

8<sup>th</sup> Judicial District  
DWI Courts  
Evaluation

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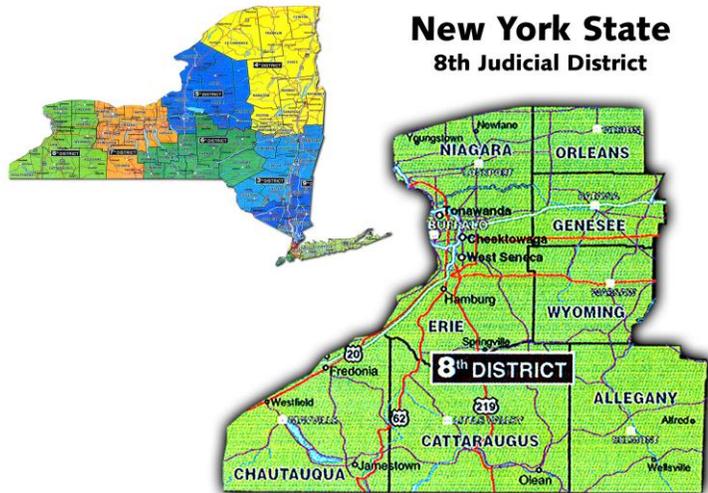
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## Executive Summary

Drunk driving is considered the most deadly crime in America by criminal justice authorities as 43 percent of U.S. traffic fatalities occur due to impaired driving. Consequently, impaired driving poses a formidable threat to public safety. Over one-third (1/3) of those arrested for drunk driving are repeat offenders. It is apparent that arrest alone does not deter continued alcohol use or driving under the influence of alcohol and/or drugs. The New York State Unified Court System's 8<sup>th</sup> Judicial District, encompasses eight counties in Western New York (Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming).

According to data published by New York State Department of Motor Vehicles there are 15,762 miles of roadway within the eight counties in the 8<sup>th</sup> Judicial District. In 2004, there were 11,877 DWI/DUI arrests (VTL §1192) and 40 alcohol related fatal crashes resulting in 42 deaths. That translates to one DUI or DWI arrest for every 1.3 miles of road within the District per year. This is even more alarming when you consider that

research indicates that there is less than one arrest for every 50 trips by a driver with over .08 blood alcohol concentration (BAC) (Hedlund and McCartt, 2002). Drivers arrested for DUI or DWI within the 8<sup>th</sup> Judicial District has an average BAC of .16 to .18 at the time of arrest (Lakamp, 2005). Compared with a non-drinking driver, the risk of a single-vehicle fatal crash is 382 times higher for a driver with a BAC of .15 or higher. In fact, for male drivers between the ages of 16 to 29, each .02 increase in the BAC more than doubles the risk of being killed in a single-vehicle crash (Zador, Krawchuk, and Voas, 2000). Alcohol related fatalities and injuries are a chronic problem. Research has shown that 75% of those convicted of driving under the influence (DWI) are problem drinkers or alcoholics. In fact, repeat offenders comprise approximately thirty three (33%) percent of those arrested for DUI or DWI and are responsible for forty (40%) percent of all alcohol related crashes. If we are to reduce the threat posed to public safety, we must become willing to view this problem throughout the 8th Judicial District as a public safety issue. In 2006, members of the 8th District's DWI Task Force<sup>1</sup> in collaboration with several western New York STOP DWI programs concluded that punishment unaccompanied by treatment and accountability is an ineffective deterrent for DWI/DWI offenders.



<sup>1</sup> The Task Force is comprised of the Hon. Patrick Carney, the Hon. Thomas Amodeo, the Hon. Mark A. Violante, Hank Pirowski and Jeffrey Smith.

The innovative 8<sup>th</sup> Judicial Districts DUI Hybrid DWI Courts work through stipulated sentences, explicit program requirements, judicial monitoring, strong accountability, electronic alcohol monitoring (SCRAM), quality long-term treatment, scheduled and random alcohol/breath tests and urine analysis, immediate sanctions for non compliance, and a variety of short and long-term incentives for sustained sobriety. The Hybrid DUI/DWI drug treatment courts dedicated tracks are not a means to avoid a record of conviction and/or license sanctions. The DUI/DWI/drug treatment courts operate within a post-conviction model and include sanctions for controlling the so-called “hard-core drinking driver” that have been categorized by Voas (1999) as the three Rs:

1. Restrictions on driving (license sanctions, vehicle sanctions, etc.),
2. Restitution (community service, fines, etc.), and
3. Rehabilitation (assessment, treatment, probation, etc.)

To address the issue of persistent driving while intoxicated in the 8<sup>th</sup> Judicial District, the New York State Unified Court System launched DWI Hybrid Drug Courts in both counties in October 2006. The courts target nonviolent felony DWI offenders who have at least one prior DWI conviction (misdemeanor or felony) and who are identified as having an alcohol abuse problem. Upon a conviction or guilty plea to an eligible DWI offense, the sentencing judge has the option of ordering the offender to undergo an assessment at the specialized DWI court to determine the existence of an alcohol dependence/abuse disorder. If it is determined the offender is alcohol dependent, the offender may be ordered to participate and complete the DWI Court. Offenders who refuse participation are usually sentenced to state prison time. Offenders who agree to enter the program are sentenced to five years of probation, with an additional condition requiring participation in the DWI Hybrid Drug Court for at least one year. (Program length is determined by the participant’s compliance, but is no less than one year and no more than two years.)

All offenders assigned to the DWI Court are under community supervision by the probation department and case management by the court based DWI team. They are also subject to monitoring through the SCRAM anklet for at least six months and longer in the event of noncompliance or as a condition set by the sentencing judge. In addition, the offenders must attend an alcohol treatment program (most defendants start out in outpatient treatment, but inpatient treatment may be necessary in some cases) and must return to court regularly for judicial status hearings. Participants are required to submit to random alcohol and drug screens on the days they appear for their status hearings and random days between court appearances and unannounced home visits by the probation department. The DWI court judge can apply intermediate sanctions to respond to participant compliance. Sanctions can include admonishment from the judge, increased frequency of court appearances and testing,

increased participation in treatment, community service, demotion to an earlier phase of treatment, brief periods of incarceration, and formal probation violation with program termination and re-sentencing to jail.

Eligible participants are eighteen years old or older, non-violent males and females, repeat offenders who have been charged with felony DWI. The 8<sup>th</sup> Judicial Districts DWI Courts are designed to address issues such as these through judicial monitoring and long-term treatment as directives to reduce recidivism and augment public safety.

## **Part 1: Contextual overview of the program and of the evaluation**

### ***Project Description***

This final project report has been prepared by Recovery Solutions Inc. in order to satisfy the requirements of the contract with the administrative offices of New York States 8<sup>th</sup> Judicial District. This **process evaluation** of the 8<sup>th</sup> Judicial Districts DWI Courts was made possible by funds provided by the New York State Governors Highway Traffic Safety Committee.

The focus of this contract was on process rather than outcomes. This evaluation was designed to help complete and document the Hybrid Drug Courts processes. This process evaluation was a case study analysis, non-experimental, of how the DWI tracks were implemented and how they operate. It was concerned with history, operations, procedures, participant enrollment, client progress, monitoring, obstacles, and recommended operational improvements. Although primarily qualitative and descriptive, it was necessary to collect demographic, historical and quantitative measures to summarize the size and nature of the caseload. Knowing that process evaluation sets the stage for future outcomes research, this report also investigated predictive variables to success. This evaluation consists of seven chapters as follows:

**Part I** provides a contextual overview of the program and the process evaluation,

**Part II** describes the overall environment, including the societal and criminal justice issues that led to the development of the specialized tract,

**Part III** describes the core functions, treatment systems and structure of the DWI Court,

**Part IV** looks at the 10 key principles that guide the DWI Courts and how it operates,

**Part V** provides a summary of findings with regard to process and organizational issues, based on court observations and extensive interviews with key stakeholders and staff from multiple systems who are involved with the project,

