary breath test *(PBT)* two times per day. Over 98% of the time defendants show up and demonstrate that they have not consumed alcohol. Bond conditions requiring that defendants not consume alcohol or frequent any place where alcohol is served should contain a compliance component.

Twice daily PBTs or the use of an alcohol monitoring systems such as a SCRAM® device will aid in determining when a bond violation has occurred.

Ignition interlocks may be a useful tool as a condition of pre-trial release. Interlock systems should be installed on any vehicle an offender has access to and frequent examination of driving data should occur in order to catch drinking events. Some interlock systems have GPS monitoring systems and are capable of providing real-time information regarding a defendant's use of the interlock with a digital photo documenting that the defendant is the individual using the vehicle.

- Pre-trial intensive supervision programs: Intensive pre-trial supervision is designed to get repeat drunk drivers into counseling, treatment and monitoring as soon as possible after arrest and before conviction. Every year in Wisconsin more than 2,000 repeat drunk drivers in 13 counties receive services from that state's pre-trial intervention programs, which Wisconsin refers to as pre-trial intensive supervision programs *(ISPs)*. A state department's long term analysis of drunk driving recidivism by client's in Wisconsin's four longest running ISP programs found:

    - ISP clients were less likely to be re-arrested for drunk driving (22 percent of ISP clients from July-December 1998 had been re-arrested once vs. 37 percent for non-clients);

- ISP clients who did recidivate went a longer time (average of 678 days) to re-arrest compared to 371 days for non-clients *(Wisconsin Department of Transportation, 2002)*.

PLEA CONSIDERATIONS

- Restrict Diversion programs: A 2002 AAA Foundation for Traffic Safety study recommends the elimination of diversion programs that allow offenders to escape licensing suspension and that remove the DWI offense from the offenders' driving record. The National Transportation Safety Board and others have recommended the elimination of diversion programs. One criticism is that without proper record keeping and centralized reporting, a repeat offender could be classified as a first offender multiple times.

- Maintain the integrity of the arrest: Prosecutors should appreciate the need to maintain the integrity of the arrest as an alcohol offense and obtain an alcohol related conviction. Limiting plea-bargaining in this fashion, while preserving the prosecutor's discretion to handle the case in an appropriate manner, can lead to more accurate identification of repeat offenders and more appropriate sanctions being imposed. A meta-analysis of 52 studies on plea-bargaining restrictions combined with other policies found an 11 percent reduction in crashes and injuries, suggesting such restrictions are a vital part of an effective strategy for reducing drunk driving *(Wagenaar et al. 2000)*.

According to a 2002 survey by the Traffic Injury Research Foundation, prosecutors support the idea of restrictive plea-bargaining, such as removing the opportunity to plead down to a non-alcohol offense and discontinuing plea-bargaining in high BAC cases. Prosecutors also support stating the reason for a plea agreement on the record *(Robertson and Simpson 2002)*.

New York is an example of a state that has enacted legislation to prohibit drunk driving offenses from being plea bargained to a non-alcohol related offense. A drunk driver who plea bargains for a lesser charge still is identified as an alcohol-related offender.

POST-CONVICTION

Traditional sentences that are limited to fines and suspended jail time only do little to reduce recidivism. Attempts should be made to tailor sentences for every defendant making use of the suggestions, where appropriate, below.

- Fines: Traditional sentences that include only fines do little to reduce recidivism. However, while their deterrent effect appears minimal, fines and other monetary sanctions serve as retribution, which is one of the objectives of sentencing. Fines can also play an important role in helping to pay for other costs associated with hardcore drunk drivers, such as enforcement efforts and treatment.

