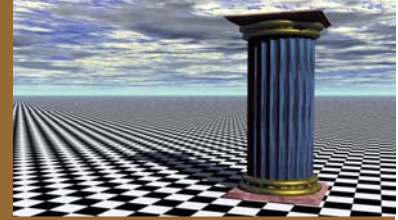


Trends in 2004



DWI Courts: The Newest Problem-Solving Courts

By [Victor E. Flango](#)

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Problem-Solving Courts

Problem-solving courts, or more accurately, specialized dockets, are established to deal with problems that may benefit from focused and sustained attention. They usually include a treatment component in an effort to reduce recidivism, which in turn reduces the number of future arrests, prosecutions, and court cases.

Specialized drug courts appeared in the late 1980s in response to the dramatic increase in drug offenses.¹ Some drug courts, often referred to as “drug treatment courts,” emphasize treatment to reduce recidivism. Essential elements of drug courts include (1) immediate intervention, (2) nonadversarial adjudication, (3) hands-on judicial involvement, (4) treatment programs with clear rules and structured goals, and (5) a team approach that brings together the judge, prosecutor, defense counsel, treatment provider, and correctional staff.² Although there are variations, drug treatment courts usually include judicial supervision of community-based treatment, timely referral to treatment, regular status hearings to monitor treatment progress, mandatory and periodic drug testing, and a system of graduated sanctions and rewards.³

The success of drug courts has sparked interest in other types of problem-solving courts, including community courts, domestic violence courts, and mental health courts.⁴

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DWI Courts

The high incidence of crimes committed while under the influence of alcohol, including driving while impaired, has prompted several jurisdictions to develop sobriety or driving while impaired (DWI) courts⁵, most based on the drug court model. Threats of punishment alone are not likely to change the behavior of individuals, and the philosophy of DWI courts is to treat the problem as well as punish the offender. DWI courts were established to protect public safety and to reduce recidivism by attacking the root cause of impaired driving—alcohol and substance abuse. The mission of sobriety and DWI courts is “to make

¹ National Association of Drug Court Professionals, Drug Court Standards Committee, [Defining Drug Courts: The Key Components](#) (Washington, DC: Drug Courts Program Office, 1997).

² P. F. Hora, W. G. Schma, and J. T. A. Rosenthal, “Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System’s Response to Drug Abuse and Crime in America,” *Notre Dame Law Review* 74 (1999): 453.

³ S. Belenko, *Research on Drug Courts: A Critical Review* (New York: National Center on Addiction and Substance Abuse at Columbia University, 1998), pp. 6-7. The report’s [update](#) is online.

⁴ P. M. Casey and D. B. Rottman, [Problem-Solving Courts: Models and Trends](#) (Williamsburg, VA: National Center for State Courts, 2003).

⁵ Also labeled as driving while intoxicated or driving under the influence (DUI) courts.

offenders accountable for their actions, bringing about a behavioral change that ends recidivism, stops the abuse of alcohol, and protects the public; to treat the victims of DWI offenders in a fair and just way; and to educate the public as to the benefits of sobriety and DWI Courts for the communities they serve.”⁶

At a national conference of Mothers Against Drunk Driving, Dr. Jeffrey Runge announced that one of the three impaired driving priorities for the National Highway Traffic Safety Administration (NHTSA) was DWI adjudication and supervision.⁷ Part of this priority is to establish DWI courts, expand drug courts, or apply the drug court model to DWI cases.

Specialized DWI courts, which are in effect specialized dockets in most states, are reputed to be better equipped to handle DWI cases, permitting swifter resolutions, reducing backlog, and improving outcomes. Judges also believe that the use of DWI courts should be expanded, allowing experienced judges to use treatment resources and to sentence, sanction, or reward offenders with greater consistency.⁸

Common characteristics of sobriety and DWI courts include intense alcohol addiction treatment and heavy court supervision, with jail sentences as a last resort. Compliance with treatment and other court-mandated requirements is verified by frequent alcohol and drug testing, close community supervision, and interaction with the judge in nonadversarial court review hearings.

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How Many DWI Courts Are There?

The National Association of Drug Court Professionals provided a list of 68 DWI “courts,” which are essentially specialized dockets.⁹ All of these courts were contacted in early 2004 and asked to provide information about the year they were established, the types of cases they heard, the volume of cases heard, and recidivism rates. Five of the courts were specialized courts but not DWI courts, leaving a total of 63 DWI courts.

Most of the DWI courts appear to have been developed from drug courts, but there are exceptions. Seven of the 63 DWI courts reported being established as separate courts. More than a third of adult drug courts in the United States are in California, New York, Missouri, and Florida.¹⁰ Half of the family drug courts are in the large states of California, New York, and Florida, and a third of the juvenile drug courts are found in these three states plus Ohio. A third of the DWI courts, however, are in Michigan (10), Idaho (6), and Indiana (6), so although DWI courts were created from drug courts, the states with the largest number of drug courts do not have the most DWI courts. DWI courts are also not more prevalent in states that have an unusually high number of alcohol-related fatalities.