**Part VI** describes defendant-related outcomes, and

**Part VII** contains recommendations based on data elements collected.

### ***Scope and Methodology of the Evaluation Plan***

This evaluation was accomplished using interviews, focus groups and surveys designed to capture both process and impact results in quantitative and qualitative formats. Individual interviews were conducted to promote ownership and investment. The primary purpose was to examine the current operation of the DWI Courts and assess the effectiveness of the implementation process, systems integration factors and program impact. This was accomplished by implementing a three (3) step evaluation design consisting of site visits, focus groups, surveys and data collection. Interviews were conducted with each member of both Hybrid Drug Court Teams, offender/case record reviews, history data elements collection, compilation and analysis of case management status reports and treatment files were also completed in addition to the inclusion of comments and concerns of the Intensive DWI Unit. The collection and analysis of all available quantified data for the evaluation depended on the cooperation from those involved in the Programs. The evaluation formulates a program logic model<sup>2</sup> including descriptions of all program components and the relationships between program components. The model establishes a baseline for the process evaluation to determine (1) if the components were implemented as designed and (2) if improvements can be made to current operations

### ***Data Sources***

Multiple sources were used to collect data for this evaluation. The primary sources of information included the management information system of the C.O.U.R.T.S.<sup>3</sup> Program. The Buffalo DMIS-2001 is a management information system (MIS) built on Access 2003 that was initially designed and customized on site at the C.O.U.R.T.S. Program for the Hybrid DWI Drug Court. It provides the staff with: a structured psychosocial intake screening for all participants including information on demographics, education, employment, physical and mental health, drug use and treatment history, ongoing monitoring of participant compliance with court appearances, drug testing, treatment attendance, case notes, structured entry of occurrences, and court responses to both achievements

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<sup>2</sup> The approach and definitions presented here are fully explained and demonstrated in: Kirchner, Robert A., Roger K. Przybylski and Ruth A. Cardella, Assessing the Effectiveness of Criminal Justice Programs. Assessment and Evaluation Handbook Series Number 1, January 1994. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance. This publication is available on the INTERNET at: [www.bja.evaluationwebsite.org](http://www.bja.evaluationwebsite.org).

<sup>3</sup> The C.O.U.R.T.S. program was launched in 1995 from the City of Buffalo Criminal Court to link individuals who come through the criminal court system with a full range of social services including drug treatment, mental health treatment, medical care, anger management services and one-on-one as well as family counseling.

and infractions. The C.O.U.R.T.S. Project Director and support staff was responsible for the collection of the data. The data was exported for analysis purposes into spreadsheets and data tables, such as those that can be directly used by the project directors for case monitoring purposes and by the evaluator. In addition, this system provided the judges with an easy-to-read, printed summary (see Appendix 2) of each participant's progress throughout the program. This timely information increased accountability and improved judicial decision-making. Key features of this MIS are:

- The ability to quickly store and retrieve information about participants,
- The creation of statistical reports for program improvements,
- The ability to create Power Point visual graphics for snapshot overview presentations,
- The ability to sort data by predictive variables (return court date, last name, age, treatment history, educational levels and other potential predictive outcome variables), and
- The opportunity for user(s) to print hard copies of participants records.

### **Summary of Research Findings**

For almost twenty years, a subtle revolution has occurred within the criminal justice system. In 1989, Dade County, Florida established the first drug court in the United States. Today, more than 2,300 drug courts can be found across the country with hundreds more in the planning stage (Huddleston, Freeman-Wilson & Marlowe, 2005). Although program specifics and populations vary depending upon community priorities and resources, the objective of every drug court is the same - to engage defendants charged with drug-related offenses in comprehensive, coordinate programs that integrate adjudication, substance abuse treatment and judicial supervision.

All drug courts are part of an innovative judicial model whereby offenders are held accountable for their actions and afforded the tools they need to break the patterns of drug abuse that so damage their lives, as well as the lives of others. The major goals of drug courts have been established with the benefit of both offenders and the communities in which they live. Typically, these goals are to reduce alcohol and drug use and associated criminal behavior by engaging and retaining drug-involved offenders in treatment and intensive supervision, to concentrate staff expertise about drug cases into a single courtroom, to address other defendant needs, and to remove drug cases from traditional courtrooms, freeing them to adjudicate non-drug cases.

### **Success of the Drug Court Model**

Today there is irrefutable evidence that drug courts are achieving what they set out to do. In a series of critical reviews published from 1998 to 2001 of over 120 evaluations of drug courts located throughout the nation, the

National Center on Addiction and Substance Abuse at Columbia University determined that “*drug courts provide the most comprehensive and effective control of drug-using offenders’ criminality and drug usage while under the court’s supervision.*” Drug courts provide closer, more comprehensive supervision and much more frequent drug testing and monitoring during the program than other forms of community supervision. More importantly, drug use and criminal behavior are substantially reduced while offenders are participating in drug court (Belenko, 1998; 2001). To put it bluntly, “*we know that drug courts outperform virtually all other strategies that have been attempted for drug-involved offenders*” (Marlowe, DeMatteo, & Festinger, 2003). Perhaps the most important finding is that offenders who become part of a drug court program are succeeding upon completion. The comparison with other groups reveal much higher retention rates and lower recidivism rates for drug court participants both during the life of a program and after the program ends (Belenko, 1998; 2001).

The most substantial and compelling national study to date was commissioned by the National Institute of Justice and released in 2002 whereby a sample of 2,020 graduates from 95 drug courts in 1999 and 2000 were tracked to establish a benchmark national aggregate recidivism rate. The study estimates that after graduation, only 16.4 percent of drug court graduates had been arrested and charged with a serious offense after one year and 27.5 percent at the two year mark. These estimates represent the expected outcomes for those who succeed in drug court - one year after graduation, only one out of six drug court graduates would be expected to be re-arrested and charged with a serious offense. (Roman, Townsend, & Bhati, 2002). Finally, the 2000 Vera Institute of Justice report concluded that “*the body of literature on recidivism is now strong enough to conclude that completing a drug court program reduces the likelihood of future arrest.*” (Fluellen & Trone, 2000).

## **Part 2: Environmental, societal and criminal justice issues.**

According to the National Highway Traffic Safety Administration in 2005 there were 16,885 fatalities from alcohol-related car crashes. Not only is drunken driving one of the most dangerous and harmful crimes committed by a person, but Driving While Intoxicated cases are some of the most complicated and time-consuming cases for county prosecutors and judges to argue and determine. It seems nothing the judicial system does will get a drunken driver to learn his or her lesson; recidivism rates for drunken driving nationally average about 40 percent. The idea behind DWI courts isn’t new. The post-conviction sentencing model used in most DWI courts is an offshoot of drug courts. DWI courts first started gaining national attention several years ago after areas in Arizona, Georgia, New Mexico, California, North Carolina and Michigan all showed long-term success at reducing their DWI recidivism rates. Now, both the American Council on Alcohol and the National Commission Against Drunk Driving have taken an active stance for having DWI courts in communities, believing

that rehabilitation is key to stopping drunk driving. Local criminal justice professionals in both Erie and Niagara County have concluded “If we do not address the root problem of alcohol abuse and alcoholism as it relates to drunk driving, then we will never solve the problem of drunk driving”.

### ***Consumption patterns***

The best source of data available on adult patterns of alcohol, tobacco and other drug use is the National Survey on Drug Use & Health conducted by the Substance Abuse and Mental Health Service Administration. The most recent of these surveys (2003) revealed that 74.5 million (61%) females aged 12 or older consumed alcohol during the past year. This same survey revealed that 15.2 million (12%) females and 19.8 million (17%) males had used an illicit drug during the past year. Data on alcohol and other drug consumption patterns of younger females is available through the annual monitoring the future survey sponsored by the National Institute on Drug Abuse. Over fifty two percent (52.3%) of female twelfth graders report consumption of alcohol in the past 30 days and 24.4% of females (versus 33% for males) report having consumed 5 or more drinks in a row in the past two weeks. In 1975, the spread between males and females on this last figure was 23 percentage points, reflecting the subsequent leveling of difference in alcohol consumption patterns between women and men. Similar trends are occurring for illicit drug use with 30.1% of high school female seniors (compared to 34.3% of male high school seniors) report having consumed an illicit drug in the past twelve months (Johnston, 2006). Older women are more likely than younger women to consume only alcohol or to consume alcohol and prescription drugs. Younger women are more likely to combine alcohol and illicit drugs (Lex, 1994). There are many clinically relevant gender differences in substance dependence. The course of alcohol and drug dependence in women is different than men in its symptomatology and is marked by a faster progression-the latter often referred to as “telescoping” (Smith and Cloninger, 1981). Such accelerated effects were first noted in women addicted to alcohol (Corrigan, 1980; Hesslebrock, et al., 1985; & Stabenau, 1984). These early studies confirmed that women become physically addicted to alcohol more rapidly than men and with less volume of alcohol consumed (Spiegel, 1986). Later studies also discovered that women developed heroin addiction more quickly than men. (Hser, et al., 1990). Studies of men and women addicted to cocaine reported women had earlier onset of use, higher rates of daily use, higher risk methods of ingestion (smoking or intravenous), more concurrent alcohol use, and an earlier age of entry into treatment (Griff et al., 1989; Wechsbert, et al., 1998; McCance-Katz, et al., 1999). Seen as a whole, women entering addiction treatment have fewer years of substance use than their male counterparts, but present with great medical, psychiatric and social consequence of such use (Greenfield, et al, 2007).