- Incarceration: The number of DWI offenders under some form of correctional supervision almost doubled between 1986 and 1997 *(Maruschak, 1999)*. In the past 15 years, most States have adopted some form of mandatory jail sentences for misdemeanor DWI and prison sentences for felony DWI. The effects of these laws have been hotly debated, and the evidence from studies of incarceration as a specific and general deterrent to DWI is mixed. In general, the available evidence suggests that as a specific deterrent, jail terms are extremely costly and no more effective in reducing DWI recidivism among either first-time or repeat offenders than are other sanctions *(Hagen, 1978; Homel, 1981; Salzberg and Paulsrude, 1984; Jones, Joksch, Lacey, and Schmidt, 1988; (Mann, Vingilis, Gavin, Adlaf, and Anglin, 1991; Ross, 1991; Martin, Annan, and Forst, 1993)*. *Nichols and Ross (1989)* reviewed available studies of the effect of incarceration on DWI recidivism rates for the Surgeon General's Workshop on Drunk Driving. They found six studies that reported no reduction in recidivism, one that found no difference in recidivism between a special DWI facility and a traditional prison, and one that found reduced recidivism for first-time offenders sentenced to 48 hours in jail. Further, traffic deaths decreased in Norway and Sweden once both countries abandoned mandatory jail sentences for convicted impaired drivers *(Ross and Klette, 1995)*.

There are some indications that the short-term effect of jail as a general deterrent depends on the extent of public awareness, the risk of incarceration, and the size of the community. These short-term effects are initially strong following public announcement of a sanction, but often dissipate over a period of about 3 years. Some studies have found that the use of 2-day jail sentences had a general deterrent effect for first-time offenders *(Falkowski, 1984; Jones et al., 1988; Zador, Lund, Fields, and Weinberg, 1988)*; others concluded that jail terms were ineffective *(Ross, McCleary, and LaFree, 1990)*. Researchers have also noted, however, that mandatory jail sentences tended to negatively affect the court operations and the correctional process by increasing the demand for jury trials, plea-bargaining, and jail crowding *(NHTSA, 1986; Voas and Lacey, 1990)*. Consequently, in some jurisdictions the severity of the sanction was reduced, and swiftness was delayed; inconsistency in implementation raised equity questions.

Additional questions arise regarding sentence severity, or the appropriate length of a jail sentence. For example, 2 days in jail may have a specific deterrent effect and may be more effective than a 2-week sentence in reducing recidivism for first-time offenders *(Wheeler and Hissong, 1988)*. In one study, lengthy periods of incarceration were actually associated with higher recidivism *(Mann et al., 1991)*. This finding may be due to judges giving longer jail sentences to those offenders whom they regard as most likely to recidivate, rather than an indication of the negative effects of more severe penalties.

Based on these findings, it has been suggested that a weekend in jail may be useful for first-time offenders, for whom a "taste of punishment" may be an effective deterrent *(Jones et al., 1988; Mayhew and Simpson, 1991)*. However, since many convicted impaired drivers, particularly repeat offenders, have severe life-stress problems, may be alcohol-dependent, and may have additional health problems, long jail terms are unlikely to resolve their problems and may even exacerbate them *(Homel, 1981)*. For such individuals, incarceration, which effectively incapacitates them as a threat to public safety but only for the period they are incarcerated, may be most effective as a complement to treatment-oriented measures *(Jones and Lacey, 1991)*.

- Staggered sentencing: Consider staggered sentencing with intensive probation. As it is being implemented in Minnesota, the court divides or staggers the repeat offender's jail sentence into three equal periods with probation between each period. They serve the first period of incarceration, but the second and third periods can be forgiven if the offender proves to the sentencing judge that he or she is meeting rehabilitation criteria. A 2003 preliminary analysis by the Minnesota House of Representatives research department found that staggered sentencing reduced DWI recidivism by nearly 50 percent, while saving considerable jail resources. Staggered sentencing programs were pioneered by Judge James Dehn in Minnesota.