All of the courts were established rather recently (after 1994), except for the Los Angeles Superior Court DUI Program and the Hancock County, Indiana, DWI Court, both established in 1971. Forty of the 63 were established in 2000 or later.

⁶ J. Tauber and C. W. Huddleston, [*DUI/Drug Courts: Defining a National Strategy*](#) (Washington, DC: National Drug Court Institute, 1999).

⁷ NHTSA, *Impaired Driving Update* (Washington, DC: National Highway Traffic Safety Administration, 2003).

⁸ R. D. Robertson and H. M. Simpson, *DWI System Improvements for Dealing with Hard Core Drinking Drivers: Sanctioning* (Ottawa, Ontario: Traffic Injury Research Foundation, 2002).

⁹ I am grateful to Kristen Daugherty of the National Association of Drug Court Professionals for providing the initial list of DWI courts and to Kate Knorr, a student intern at the National Center for State Courts, for contacting each of the courts.

¹⁰ C. West Huddleston III, Karen Freeman-Wilson, and Donna L. Boone, [*Painting the Current Picture: A National Report Card on Drug Courts and Other Problem Solving Court Programs in the United States*](#) (Washington, DC: National Drug Court Institute, 2004).

Most DWI courts (53 of 63) do not accept violent offenders into the program. A much smaller number (14) do not accept juvenile offenders or sex offenders (8) into their programs. Caseloads are, and perhaps need to be, small. The vast majority of DWI courts (45 of the 63) handle fewer than 100 cases per year.

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DWI Courts and Drug Courts

Although the multiple-DWI offender shares some characteristics with the typical drug offender (for example, they each share substance abuse problems that require treatment and a strong support system to succeed), they also have differences. DWI offenders tend to be male, employed, and slightly older than drug offenders and are more often able to draw on emotional resources, including family, that are helpful to recovery.¹¹ A careful evaluation of the effectiveness of DWI courts, both those using the drug court model and those created separately, is needed.

Unlike drug offenses, DWI offenses are *not* perceived as "victimless" crimes because public safety is more of an issue, and community impact must be kept in mind when designing a DWI court system. Monitoring DWI offenders is more difficult than monitoring drug court participants because alcohol goes through the body quickly and is harder to detect than drugs. Alcohol is also legal and easier to obtain than drugs.

DWI Court Issues

Issues still under discussion include the role of the judge, resources needed to support a DWI court, and ways to measure the effectiveness of DWI courts.

Role of the Judge

Despite the use of problem-solving courts in many arenas, the concern persists that judges are more involved with defendants, so it is more difficult for them to remain impartial. Judges need to praise and sanction defendants but must avoid getting so involved personally that their impartiality is at risk. Could this monitoring task be outsourced to treatment agencies that report violations to the court? Sanctions may appear to be coercive because judges may have to tell a defendant where to live or where to work. Judges may set such guidelines to some extent, but this role goes beyond the traditional judicial function. Likewise, sanctions that require defendants to use prescription drugs, such as Naltrexone and Antabuse, or require invasive treatments, like acupuncture, may be perceived as coercive and beyond the scope of judicial authority.

On the cost side, an integrated information system is required to track individuals through case-processing stages and to determine whether they have met the various screening, treatment, and other requirements imposed by the court.

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Resources

Would nonspecialized courts perform as well if given the same resources and access to treatment as specialized DWI courts? Critics may argue that specialized DWI courts are indeed more successful than other courts because they have so many more resources, which they require if they are to have frequent review hearings, frequent testing for alcohol use, and progress reports from probation officers and addiction counselors. To determine the appropriate workload levels for specialized DWI courts, as well as for other courts having jurisdiction over DWI cases, workload assessments are necessary.¹²

¹¹ Tauber and Huddleston, *op. cit.* p. 6.

¹² For a general discussion of workload assessments, see V. E. Flango and B. Ostrom, [Assessing the Need for Judges and Court Support Staff](#) (Williamsburg, VA: National Center for State Courts, 1996).

Effectiveness

An impartial evaluation of special DWI courts is needed to determine just how effective they are in reducing recidivism over time. Reported recidivism rates from the DWI courts that tracked them were impressive. How do those rates compare with recidivism rates in nonspecialized courts? More generally, is the relationship between specialized DWI courts and other courts related to an outside factor, such as speed of processing, so that recidivism is related to processing speed in general rather than to a specialized court? What decrease in recidivism would be necessary to justify the additional resources needed by a specialized DWI docket?

DWI courts use some criteria to screen offenders eligible for drug court. Do screening criteria affect the success rates of DWI courts? Should they be limited to misdemeanors? Nonviolent offenders? (This debate is parallel to the debate over a strategy to reduce alcohol/drug-related crashes. Is it better to focus on the relatively small proportion of the driving population responsible for a large percentage of alcohol/drug-related crashes, i.e., the hard-core offenders, or on the much larger number of moderate drinking drivers whose very numbers contribute significantly to the problem, although their individual risk of crashes is relatively low?) The assessment of all convicted DWI offenders for alcohol problems is an expensive proposition. Does the reduction in recidivism make it a worthwhile investment?

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