Changes in psychoactive drug consumption by women, particularly young women, have been linked to broader gender roles and to promotional targeting of women by the alcohol, tobacco and pharmaceutical industries special products and appears linking these products to beauty, wealth, social popularity, sophistication, sexuality and,

perhaps most offensively, with liberation (“You’ve come a long way, Baby!”) (White & Kilbourne, 2006). Increases in DWI arrests for women reflect both changes in social norms about woman and alcohol. They also portray the fact that more women are driving, driving more frequently, and more miles (Popking, 1991). It is interesting to note that increased substance use among women and increased driving does not convert into risky driving decisions to the degree seen in men. The greater risk for men for DUI and DWI recidivism may well be linking to their increased propensity for impulsivity, risk-taking and aggression than differences in substance consumption (Elliot, Shope, Raghunathan & Walter, 2006). Females seem to drive more cautiously with or without alcohol in their systems (Zador, Krawchuk, & Voas, 2000).

### **DWI Courts and DWI/Drug Courts**

The long history of positive outcomes for drug courts begs the question. **If drug court programs can reduce recidivism among the populations they now serve, could the drug court model, applied to impaired drivers be as successful?**

### **Adapting the Drug Court Model for Impaired Drivers**

To date it has been left to the traditional courts and criminal justice system to deal with DWI cases and it has become clear that the traditional process is not working for repeat offenders. Punishment, unaccompanied by treatment and accountability, is an ineffective deterrent for the repeat DWI offender. The outcome for the offender is continued dependence on alcohol and continued peril for the community.

Although opinions differ on whether or not applying the adult drug court model to DWI is a valid strategy, the hybridizing of the drug court model to include other types of problem-solving courts is increasingly prevalent within the justice system and problem-solving courts now outnumber drug courts. In 2004, there were 1,621 drug courts and 2,558 problem solving courts in existence in the United States, and new DWI courts alone have grown by 200 percent since December 2003.

### **The DWI/drug court theory of change is to reduce DWI by treating the underlying cause which is presumed to be alcoholism.**

A DWI court is a distinct court system dedicated to changing the behavior of the alcohol/drug dependent offender arrested for Driving While Impaired (DWI)<sup>4</sup>. The goal of the DWI court is to protect public safety by using the drug court model to address the root cause of impaired driving (alcohol and other substance abuse). Variants of DWI

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<sup>4</sup>The New York State Department of Motor Vehicles uses the term DWI to mean "driving while intoxicated." Other jurisdictions use the term "DWI" to mean "driving under the influence."

courts include drug courts that also take DWI offenders, which are commonly referred to as "hybrid" DWI courts or DWI/drug courts. The DWI court utilizes all criminal justice stakeholders (prosecutors, defense attorneys, probation, law enforcement, and others) along with alcohol or drug treatment professionals. This group of professionals comprises the "DWI Court Team" and uses a cooperative approach to systematically change participant behavior. This approach includes identification and referral of participants early in the legal process to a full continuum of drug or alcohol treatment and other rehabilitative services. Compliance with treatment and other court-mandated requirements is verified by frequent alcohol/drug testing, close community supervision, and interaction with the judge in non-adversarial court review hearings (Loeffler & Huddleston, 2003).

### ***Special Problems Faced by Hybrid DWI/Drug Courts***

Freeman-Wilson and Huddleston and the DWI/Drug Court Advisory Panel of the National Drug Court Institute have provided an interesting analysis of how DWI courts may differ from drug courts (Freeman-Wilson 1999). Although there are many obvious similarities between the typical multiple DWI offender and the typical drug offender, there are some important distinctions. DWI offenders tend to be male, employed, slightly older than drug offenders, and able to draw on emotional resources (family, education, etc.) that are helpful to recovery. They have a "legal orientation" (the substance they ingest is legal), and are often in denial about their addiction. Frequently out of work and unable to support themselves, drug offenders have little financial or emotional support. They have a more realistic perception of their addiction, and they recognize that their actions are illegal. They are nearly as likely to be female as male.

Within the court system, hybrid DWI courts face additional issues. Maintaining a non-adversarial approach can be more challenging in DWI cases, where there is increased pressure to imprison offenders. "Timely admission to DWI Court programs for DWI offenders can be more of a challenge, where mandatory sentencing, a lack of pre-adjudication options, and public perceptions may prove to be obstacles" (Freeman-Wilson, 1999). Defense attorneys in DWI cases often resort to delay tactics in order to keep their clients out of jail. One unfortunate outcome of this tactic is that the clients also are kept out of treatment.

Close supervision and testing are essential for public safety, but monitoring of DWI offenders calls for greater coordination, more frequent testing, more innovative technologies, and a high level of personal communication. Testing is usually random and frequent. Some DWI courts require offenders to call in daily and submit to testing on demand. Alcohol testing technologies can include state of the art voice recognition and testing devices that can detect alcohol use via telephone, interlock devices on automobiles, and hand-held testers. Other new work on detecting alcohol biochemically may lead to new techniques that are not yet available, but may improve alcohol testing in the future.

Judges may have less discretion in levying sanctions and incentives on DWI offenders than when working with drug cases. The law and public opinion narrow the list of sanctions and incentives that can be used in DWI cases and give judges less flexibility in imposing them. Quicker imposition and use of more severe sanctions are often mandated by law or demanded by the community.

Incentives for DWI courts may be more limited than for drug courts. For example in the 8<sup>th</sup> District case dismissal or reduction is not an option.

Becoming a community-based institution can be a greater challenge for DWI courts than for drug courts because DWI cases get little public sympathy. A single DWI offender relapse could result in a traffic crash and death with negative consequences for the DWI court program.

### ***The Hybrid 8<sup>th</sup> District DWI Courts?***

The goal of DWI court is to protect public safety by using the drug court model to address the root cause of impaired driving, alcohol and other substance abuse. With the repeat offender as its target population, DWI courts follow the Ten Key Components of Drug Courts and the Ten Guiding Principles of DWI Courts, as established by the National Association of Drug Court Professionals and the National Drug Court Institute.

Unlike drug courts within the 8<sup>th</sup> judicial district, the DWI courts operate within a post-conviction model. These courts appear to follow a supported resolution by National Mothers Against Drunk Driving, “MADD recommends that DWI/DWI courts should not be used to avoid a record of conviction and/or license sanctions.” As indicated earlier, The 8<sup>th</sup> District adopted a variant of DWI courts which are commonly referred to as “Hybrid” DWI courts or DWI/drug courts.

Compliance with treatment and other court-mandated requirements is verified by frequent alcohol/drug testing (SCRAM- Secure Continuous Remote Alcohol Monitoring), close community supervision by both probation and on site case managers, and ongoing judicial supervision in a non-adversarial court review hearing. During review hearings, the judge employs a science based response to participant compliance (or non-compliance) in an effort to further the team's goal to encourage pro-social, sober behaviors that will prevent future DWI recidivism (Loeffler, Huddleston & Daugherty, 2005).

The major difference from traditional drug court is that in the Hybrid DWI/Drug Courts, the offenders come to the court as a direct result of an impaired driving arrest and a documented history of impaired driving. In contrast, in the more traditional drug court docket the targeted offenders are those who have engaged in non-traffic related criminal behavior (as opposed to illegal driving behavior) as a result of their use of illegal substances. Experience has shown, however, that the participants in these two treatment court environments are far more similar than different. At both sites it has become evident that there are several advantages to operating Hybrid DWI Courts, most notably because they allow for development of a more specialized treatment focus and a more

case manageable network of relevant and supportive community resources directed at the repeat offender. Most importantly perhaps, they serve as a potential unifying hub for the myriad of agencies and organizations that have been part the community's attempts to plug the gaps in the drunk driver control system. More specifically, the relationship between the DWI Courts the on site case management team and probation appears to have bridged the communication gap and jointly hold the offender to a higher degree of accountability. Through collaboration with the state's department of motor vehicles, Governor's highway safety commission, local law enforcement, probation, STOP DWI programs and MADD, the Hybrid DWI Courts is another tool for the justice system's response to repeat drunk driving.