- Intensive supervision/probation: Place hardcore defendants on intensive monitoring, supervision and probation that runs concurrently with the offender's rehabilitation program to ensure successful completion. Intensive supervision probation is one of the most promising strategies for hardcore drunk drivers. These programs usually require an offender to meet with a probation officer two or three times a week and use several interventions, which can include alcohol abuse treatment, ignition interlocks, home detention, victim impact panels and community supervision. An average duration of the program is four to five months and may be followed by a period of "normal" probation.

"Probation is an important aspect of managing the offender. It keeps him on the hook since the sentence is just dangling before him. Probation is the key to a court being able to do something about recidivism."

- *Judge Karl Grube, National Hardcore Drunk Driver Project's Judicial Summit*

- Shock probation: Shock probation allows defendants an opportunity to receive probation after a short period of time in a correctional facility. The theory underlying shock probation is that immersing a defendant in the penal system for a short period of time could 'shock' him or her into a noncriminal lifestyle.

- Inpatient treatment: Prosecutors should develop or obtain an up-to-date list of all local alcohol treatment programs with descriptions of services provided. Your state Department of Mental Health may be a good resource for that and additional information on individual providers. Prosecutors may consider requesting that a defendant be required to successfully complete a course of inpatient treatment. Inpatient treatment requires a defendant to stay overnight at a treatment facility for a few days or several months in order to receive treatment. Inpatient alcohol treatment typically lasts for 28 days. One of the cornerstones of successful alcohol treatment programs is detoxification. The earlier a defendant quits drinking the more amenable he is to treatment. There are three main approaches to alcohol rehabilitation: Behavioral therapies, 12-step programs, and pharmacological treatment. Most inpatient alcohol rehab centers employ a combination of approaches to provide more comprehensive treatment.

- Electronic home confinement: Combine home confinement with electronic monitoring and sobriety testing where appropriate. It relieves jail overcrowding and is a low cost, acceptable alternative to jail if the sanction period is longer than jail and if it is used in conjunction with treatment and other behavior reinforcing mechanisms.

Under home confinement, offenders are ordered by the court to be at home during specified hours, allowing for pre-scheduled periods of work or treatment. It permits the offender to stay in the community, maintain employment and avoid the stigma of incarceration. The costs of equipment, installation and monitoring should be paid by the offender.

Numerous research studies have found home confinement with electronic monitoring to be effective. A study of the Los Angeles County Electronic Monitoring/Home Detention program found one year after entering the program the recidivism rate for offenders was cut by about 33 percent. Offenders said the program was effective because it offered monitoring, structure and support for an extended time period *(Jones, Lacey, and Wiliszowski 1996)*.

- DWI Court Model: Special DWI courts, which are gaining popularity around the country, provide focused, comprehensive attention to the issues of drunk driving and enlist many of the strategies needed to build a box around hardcore drunk drivers. In most courts, a heavy caseload of DWI offenders is intermingled with a variety of proceedings ranging from car theft to murder. DWI courts, which offer extensive supervision, rehabilitation and treatment programs, allow the judge and prosecutor to specialize in DWI cases and keep those cases from getting lost on the docket. DWI courts provide extended judicial monitoring of hardcore drunk driving offenders and have been developed to place drunk driving offenders into programs designated to promote recovery, reduce recidivism and effect behavioral change. These courts usually include close supervision from judges and treatment providers, including regular BAC testing and offender accountability. This approach has yielded promising results in various parts of the country. It is supported by a majority of judges surveyed, who recommended the use of DWI courts be expanded *(Voas and Fischer 2001)*.

- Community service: Avoid substituting community service for harsher sanctions. As a stand-alone alternative to harsher sentencing, community service appears to have little beneficial effect on hardcore offenders. The Century Council, National Transportation Safety Board and Mothers Against Drunk Driving all recommended eliminating the federal traffic safety provision establishing community service as an alternative to incarceration. Difficulties of the program include finding suitable jobs, liability risk, the cost of supervision and the offender's failure to provide the service. Treatment professionals note community service may not be effective because it focuses on punishment without addressing underlying behavior contributing to alcohol abuse.

- Ignition Interlock: Order the installation of offender-funded ignition interlock devices on all cars under title of a hardcore drunk driver as a means of preventing the offender from driving drunk while receiving punishment and treatment. This sanction should be used in conjunction with treatment for long-term reduction of recidivism. Treatment is necessary because the interlock alone may not change the behavior of the offender. These devices can substantially reinforce the effectiveness of alcohol treatment and should be required during the entire treatment and follow-up period.

They should not be used as a substitute for licensing sanctions but rather in concert with licensing actions. Ignition interlock devises should be required:

- To be installed by an approved technician, with all of the costs paid by the offender;
- As a condition of license reinstatement after a period of suspension;
- Whenever there are exceptions to license suspension or revocation, such as conditional licenses;
- For an appropriate time period of at least six months or longer after incarceration or until the offender has completed necessary treatment satisfactorily and can prove through probationary monitoring that he or she is capable of driving responsibly.

- SCRAM® (Secured Continuous Remote Alcohol Monitoring): Perhaps the best available method of determining if a hardcore drunk driver is consuming alcohol while on release or post-sentencing is to place a SCRAM® bracelet on their leg. This instrument, which has received acceptance in many jurisdictions, will continually monitor an individual to determine whether or not they have consumed alcohol. The wearer must be in close proximity to a modem which downloads the information from the bracelet at least once per day. Unlike interlock, the SCRAM® bracelet provides immediate information concerning the user's consumption of alcohol or their attempt to tamper with the device. Immediate sanctioning can occur in the form of motions to revoke bond or probation as a result of the detection of alcohol consumption.

- Vehicle Sanctions: Employ the use of vehicle sanctions, such as immobilization and impoundment, as a means of separating hardcore drunk drivers from their vehicles while they are receiving sanctions and rehabilitation. These sanctions often are applied administratively. Immobilizing an offender's vehicle (such as using a "club" to lock the steering wheel or a "boot" to lock a wheel) has the advantage of preventing the vehicle from being used by the hardcore offender while avoiding the procedural problems and costs involved with vehicle confiscation and storage. Impoundment is applied primarily against hardcore drunk drivers and its application varies among jurisdictions. Some target drivers who violate license suspension, while others use the sanction only after repeated DWI convictions.

- Licensing options: While licensing provisions may vary from state to state, depending upon whether sanctions are to be imposed administratively or upon a criminal conviction, the vast majority of states look upon the ability to operate a vehicle as a privilege. Accordingly, absent some legal restriction to the contrary,

sanctions dealing with the time and location of driving may be available. Examples might include restricting the operation of a vehicle by the defendant to normal drive times and routes for regularly scheduled employment, pre-approved medical appointments, necessary shopping or educational classes.

MONITORING AND ASSURING COMPLIANCE

- Identification of responsibility: Prosecutors must consider it their responsibility as Ministers of Justice to ensure compliance with bond conditions and conditions of sentencing. A prosecutor's responsibility does not end with the conviction. Compliance with sentencing conditions and swift actions should there be a violation of a condition of sentence must occur in order to change the behavior of the hardcore drunk driver.

- Communication: Violations of conditions of bond and sentences must be prosecuted. Communication with law enforcement agencies and the judiciary is crucial to effectively deal with the hardcore drunk driver. Law enforcement agencies should be instructed on how a prosecutor will handle a violation. Law enforcement agencies must be aware of conditions of bond and sentence. This may require that law enforcement dispatch agencies be provided with copies of these conditions. In jurisdictions where the court must first be presented with notices of violations of conditions of bond and sentence, consider obtaining court approval in hard core drunk driving cases for arrests to be made upon discovery of violations.

- Imposition of sanctions:
  - Appropriate: Sentencing of hardcore drunk driving defendants must be appropriate to the nature and severity of both the infraction and the individual defendant. Evaluation provides key information about the defendant, allowing appropriate sanctions to be tailored to fit the particular circumstances of that defendant.