Although too early to quantify, the DWI Court's coercive power appears to be the key to admitting DWI offenders into treatment quickly and for maintaining them for a period of time that is long enough to make a difference .

Accordingly, if treatment is to fulfill its considerable promise as a key component of a DWI reduction policy, DWI offenders not only must enter treatment, but must remain in treatment and complete the program. If they are to do so, most will need sanctions that may be characterized as "coercive." In the context of treatment, the term coercion - used more or less interchangeably with "compulsory treatment," "mandated treatment," "involuntary treatment," "legal pressure into treatment"- refers to an array of strategies that shape behavior by responding to specific actions with external pressure and predictable consequences. Moreover, evidence shows that substance abusers who get treatment through court order benefit as much as, and sometimes more than, their counterparts who enter treatment voluntarily (Satel, 1999; Huddleston, 2000). This proposition is unequivocally supported by the empirical data on substance abuse treatment programs. Data consistently show that treatment, when completed, is effective. However, most addicts and alcoholics, given a choice, will not enter a treatment program voluntarily. Those who do enter programs rarely complete them. About half drop out in the first three months, and 80 to 90 percent have left by the end of the first year. Among such dropouts, relapse within a year is the norm.

With their rapid expansion and proven effectiveness, DWI Courts are changing the mindset of criminal justice professionals and effecting how DWI offenders are handled. Treatment with intensive supervision works with this population and promises better long-term outcomes with significant decreased recidivism.

### ***Data and Trend Analysis***

***Driving While Intoxicated.*** In New York State, operating a motor vehicle while under the influence of alcohol or drugs is regulated under Vehicle and Traffic Law (VTL) §1192, which states that no person shall operate a motor vehicle while they have an blood alcohol content of 0.08% as measured through analysis of the driver's blood,

breath, urine, or saliva. In New York State, charges incurred through driving with a blood alcohol content of greater than 0.08% are termed Driving While Intoxicated (DWI) and driving with a blood alcohol content of greater than 0.18% results in Aggravated DWI charges. Re-offense within ten years automatically results in felony charges in New York State.

***Criminal Justice Responses to Repeat Offenders.*** Criminal Justice agencies have attempted a variety of methods for ensuring public safety by preventing repeat alcohol-impaired driving. A 2007 report released by the National Highway Traffic Safety Administration identifies three primary methods by which criminal justice agencies attempt to curtail drinking (Marques and McKnight, 2007). The first method is to prevent all driving by DWI offenders. Vehicle or license plate impounding, vehicle forfeiture, and vehicle immobilization are used in a limited number of jurisdictions. By far the most common method for preventing offender driving is through license suspension or revocation. All fifty states allow license suspension or revocation for convicted DWI offenders, with mandatory minimum revocation periods for first offenders in twenty-eight states. Most states do allow for occupational or hardship licensure during the suspension or revocation period (McCartt, Geary, and Nissen, 2002).

There is evidence that license revocation has a positive impact on reducing recidivism and offenders who have their licenses revoked drive less frequently or more carefully than before revocation. However, this is not a fail-safe response (Mayhew and Simpson, 1991; Nichols and Ross, 1990; Ross 1991; & Ross and Gonzalez, 1988). A 2002 study found that between 36% and 88% of offenders continue to drive after their license has been revoked (McCartt et al. 2002) and 20% of fatal crashes between 1993 and 1997 involved a driver with a suspended or revoked license (Griffin and DeLaZerda, 2000). Longer suspensions may be more effective in reducing re-offense. Homel (1981) found that suspension periods between 12 and 18 months are optimum and others have found that brief suspensions (under three months) do not have any impact on re-offense (Paulsrude and Klingberg, 1975; Peck, Wilson, and Sutton, 1994).

The second primary method for curtailing recidivism is preventing all driving after drinking (Marques and McKnight 2007). A variety of alcohol ignition interlock devices are available which require drivers to verify their sobriety by submitting to a breathalyzer each time they start their vehicle. If alcohol is detected, the vehicle will not start. Interlock devices continue to test drivers for sobriety periodically after the car has been successfully started, ensuring that drivers remain sober while driving. In addition, the devices log the results of each test, providing a monitoring tool for courts and probation officers. By allowing offenders to continue to drive as long as they are sober, such technologies allow compliant offenders to continue to maintain employment and other obligations, while also promoting public safety. However, this method is fallible. Drivers can ask someone else to submit to the breathalyzer test and there is nothing to keep intoxicated drivers from driving the cars of friends or

family members that do not have an interlock device. Ignition interlocks have been shown to reduce new offenses between 40 and 65 percent *while the devices are installed*. However, once the device is removed, re-offense rates return to the same rate as the comparison group (Beck et al. 1999; Beirness and Marques 2004; Coben and Larkin 1999; Fulkerson 2003; More and Delbert 1992; Tashima and Helander 1999; Raub, Lucke, and Wark 2003; Willis, Lybrand, and Bellany 2004).

The 8<sup>th</sup> Judicial District's DWI Courts has applied the above mentioned strategies with a focus on the third primary method for reducing recidivism, "preventing all drinking by the offenders". This strategy goes beyond promoting public safety and seeks to correct offenders' underlying problematic drinking by requiring total sobriety through a judicially supervised treatment regimen coupled with intensive data management through probation teamed with court based case management. Methods at the Erie and Niagara sites to stop offenders from drinking include intensive probation with unannounced home visits, frequent random urine or breathalyzer tests; intensive case management on site at the court, mandated inpatient or intensive outpatient alcohol treatment; house arrest with a GPS bracelet, and the use of a passive, continuous alcohol monitoring device, the Secure Continuous Remote Alcohol Monitor (SCRAM).

***Rationale and principles for the 8<sup>th</sup> Judicial District's response for DWI offenders.***

In 2004, under a grant from the National Highway Traffic Safety Administration (NHTSA), The National Judicial College held a sentencing summit to identify innovative sentencing practices that have been successful with DWI offenders where traditional sentencing methods failed to prevent recidivism. A lengthy discussion on drug treatment courts in the United States took place at the summit. It included successes in reducing recidivism and costs and how the utilization of the drug court model for DWI/DWI courts can be effective. They proposed inclusion of eligible DUI or DWI offenders in court programs for the treatment of substance abuse as an innovative, effective and cost efficient method of achieving the desired results.

It was recognized at this summit that hybrid treatment courts that serve an impaired driving population (DWI/drug treatment courts) can reduce recidivism because the judge, prosecutor, community supervision, probation staff, and treatment staff work together as a team to assure that alcohol treatment and other sentencing requirements are satisfied. Treatment with intensive supervision works with this population and it promises better long-term outcomes through decreased recidivism (NHTSA 2003, p. 18).

It is apparent that the traditional court process has not worked for repeat DUI/DWI offenders as already indicated in the Executive Summary. For example, in most circumstances the extended time between the arrest

and disposition of these cases could last up to two years. Pending disposition, the repeat offender is out of custody, unmonitored, and untreated and more than likely a continued risk to the community.

Even when offenders are ultimately convicted, there are few mechanisms to ensure the sanction imposed will actually be fulfilled (Robertson and Simpson, 2002). For example, these convicted offenders may or may not report back to the judge, the prosecutor, or any other agent of the court or treatment facility as deemed appropriate. It is apparent that an offender who is not compliant with the court's sentence is a persistent public safety hazard and is more likely to be rearrested for DUI or DWI than offenders who are compliant. Studies suggest that long lasting results require focusing on the substance dependence of the habitual drinking and driving offender.

### **DWI Offenders Fall into Two Categories**

1. People who have made a poor decision and driven after having had too much alcohol to drink.
  - These drivers tend to have relatively low blood alcohol concentrations (BACs).
  - These people are usually dissuaded from the crime in the future by punishment.
2. People who are addicted to alcohol (alcoholics) who are hard-core repeat offenders.
  - These drivers tend to have very high and dangerous BACs.
  - These people are very resistant to changing their drunken driving behavior.