  - Swift: The quick detection, identification, and assessment of those who repeatedly drive drunk are essential to keeping the hardcore drunk driver off the road. Enforcement techniques used to detect and apprehend drunk drivers include: sobriety checkpoints, blanket patrols, publicized enforcement campaigns, standardized field sobriety testing, mobile videotaping and BAT *(breath alcohol testing)* Mobiles. Consider "No refusal weekends" where search warrants are obtained for every individual refusing to provide a sample of their blood, breath or urine

upon arrest for a DUI. In 2006, the State of South Dakota eliminated the right of a defendant to refuse to submit to a blood test in every DUI case.

- Certain: The application of swift and certain penalties that restrict the offender from driving, punish the offense and rehabilitate the offender, must be imposed consistently to change hardcore behavior.

EFFECTIVE TREATMENT

Ensuring Solutions to Alcohol Problems *(ESAP)*, a research-based project at George Washington University Medical Center, has identified 13 active ingredients of effective alcohol treatment.

The nation's system for treating alcohol problems continues to fall short of the comprehensive model envisioned more than 10 years ago by the Institute of Medicine. While several of the active ingredients identified by ESAP have long been prescribed for treating alcohol-dependent individuals, many, including the use of prescribed medications to support clinically-proven psychosocial therapies, are not widely found in clinical practice.

The 13 active ingredients of effective alcohol treatment include:

1. Early detection, including screening and brief interventions (for *non-dependent problem drinkers*). The earlier the treatment for drinking problems begins, the better the chance for success.

2. Comprehensive assessment and individualized treatment plan. Treatment for alcoholism and drug abuse is not a one-size-fits-all proposition. Not all patients require the "acute care" approach.

3. Care management. Treatment programs need to be carefully managed every step of the way, sometimes involving family members and friends, from the initial assessment through continued follow-up after the intervention program ends.

4. Individually delivered, proven professional interventions. Several interventions, based on different treatment philosophies, can be effective in reducing alcohol consumption depending on the patient's gender, severity of dependence and motivation to change. Effective treatment programs will offer more than one approach.

5. Contracting with patients. Also called contingency management or behavior contracting, contracting with patients to reward good behavior and to punish bad behavior can improve treatment outcomes.

6. Social skills training. The basis for *cognitive behavioral therapy*, people with alcohol problems can be taught to recognize stressful situations, in which their drinking has been a problem in the past, and skills to help them cope with those situations.

7. Medications. *Medical treatments* cannot "cure" drinking problems, but they can be combined with other interventions and therapies to produce treatment that is even more effective.

8. Specialized services for medical, psychiatric, employment or family problems. Treatment programs need to be targeted at the individual needs of the patient through "problem-to-service matching."

9. Continuing care. Most that enter treatment have *at least one relapse*. Follow-up contact as well as participation in support groups has both been shown to improve long-term treatment outcomes.

10. Strong bond with therapist or counselor. Research shows that counselors and therapists, who bond with patients through empathy, rather than confrontation, are powerful motivating influences in alcohol treatment.

11. Longer duration (for *alcohol dependent drinkers*). How long a patient stays in treatment matters more in most cases than if a patient is treated in an inpatient or outpatient setting. Studies indicate that outpatient treatment lasting less than 90 days results in poorer outcomes.

12. Participation in support groups. Project MATCH and other studies in the 1990s definitively proved that participation in support groups, such as *Alcoholics Anonymous*, can be an active ingredient of treatment — both during a professional intervention and after.

13. Strong patient motivation. All approaches to alcoholism recovery depend on the desire of the person to get and remain sober. Effective treatment programs enhance this motivation with intervention and therapy.[2]

[2] Ensuring Solutions to Alcohol Problems, The George Washington University Medical Center. *The Active Ingredients of Effective Alcohol Treatment (PDF)*. June 2003.