The 8<sup>th</sup> Judicial District's DWI Courts address the problem of the second category. They do so by addressing the root cause of the problem which is alcohol dependence. Offenders accepted into the Hybrid/DWI program must typically:

- Plead guilty to the crime of DWI,
- Abstain completely from all alcoholic beverages,
- They must wear monitoring devices and/or be subject to unannounced tests for BAC,
- Undergo a treatment program that generally lasts 12-18 months,
- Accept, in the majority of cases, will have received a split sentence followed by five year of probations, and
- Appear in DWI court every two weeks.

### ***The geographic environment and socio-economic factors***

The New York State's 8<sup>th</sup> Judicial District encompasses eight counties in Western New York. Erie is the largest county within the 8<sup>th</sup> District and the most populated county in New York State (population 950,265) outside of

the New York City area. Erie County is a metropolitan center located on the western border of New York State covering 1,058 square miles. The County is bounded by Lake Erie to the west and Canada to the north. Located within the County is the City of Buffalo, the second largest city in the State (population. 292,648) which serves as the County seat, two smaller cities, 46 Towns and villages, as well as the Cattaraugus and Tonawanda Indian Reservations home to the Seneca Nations. The U.S. Census Bureau (2005), American Community Survey indicates that within Erie County, 13.2% of the total population lives below the poverty level and is relatively similar to that of 13.8% for the state. The County's Per Capital Income is \$27,356. In Buffalo there is a stark contrast, the poverty rate is double that of the county at 26.9%. In families headed by a female with children under 18, the poverty level is 43.5%. Buffalo is culturally diverse with 15% speaking languages other than English, 46% Caucasian, 39% African American, 10% of Hispanic/Latino origin, 1% Native American, 3% Asian and 2% other. Niagara County is adjacent to Erie's northern border. The county is less diverse than Erie, as 90% of its approximately 220,000 residents are white, 6% are black, 2% are Latino, and 4% are Asian or from some other group.

### ***Who Are the DWI Offenders?***

No generalization about the "typical" drinking driver applies to every offender. During any given one-year period, self-reported survey data indicated that between 17 to 27 percent of people in the United States drive shortly after drinking - this translates to between 28 and 45 million people who have driven after consuming alcohol in an average year (Balmforth, 1999). Theoretically, any of them may be arrested. Nevertheless, most impaired drivers are not arrested (Zador, Krawchuck, and Moore, 2000). Much is known about those offenders who have been arrested and convicted of DWI. A study of DWI offenders under correctional supervision (typically repeat offenders) highlighted several differences between DWI offenders and other criminal offenders: DWI offenders are older (by approximately five years), more educated than other criminals, and more likely to be white males (Maruschak, 1999). Maruschak listed the following additional characteristics for DWI offenders:

- 34 percent of the offenders in jail and 8 percent of the offenders on probation reported having been convicted of three or more DWI offenses in their lifetime.
- Approximately one in three DWI offenders on probation and two out of five in jail reported drinking alcohol daily, whereas 44 percent of jailed DWI offenders and nearly half of DWI offenders on probation report drinking at least once a week.
- Over 37 percent of DWI offenders on probation and almost half of jailed DWI offenders showed signs of alcohol dependence compared to 18 percent and 25 percent of other offenders.

- Are age 25 to 45, male, white, not married, have blue-collar jobs, prefer beer and drink it frequently, tend to drink at bars and tend to be “problem drinkers” (i.e., repeat DWI offenders, drink excessively - 5 or more drinks - in a session, and have problems associated with alcohol use).
- Tend to have experienced alcohol-related problems in the past and tend to be extroverted, impulsive, aggressive, hostile, and antisocial.
- Compared with a non-drinking driver, the relative risk of a single-vehicle fatal crash is 382 times higher for a driver with a BAC of .15 g/dL or higher (Zador, Krawchuk, and Voas, 2000). In fact, Zador, et al. (2000) found that each .02 increase in the BAC of a driver more than doubled the risk of male drivers age 16 to 29 being killed in a single-vehicle crash.
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### ***Overview of the 8<sup>th</sup> Districts DWI Track and Target Population***

Although drug courts in general vary in their organization by jurisdiction as a result of local concerns, their key components include judicial supervision of structured community-based treatment, identification of defendants for treatment and referral shortly after arrest, regular hearings to monitor treatment progress and compliance, a series of graduated sanctions, and mandatory drug testing.<sup>5</sup> Drug courts have their genesis in the concept of Problem Solving Courts and the idea of therapeutic jurisprudence.<sup>6</sup> The latter concept reflects a focus on "the extent to which legal rule or practice promotes the psychological and physical well-being of a person subject to legal proceedings"<sup>7</sup> as well as an "exploration of ways mental health and related disciplines can help shape the law". In December 1995, the Buffalo Drug Treatment Court was implemented followed by the Niagara Falls Court in 1996, as a joint response by Buffalo and Niagara Falls City Court to the overwhelming volume of drug-related cases. The planners recognized the practical need for treatment of offenders to reduce jail overcrowding, recidivism and to respond to addiction as a disease. These drug courts embraced a team approach to decision making in the treatment and evaluation of offenders who came before the court.

The relationship between crime and substance abuse is well established. The eight judicial district has viewed the development of the drug treatment courts as an ideal opportunity to draw together multi-disciplinary partners within a program that combines the authority and sanctioning power of the court with the clinical expertise of treatment professionals. The planners of the treatment courts looked to the 10 key components set forth by OJP publication *Defining Drug Courts* as a guide that would insure the development of a program that would employ

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<sup>5</sup> This article was first published in the University of the District of Columbia Law Review

<sup>6</sup> COUNCIL OF STATE GOVERNMENTS, CRIMINAL JUSTICE / MENTAL HEALTH CONSENSUS PROJECT xii (June 2002).

<sup>7</sup> BUREAU OF JUSTICE STATISTICS, *supra* note 4, at 1.

the best practices available. The use of the components guided the development of a program that met local justice needs, mandates and the expansion of our partnerships with our treatment community. The primary goal of the courts is to provide non-violent substance abusers charged within the respective jurisdictions with drug possession, as well as with non-violent offenses that stem from drug abuse (excluding those charged with crimes of violence, sexual abuse and drug sales) with early intervention consisting of treatment, education, intensive case management, and intensive judicial supervision. Both the prosecutor and defense counsel have agreed from the outset that drug court proceedings will be non-adversarial, and that the over-riding purpose is to achieve the successful treatment and rehabilitation of the defendant. The prosecutor and defense counsel appear at every Drug Court session and participate fully in drug court staffing sessions prior to court. The Public Defender and the Assistant District Attorney that are assigned to the courts, as well as the Coordinators and Project Directors review cases that have met eligibility criteria on a daily basis. Protocols are in place so that offenders with private counsel also have access to the program. These are both a pre-plea and post-conviction program.

These courts have proven the ability to engage and maintain participants in long-term treatment and other services who have had limited treatment exposure in the past. It also provides consistent, regular and closer supervision than by those under other forms of criminal justice supervision in the community. The average length of program participation for graduates is 478 days in Buffalo and xxx in Niagara Falls. It has been suggested that both courts have reduced the number of new crimes that untreated offenders would likely have committed, if not involved in the program. Preliminary review of participant characteristics has indicated that participant/offenders are most likely to be young males, primarily members of cultural and ethnic minority groups, and to have low educational attainments. Participation in the drug court is voluntary. Defendants are fully apprised, prior to their admission, of the requirements, procedures, incentives and sanctions associated with participation. Defense Counsel is fully informed of these parameters and has full access to all Court information regarding their client. Additionally, defendants may choose to discontinue their participation in the courts, with the prior understanding of the application of consequences previously associated with their charge and/or conviction. Unless sentenced to Drug Court, the consent of the prosecutor, defense counsel, defendant, the referring Judge and the Drug Court Judge is required. When an offender meets program criteria, he or she appears before the Presiding Drug Court Judge. Pre-adjudicated participants enter into a written contract with the Court. All who participate are then linked with a licensed provider within forty-eight (48) hours of case transfer. Initially, status hearings (court appearances) are scheduled with the Drug Court Judge every two-weeks. Sanctions and incentives are administered according to its provisions. Screening, Orientation, Placement, Treatment Coordination/Case management, Data collection, tracking and monitoring are all coordinated on site through the C.O.U.R.T.S.

PROGRAM (COURT OUTREACH UNIT REFERRAL AND TREATMENT SERVICE).<sup>8</sup> The Buffalo City Court Project Director manages both the BDTC and C.O.U.R.T.S. PROGRAM. Niagara Falls also has a coordinator and community based partners housed on site that perform similar functions.