- Assessment-based: Comprehensive alcohol use assessment includes many elements. It includes a profile of drinking to examine drinking patterns and a personalized picture of its effects. A comprehensive assessment also includes identification of situations in which the problem occurs, and a focus on the individual's strengths. The strengths are important since having early successes are critical to the individual's motivation to stay with the process of recovery. Motivation to change and commitment to the change process are also critical aspects of the assessment process.

A key feature of the diagnosis and assessment process is the nature of the helping relationship that becomes established. "The tenor of the assessment enterprise should be characterized as collaborative, with the assessor and client jointly committed to discovering those client features that will contribute to important decisions about future clinical management" *(Allen, Columbus, & Fertig, 1995)*. Thus, the information obtained from assessment interviews should include specifics about procedures and practices that stimulate motivation and client commitment to the process.[3]

- Mandatory participation: Consider requiring that hardcore drunk drivers obtain an alcohol assessment prior to the imposition of any sentence. Make the successful completion of any alcohol treatment a condition of any sentence and vigorously prosecute any offender who fails to comply with their alcohol treatment plan.

- "Buy-in" by treatment providers – Effective treatment for hardcore drunk drivers necessarily involves by-in by treatment providers. Effective treatment requires substantially more than a series of video tapes for offenders to view. Prosecutors should be familiar with the treatment providers in their jurisdiction. If feasible, prosecutors should sit through DUI classes to determine the efficacy for themselves.

- Reporting consistency: Nothing can be done about a problem if no one knows anything about it. All partners in the effort – law enforcement officers, probation officers, social workers, treatment providers, and any others – must understand and appreciate the need to be consistent in timely reporting violations of and conditions of pre-trial release or sentencing.

[3] Allen, J. P., Columbus, M., & Fertig, J. (1995). Assessment in alcoholism treatment: An overview. In J. P. Allen, & M. Columbus (Eds.) Assessing alcohol problems: a guide for clinicians and researchers. NIAAA treatment handbook series 4. Bethesda, MD: U. S. Department of Health and Human Services, Public Health Service, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism (NIH publication no. 95-3745).

PROSECUTORIAL ACTION

Prosecutorial initiatives, persistence and creativity can lead to significant reductions in hardcore drunk driving. More lives will be saved — and changed — as more prosecutors and court system partners become aware of the unique characteristics of hardcore drunk driving cases and implement the strategies, tactics and programs needed to combat them. By means of comprehensive sentencing, prosecutors can build a box around the hardcore drunk driver that not only protects the public but demands behavioral changes. The important thing is that the strategies and sanctions work together.

Prosecutors, in conjunction with judges, can build an effective disposition in a hardcore drunk driving case if they:

- Recognize high BAC as an indicator of a hardcore drunk driver;
- Restrict plea bargaining;
- Restrict diversion programs;
- Consider pre-trial intensive supervision programs;
- Mandate alcohol assessments or evaluations for all hardcore drunk drivers;
- Conduct pre-sentence investigations or interviews;
- Impose meaningful fines;
- Introduce measures to reduce failure-to-appear;
- Employ the use of vehicle sanctions;
- Order the installation of offender-funded ignition interlock;
- Place hardcore offenders on intensive monitoring, supervision and probation;
- Consider staggered sentencing with intensive probation;
- Consider home confinement with electronic monitoring and sobriety testing;
- Utilize dedicated detention facilities;
- Supplement incarceration with treatment and aftercare;
- Avoid substituting community service for harsher sanctions.

SECTION IV

MAINTAIN THE INTEGRITY OF THE PROSECUTION

This monograph would be futile were it not to acknowledge the importance of maintaining the integrity of the prosecution. In the face of high case loads, more experienced defense attorneys and the difficulties particular to DWI cases in obtaining convictions, prosecutors are often challenged to move DWI cases through the criminal justice system in assembly line fashion. Care must be taken to avoid achieving efficiency at the expense of effectiveness. Adopting a cookie-cutter or one-size-fits-all approach in order to expedite these cases ignores the unique factors of each case and the characteristics of the hardcore drunk driving defendant.

When dealing with repeat or high BAC offenders, there is little or no value in disposing of the DWI as a reckless driving or some other non-alcohol driving offense. Pre-trial diversions or programs that result in non-alcohol convictions or no conviction at all have even less.

The commitment to focus on the unique characteristics of the hardcore drunk driving defendant demands a tremendous amount of responsibility, sound judgment and fairness. Remember, for example, that in the case of the repeat offender, whatever was done the last time didn't work to deter, incapacitate or rehabilitate the offender.

MANAGE THE CASE

Case management is an important and essential element of a prosecutor's daily tasks. Managing hardcore drunk driving cases is particularly important given the need to address the unique characteristics of such cases and deal with them successfully.

- Flag the Case: Swift identification of the hardcore drunk driving case affords the prosecutor the opportunity to flag the defendant. Identifying a list of potential sources for information about the defendant and gathering the information available allows the prosecutor to make such determinations. Make use of checklists or screening tools for this purpose.

- Focus the Case: Once the hardcore drunk driving defendant is identified, the prosecutor may now make use of the information gathered and focus the case. This might include a specialized hardcore drunk driving docket or calendar, specific prosecutors to handle or assignment of the case to specialized courtrooms.

- Prosecutor's Task: The prosecutor's task is to develop a list of potential unique pre-trial release and sentencing options and to evaluate whether these options are viable. Are the options realistic from an execution standpoint? Does the jurisdiction have adequate resources to execute and monitor the hardcore drunk driving defendant's performance and behavior?

MEASURING SUCCESS

The development and execution of any new plan requires a formula or system for measuring success. It is strongly recommended that accurate records be maintained in order to gauge progress and to chart trends. Generally accepted methods of measuring success are anecdotal support and empirical support. While it is true that empirical support and evidence usually carry more clout and credibility, do not underestimate the value of anecdotal support. In order to make any form of innovative sentencing work, the on-going approval and commitment from judges is essential. Everyone loves a great success story. So, when that "poster-defendant" comes along, don't be shy about sharing the story. Remember that the goal in accurately measuring success is too scrutinize all facets of the sentencing scheme and this must include a category reserved for "areas for improvement."

Make good use of the information you gather, keeping in mind the ultimate goal of reducing recidivism and thus saving lives. Sharing the information, particularly outcomes and trends, with strategic partners encourages their future buy-in and cooperation. Victim and special interest groups, coupled with the media, may partner or take the lead in seeking changes in the law or development and funding of needed programs. Efforts regarding staffing levels and budget considerations may also benefit from this information.

CONCLUSION

The final disposition and sentence in a hardcore drunk driving case should be a reflection on all of the factors that led to the apprehension, prosecution and conviction of the defendant. Throughout the entire prosecution and sentencing process the goal of reducing recidivism and saving lives should remain the focal point.

GLOSSARY OF TERMS

- **Alcohol-Impaired Driving Fatality**
  Drivers in all 50 states and D.C. are considered to be alcohol-impaired if their blood alcohol concentration *(BAC)* is .08 grams per deciliter *(g/dL)* or higher. Any fatality occurring in a crash that involves at least one driver, or motorcycle operator, with a BAC of .08 or higher is considered to be an alcohol-impaired fatality. Alcohol-involved fatalities are those where at least one driver, or motorcycle operator, has a positive BAC of .01 or higher.