These courts have used the authority and power of the Court to keep offenders with substance abuse disorders and mental disorders in treatment with the expectation of improved treatment outcomes, less relapses, higher treatment completion rates and, more importantly, for our community a reduction in crime and recidivism. The courts are coordinated and complimented by a proven dedicated team approach. This approach relies on representatives of the Court, community, and treatment and support agencies to form a cooperative, multidisciplinary working relationship. All offenders in the treatment courts have an Individual Treatment Plan for integrated, concurrent treatment (substance abuse and mental health), rehabilitation and other needed services. Eligible individuals receive full benefits of these programs, including service enhancements, flexible services and wrap-around benefits such as housing, vocational, employment and medical services. Both sites provide integrated utilization case management and judicial oversight for participants.

### **OVERVIEW OF THE 8<sup>th</sup> JUDICIAL DISTRICT DWI HYBRID DRUG COURT.**

These problem solving courts operate under a single model in two separate counties in Western New York. Within Erie County, the largest county in the district, 6,350 desk appearance tickets were issued for DWI in 2006. In Niagara County 2,074 desk appearance tickets were issued that year. In addition, just over five thousand (5,062) arrests were made for DWI in the two counties, of which 682 (13%) were for felony DWI. Of these, approximately 28% of the defendants were repeat offenders.

To address the issue of persistent driving while intoxicated in the 8<sup>th</sup> Judicial District, the New York State Unified Court System launched DWI Hybrid Drug Courts in both counties in October 2006. The courts target nonviolent felony DWI offenders who had, at least, one prior felony DWI conviction and who are identified as having an alcohol abuse problem. Upon a conviction or guilty plea to an eligible DWI offense, the sentencing judge has the option of ordering the offender to undergo an assessment at the specialized DWI court to determine the existence

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<sup>8</sup> Formed in 1995 through a collaborative effort of Buffalo Mayor Anthony M. Masiello , Chief Judge Thomas P. Amodeo, and The Hon. Robert T. Russell. The COURTS Program, under the direction of Henry G. Pirowski, is one of the nation's "top 10" court-based initiatives (cf. US Department of Justice, A Guide to Successful Adjudication Partnerships). Its success centers on providing judges with a centralized, court-based unit that directly reports to the Court the progress of defendants as they comply with the Court's mandates or sanctions. It tracks and monitors defendants throughout their stay in treatment recovery programs and brokers the treatment needs of defendants with a local consortium of treatment providers. Also, it is the treatment gateway for defendants who participate in Buffalo's Drug Court (the Hon. Robert T. Russell, Presiding). Since 1995, the COURTS Program has received national recognition for its innovative approach. Such honors include the New York State Bar Association Public Service Award for the Furtherance of Justice (1995), the US Conference of Mayors' City Livability Award (First Place/Large City Category, 1996)..

of an alcohol dependence/abuse disorder. If it is determined the offender is alcohol dependent, the offender may be ordered to participate and complete the DWI Court. Offenders who refuse participation are usually sentenced to state prison time. Offenders who agree to enter the program are sentenced to five years of probation, with an additional condition requiring participation in the DWI Hybrid Drug Court for at least one year. (Program length is determined by the participant's compliance, but is no less than one year and no more than two years.)

All offenders assigned to the DWI Courts are under community supervision by the probation department and case management by the court based DWI team. They are also subject to monitoring through the SCRAM anklet for at least six months and longer in the event of noncompliance or as a condition set by the sentencing judge. In addition, the offenders must attend an alcohol treatment program (most defendants start out in outpatient treatment, but inpatient treatment may be necessary in some cases) and must return to court regularly for judicial status hearings. Participants are required to submit to random alcohol and drug screens on the days they appear for their status hearings and random days between court appearances, as well as unannounced home visits by the probation department. The DWI court judge can apply intermediate sanctions to respond to participant compliance. Sanctions can include admonishment from the judge, increased frequency of court appearances and testing, increased participation in treatment, community service, demotion to an earlier phase of treatment, brief periods of incarceration, and formal probation violation with program termination and re-sentencing to jail.

### **Target Population:**

Eligible candidates for participation in the DWI Courts are non-violent felony offenders whose alcoholism disorder appears to have contributed significantly to their current arrest and conviction. DWI court participants are primarily those offenders who have one or more prior offenses over a seven-year period, and whose behavior indicates a problem regarding alcohol use and abuse. Special emphasis is placed on the previously convicted DWI offender whose fear of prosecution and or imprisonment has proven to be an ineffective deterrent to continued drunk driving. It should be noted that if someone was hurt other than the driver during the DWI stop (arrest) or event (crash) they are not eligible for program participation.

### ***Referral Process***

The DWI offender referral process ensures that potentially eligible participants are not inadvertently or inappropriately denied the opportunity for participation. The eligibility screening process has eliminated from the pool of potentially eligible offenders who are not appropriate for the program. For those who are still potentially eligible after a review of information contained in legal documents, a face-to-face screening interview is conducted either on site at the court. Participants are referred to the program primarily by a Judge at either the pre-sentencing

(monitoring) or sentencing stage of the court process (formal admission). Referrals to the program are at the sentencing judges' discretion.

Prior to sentencing or release, a pre-trial investigation by the probation department is ordered. The court based case managers conduct an initial screening and intake interview and a client may be screened out at this point because of histories of violence or charges that include bodily harm to others. The senior case managers prepare a packet with the results of the intake interview and screening. This packet is presented to the DWI team, consisting of the judge, prosecutor, defense counsel, treatment provider, and project director. Upon sentencing and acceptance into the program the probation DWI supervisor is notified. With approval of the team, the judge formally admits the offender into the program during the status hearing. Upon admission, the public defender and or private counselor explains the participant's rights and responsibilities. At sentencing/referral the judge and program staff reinforces the conditions set by the court. Their license is suspended; they must agree to follow all treatment recommendations, wear a SCRAM monitor for a minimum of six months and comply with all conditions set by the DWI court. All participants who are admitted to the program are given five years of probation. A majority of participants also receive a split sentence, whereas jail time was given ranging from weekends or up to six months in jail.

The program is designed to be completed in twelve to eighteen months. The primary objectives of the project were to establish a seamless system of offender accountability and service delivery throughout the criminal justice process and to reduce recidivism and relapse of offenders by providing intensive supervision and individualized court monitored treatment. Participants in the DWI court agree to chemical dependence and psychiatric treatment as a condition of enrollment. These health care services are provided by licensed community treatment providers. The court holds review hearings to monitor compliance and cooperation in treatment. Sanctions and rewards are used as part of the program. Sanctions may be given for reasons such as noncompliance in treatment, substance use or abuse, or inappropriate behavior. Sanctions include more frequent status hearings; reprimands from the judge, community service, jail time, or termination from the program.

## **Supervising the Offender**

There are unique characteristics attributable to those who drive while impaired by alcohol and other drugs. Alcoholics or alcohol abusers, unlike users of illicit drugs, may not have lost the support of their families and friends, and in many cases may still have some semblance of functional lifestyles. Similarly, while involvement with the court may be considered inconvenient or embarrassing, the alcoholic's family and friends may enable the alcoholic to continue to drink by covering up or denying the problem. As a result, it appears the DWI offender is often in a greater state of denial than other addicts and is therefore more resistant to the goals of the DWI court team and specifically to supervision efforts. The offender who drives while impaired is extraordinarily dangerous;

this coupled with the quick dissipation of alcohol from a person's biological system makes increased supervision a necessity. Since there is a potential for a greater level of danger to the public, supervision is tighter. For example, participants involved with the program at both sites report to the on site court case management team three times a week for SCRAM readings for the first three months in addition to seeing their probation officer. After three months of compliance (no usage, no tampering) the participant is allowed to take the SCRAM modem home and is not required to report to court except for their scheduled court appearances. In three separate circumstances participants with severe transportation problems were allowed to take the modem home prior to the standard three month rule. Court appearances generally are weekly in the beginning and based on participant's compliance may be moved to twice a month. The frequency of Probation contact is based on a case by case basis by the risk presented to the community and all DWI court participants are subject to unannounced home visits.

In addition to SCRAM monitoring a participant in the DWI court can be ordered by the court as a condition of probation to have an alcohol ignition interlock installed on their vehicle. Interlocks typically are used as a condition of probation for DWI offenders to prevent them from driving while impaired by alcohol after their driver's licenses have been reinstated. The alcohol ignition interlock prevents a car from starting unless the driver provides a breath sample with a BAC lower than a pre-set level, usually .02 grams per deciliter. Interlocks are highly effective in allowing a car to be started by sober drivers but not by alcohol-impaired drivers. A "running retest" requires the driver to remain sober while driving. A data recorder logs the driver's BAC at each test and can be used by probation officers to monitor the offender's drinking and driving behavior. Beirness and Marques (2004) provide an overview of interlock use, effectiveness, operational considerations, and program management issues. They summarized 10 evaluations of interlock programs in the United States and Canada. Interlocks cut DWI recidivism at least in half, and sometimes more, compared to similar offenders without interlocks. After the interlock was removed, the effects largely disappeared, with interlock and comparison drivers having similar recidivism rates. A Cochrane review of 11 studies reached similar conclusions (Willis et al., 2004). Thus, interlocks are an effective method for preventing alcohol-impaired driving while they are installed.

### ***Measuring Alcohol Ingestion.***

Ingested alcohol is present in a variety of bodily specimens, including blood, breath, urine, and sweat (Swift 2000). The most commonly used methods for measuring alcohol ingestion are through blood alcohol concentration (BAC) or breath alcohol concentration (BrAC). Blood alcohol concentration is the amount of alcohol present in the blood, measured as percent BAC by volume. Consumed alcohol is absorbed into the bloodstream relatively quickly; BAC measures reflect the presence of alcohol within thirty (30) to seventy (70)

minutes of ingestion (NHTSA 2005). Individual height, weight, sex, and alcohol tolerance all impact how alcohol is metabolized and, thus, will impact the amount of alcohol it takes an individual to reach the legal blood alcohol limit. Breathalyzer tests or breath alcohol concentration tests estimate blood alcohol concentration in grams of ethanol per liters of breath. These tests are less invasive and expensive than blood tests and are used with greater frequency by law enforcement agencies.

Although methods to reliably measure it did not exist until recently, about 1% of consumed alcohol is excreted through the skin, either in the form of sweat or insensible perspiration (Nyman and Palmlov 1936; Swift 2003).<sup>9</sup> The alcohol concentration excreted through the skin is known as transdermal alcohol concentration (TAC). Studies have verified that transdermal alcohol concentration is an accurate indicator of alcohol consumption. That is, neither false-positive results among non-drinking subjects nor false-negatives among drinking subjects result from TAC tests (Brown 1985; Giles, et al. 1986; Giles, et al. 1987; Phillips and McAloon 1980; Sakai, Mikulich-Gilbertson, Long, and Crowley 2006). In addition, laboratory testing indicates that this method is able to reliably differentiate between high- and low-alcohol dosages (Sakai, et al. 2006). However, because alcohol is eliminated through the skin at a slower rate than through blood or breath, TAC is delayed as compared to BAC and BrAC. Positive TAC readings take longer after alcohol ingestion to register and alcohol concentration remains heightened for a longer period after ingestion (Sakai, et al. 2006; Swift 1993; Swift, et al. 1992). While this means that TAC may not be the best tool for identifying alcohol ingestion *immediately*, study results do support the reliability of TAC as an indicator of alcohol consumption.

In recent years, several new technologies designed to measure TAC have been introduced. The first commercial device for detecting TAC was a sweat-patch test, a patch applied to the skin and worn for several days. The patch was then analyzed in a laboratory for ethanol content, which would indicate whether the wearer had consumed alcohol. The sweat-patch test was found to be a reliable measure of alcohol consumption, but the necessary time delay in analysis and expensive laboratory equipment kept the patch from large scale use (Phillips and McAloon 1980). Rather than measuring ethanol content of wearers' sweat, the next round of TAC monitors were developed to measure the ethanol content of insensible perspiration. The earliest devices still relied on expensive laboratory equipment coupled with plastic bags designed to capture insensible perspiration, but later monitors eliminated both the plastic bag and the need for the laboratory by placing an ethanol sensor directly above the skin (Hawthorne and Wojcik 2004). TAC readings from both the plastic bags and the ethanol sensors were found to correspond closely to blood alcohol and breath alcohol concentrations, supporting the use of TAC as a reliable indicator of alcohol consumption (Giles, et al. 1986; Giles, et al. 1987).

The Secure Continuous Remote Alcohol Monitor (SCRAM) is an anklet that measures transdermal alcohol

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<sup>9</sup> Insensible perspiration is the perspiration that evaporates before it is perceived as sweat on the skin.

concentration using sensors like those described above. The device continually samples the perspiration on the wearer's body and transmits readings via a modem located in the user's home. Readings are transmitted to a web-based application and are then monitored and interpreted by Alcohol Monitoring Systems, Inc. (the manufacturer of SCRAM). The device safeguards against tampering by measuring body temperature and voltage readings. A pilot study found no technical failures of the SCRAM anklets used with 176 offenders, despite rural settings and cold and inclement weather (McKelvie 2005).

There is limited research testing the accuracy of SCRAM anklets in detecting actual levels of alcohol use. Alcohol Monitoring Systems, Inc. (the manufacturer) reports that it has conducted an evaluation of the device and found it to report alcohol consumption accurately, with an expected delay in TAC as compared to BrAC (Hawthorne and Wojcik 2004). This study has not been published. Sakai et al. (2006) conducted an evaluation of SCRAM with 24 laboratory subjects and 20 subjects in a community setting (including ten (10) who were alcohol dependant and ten (10) who were not). The evaluation found that SCRAM was a reliable indicator of alcohol use; the results indicated neither false negatives among subjects who consumed alcohol or false positives among subjects who did not consume alcohol. As with previous research on transdermal alcohol concentration, the study found that SCRAM readings were not equivalent to simultaneous breath alcohol concentration, with consumed alcohol taking longer to register through SCRAM.

#### **Part IV : Lessons Learned, Critical Elements and The Ten Key Principles**

It is the mission of the Erie and Niagara County DWI Court Programs to provide direction and treatment to DWI offenders in an effort to change their drinking and driving behavior and to reduce the risk they pose to the safety of the community. This opportunity for change is afforded through frequent Court interaction, monitoring of sobriety, judicial supervision and participation in graduated levels of alcohol education and treatment.

Although self-evaluation (program monitoring) has proven its worth to the DWI Courts within the 8<sup>th</sup> Judicial District, its most important result has been to produce knowledge about lessons learned and the identification of critical components or elements that are essential for success, self-sufficiency, and institutionalization.

The following section, presents the ten (10) Guiding principles of the 8<sup>th</sup> Judicial Districts DWI Hybrid DWI Courts implementation and condition on each and it identifies their use in the successful accomplishment of both programmatic and organizational objectives. The "Key Principles" presented below detail 10 characteristics of the Hybrid DWI/Drug Courts that were developed by the National Drug Court Institute. The Key Principles, with some minor modifications, have been adopted by the DWI/Buffalo and Niagara Drug Treatment Courts. It is intended for the benchmarks presented here to be descriptive of best practices, designs, and operations of the

Hybrid DWI/Drug Courts. The benchmarks offered here are not intended as a certification or regulatory checklist because the program is still too new to codify policies, procedures, and operations. The benchmarks are meant to serve as practical, flexible frameworks for documenting policy, practices, and to provide a structure for conducting further evaluation for program accountability. The purpose of each key principle is explained, followed by several performance benchmarks that give guidance for implementation.

## ***GUIDING PRINCIPLES FOR DWI COURTS***

### **GUIDING PRINCIPLE #1: TARGET THE POPULATION**

The DWI court focuses on repeat felony offenders charged with driving while impaired by alcohol or illicit drugs and who have been diagnosed with a serious alcohol and/or illicit drug problem. Special emphasis is placed on the previously convicted DWI offender whose fear of prosecution has proven to be an ineffective deterrent to continued drunk driving.

#### **Performance Benchmarks:**

1. Screening is based on established written criteria. Program staffs as well as the probation departments are designated to screen cases and identify potential participants.
2. Eligible participants are promptly advised about program requirements.
3. The program requires that eligible participants receive integrated treatment services.

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

The assessment process is designed to identify and determine who can benefit from treatment and matches the participant to an appropriate level of care. It is an accepted standard within the District that the quality of treatment will never rise above the quality of the assessment. Effective treatment requires that the offender undergo a thorough clinical assessment to identify relevant impairments and strengths in multiple biopsychosocial domains. An objective clinical assessment is administered to all DWI court clients that includes the following domains: (1) severity of alcohol use/abuse; (2) level of care needed and placement in treatment; (3) drug use involvement; (4) medial status; (5) psychiatric status; (6) employment and financial status; (7) family and social status; (8) alcohol triggers and cognitions; and (9) self-efficacy and motivation for change.