- **Alcohol-Related Traffic Fatality**
  A traffic fatality is considered alcohol-related if either the driver or anyone else involved in the police reported crash, other than a passenger (e.g., a pedestrian or bicyclist), has alcohol in their blood stream (a BAC level of .01 or more). For example, a pedestrian with a BAC of .01 who steps off the curb in front of a sober driver and is killed by that driver, this fatality is included in alcohol-related traffic statistics. If a driver who has been drinking hits a car with two sober people in it and kills both, those two fatalities are considered alcohol-related. In producing national and state statistics, NHTSA estimates the extent of alcohol involvement when alcohol test results are unknown.

- **Binge Drinking**
  According to the National Institute on Alcohol Abuse and Alcoholism *(NIAAA)*, binge drinking is defined as occasions of heavy drinking measured by the consumption of five or more (for males) and four or more (for females) drinks in a row at least once in the past two weeks.

- **Blood Alcohol Concentration *(BAC)***
  BAC is measured in grams of alcohol per 100 milliliters of blood. A BAC of .01 indicates .01 grams of alcohol per 100 milliliters of blood. As of July 2004, all 50 states and the District of Columbia have passed legislation establishing a driver with a BAC of .08 is considered legally intoxicated. Additionally, 42 states and the District of Columbia have laws and penalties for those who drive with elevated or "high" BAC levels.

  Women have less fluid in their bodies than men of the same weight, so there's less

water to dilute the alcohol. So with the same amount of alcohol, women will generally feel and experience the effects of alcohol more than men.

- **Heavy Alcohol Use**
  Five or more drinks on the same occasion on 5 or more days in the past 30 days.

- **Rates Per 100,000 Population**
  The rate of alcohol-impaired traffic fatalities per 100,000 population is the number of alcohol-impaired traffic fatalities for every 100,000 persons in the population being measured. For example, an alcohol-impaired traffic fatality rate of 4.3 per 100,000 population nationally means that for every 100,000 people in the nation, there were nearly four alcohol-impaired traffic fatalities.

- **Standard Drink of Alcohol**
  According to the *Dietary Guidelines for Americans*, the federal government's official nutrition policy defines a standard drink of alcohol as 1.5 ounces of 80-proof distilled spirits, 12 ounces of regular beer or 5 ounces of wine.

- **Underage Drinking**
  Since 1988, all 50 states and the District of Columbia have laws that make it illegal for anyone under the age of 21 to purchase or publicly possess alcoholic beverages. While each state's law varies and may contain exceptions (e.g., religious ceremonies) it is generally considered illegal for anyone under 21 to consume alcohol. Underage drinking refers to the consumption of beverage alcohol, defined as defined as a can or bottle of beer, a glass of wine or a wine cooler, a shot of liquor, or a mixed drink with liquor in it, by persons 20 years of age and younger.

PROSECUTOR CHECKLIST

Name: _____

Date of Birth: _____

Case Number: _____

Address: _____

Marital Status/Children: _____

Employment: _____

History: _____

Education: _____

Date of Offense: _____

BAC/Blood/Urine: _____

Refusal: _____

Tests Performed: _____

Crash Involved: _____

Drug Screen: _____

Arresting Officer: _____

Prior Alcohol Convictions: _____

Prior Alcohol Arrests: _____

Prior Alcohol Related Crashes: _____

Other Criminal Convictions: _____

License Status and History: _____

Prior Incarceration: _____

Prior Treatment: _____

Vehicle Ownership: _____

RESOURCES

The Century Council	www.centurycouncil.org
National District Attorneys Association	www.ndaa.org
National Highway Traffic Safety Administration	www.nhtsa.org
American Association of Motor Vehicle Administrators	www.aamva.org
National Association of Drug Court Professionals	www.nadcp.org
International Association of Chiefs of Police	www.theiacp.org
National Association of State Judicial Educators	www.nasje.org
AAA Foundation for Traffic Safety	www.aaafoundation.org
American Probation and Parole Association	www.appa-net.org
National Transportation Safety Board	www.ntsb.gov

www.ndaa.org

THE CENTURY COUNCIL

Distillers Fighting Drunk Driving & Underage Drinking

www.centurycouncil.org

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