#### **Performance Benchmarks:**

1. Individuals are initially screened and thereafter periodically assessed by both court and treatment personnel to ensure that treatment services and individuals are suitably matched.

2. An assessment at treatment entry, while useful as a baseline, provides a time specific "snapshot" of a person's needs and may be based on limited or unreliable information. Ongoing assessment is necessary to monitor progress, to change the treatment plan as necessary, and to identify relapse cues.

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

Substance dependence is a chronic, relapsing condition that can be effectively treated with the right type and length of treatment regimen. In addition to having a substance abuse problem, a significant proportion of the DWI population also suffers from a variety of co-occurring mental health disorders. Placement into an integrated treatment system is based upon, but not limited to, the reported substance abused, psychiatric condition, functional level, social and psychological risk factors, geographical location (relationship of residence and location of provider) and insurance coverage. Assessment of participant's progress is routinely done through established licensed and accreditation policies and procedures for case conferences. Quality assurances are met by utilization review, continued stay review and regularly scheduled consortium staff meetings. All individual treatment planning and delivery are reviewed in accordance with New York State licensure guidelines for continuous quality improvement performance standards and measures. The addiction treatment protocols are followed in engage and treat participants based on models from the American Society of Addictions Medicine and the Joint Commission on the Accreditation of Health Care Organizations.

#### **Performance Benchmarks:**

1. Treatment services are individualized and comprehensive to include, but are not limited to, substance abuse and mental health counseling group counseling; individual and family counseling; relapse prevention; 12-step self-help groups; peer support groups: preventive and primary medical care; general health education and medical detoxification. Treatment is available in a number of settings, including detoxification, acute residential, day treatment, outpatient, and sober living residences. Clinical case management services are available on both sites at the C.O.U.R.T.S. Program in Buffalo and Niagara City Court to provide ongoing assessment of participant progress and needs, to coordinate referrals to services in addition to primary treatment, to provide structure and support for individuals who typically have difficulty using services even when they are available, and to ensure communication between the court and the various service providers.

2. Treatment agencies are accountable to report accurate and timely information about a participant's progress. Information exchange complies with the provisions of 42 CFR, Part 2 (the Federal regulations governing confidentiality of AOD abuse patient records) and with applicable State statutes. Responses to progress and

noncompliance are incorporated into the treatment protocols. Treatment designs and delivery systems are sensitive and relevant to issues of race, culture, religion, gender, age, ethnicity, and sexual orientation.

#### **GUIDING PRINCIPLE #4: SUPERVISE THE OFFENDER**

Increased supervision and monitoring by the court, probation department, and treatment provider is part of a coordinated strategy to intervene with the high-risk DWI offenders and to protect against future impaired driving. The approach taken in the DWI Courts is based on the Judge's authority in status proceedings. Defendants are required to account for their behaviors/progress in open court. Therefore, it is essential for the Judge to have timely, accurate information on the participant's treatment progress. This unique judicial role is distinct from other treatment experiences. It appears that the close involvement of the Judge creates a relationship, which may be unique for the participants, since it combines authority with responsibility. In this role the Judge in many respects becomes the manager or supervisor of the entire treatment process, encouraging where appropriate and using the authority of the court to empower the defendant to take responsibility for his or her actions.

##### **Performance Benchmarks:**

1. Regular status hearings are used to monitor participant performance. Frequent status hearings during the initial phases of each participant's program establish and reinforce the DWI Court policies and ensure effective supervision of each participant. Frequent hearings also give the participant a sense of how he or she is doing in relation to others.
2. Time between status hearings may be increased or decreased (weekly, every other week, once a month), based on compliance with treatment protocols and progress observed.
3. Having a dedicated day for participants in the DWI tract gives the judge the opportunity to educate both the offender at the bench and those waiting as to the benefits of program compliance and consequences for noncompliance.
4. The court applies appropriate incentives and sanctions to match the participant's treatment progress.

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

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

The partners in both counties meet regularly to provide direction and guidance in the growth and further development of the DWI/Drug Court. The DWI/Drug Court Teams are active in the promotion of community involvement through informational meetings, forums, public speaking engagements, local college and university appearances, and other community outreach efforts. The DWI/Drug Court is a circular system, with each part of the system linked to, dependent upon, and responsible to the other parts.

**Performance Benchmarks:**

1. Representatives from the court, community organizations, law enforcement, corrections, prosecution, defense counsel, supervisory agencies, treatment and rehabilitation providers, educators, health and social service agencies, and the faith community meet quarterly to provide guidance and direction to the program.
2. Participation of public and private agencies, as well as community based organizations, come together through a steering committee. The steering committee aids in the acquisition and distribution of resources.
3. The 8<sup>th</sup> Judicial District has provided opportunities for community involvement through forums six (6), informational meetings (quarterly), and other community outreach efforts such as the attendance and speaking at twenty block club meetings.

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

The Judges are a vital part of the DWI court team. As leader of this team, the judge's role is paramount to the success of the Drug Court program. The judge must also possess recognizable leadership skills as well as the capability to motivate team members and elicit buy in from various stakeholders. The selection of the judge to lead the DWI court team, therefore, is of utmost importance. The Honorable Patrick Carney (Buffalo) and Honorable Mark Violante (Niagara Falls) are Presiding DWI/Drug Court Judges with strong leadership roles in the formation of partnerships among representatives of the court, treatment providers, educators, police department, probation department, social service agencies, and community based organizations, health agencies and local religious leaders.

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

Case management, the series of inter-related functions by the coordinated drug court team and seamless collaboration across the treatment and justice systems, is essential for an integrated and effective DWI court program. There are five core functions of case management in the DWI courts including: (1) assessment, (2) planning, (3) linking, (4) monitoring, and (5) advocacy. Although various members of the DWI court team share the performance of these functions, a specially designated team member should serve as the person primarily responsible for coordinating the development and pursuit of participant case plans, linking participants to resources, and monitoring participant and service provider performance.

### **DWI Case Management**

Two case managers funded by the initiative are assigned to both the Niagara County and Erie County DWI Tract or Hybrid DWI/Drug Court case management team. Along with the Drug Court Case Management Team, everyone is responsible for a series of inter-related functions that provide for a coordinated team strategy and seamless collaboration across the treatment and justice system. (Assignment & Responsibilities) -BOLD

The eligibility screening process performed by this team eliminates from the pool of potentially eligible participants those offenders who are not appropriate for the program. For those who are still potentially eligible after a review of information contained in legal documents, a face-to-face screening interview is performed. (Screening) - BOLD

The case management team administers a brief screening instrument to confirm the individual has a substance abuse problem and is potentially suitable for substance abuse treatment. (Activities) - BOLD

The case management team, based on the findings of the screening, makes the initial referral to the treatment system for a thorough clinical assessment to identify relevant impairments and strengths in multiple biopsychosocial domains. (Assessment) - BOLD

The case management team's supervision of participants is accomplished through technical innovation (SCRAM Monitors), random and twice weekly office contacts, and weekly judicial review. In addition to meeting with participants a minimum of twice per week, these members of the drug court team prepare progress reports for the court and utilize random and scheduled urine testing as both a supervisory device and a therapeutic tool. It appears that, for some participants, in addition to the SCRAM, urine testing is an important way to prove objectively to themselves, as well as the court, that they are making progress. For others, testing can be an external source of motivation that helps them achieve abstinence. Alcohol and drug testing is a vital part of treatment and provides a tool for determining progress and for making decisions about changes in the treatment plan. Instant

urinalysis tests are available to the DWI/Drug Court Judge to address suspicious behavior (missed appointments at the clinic, failure to meet clinical standards, and/or failure to cooperate with testing at the clinical level). (Monitoring) - BOLD

**Performance Benchmarks:**

1. Treatment providers, the judge, and other program staff maintain frequent, regular communication to provide timely reporting of progress and noncompliance and to enable the court to respond immediately.
2. Responses to compliance and noncompliance are explained verbally and provided in writing to participants during their orientation (first Monday of every month). Periodic reminders are given throughout the treatment process.
3. Alcohol & Drug testing policies and procedures are based on established and tested guidelines, similar to those of the American Probation and Parole Associations. Contracted laboratories analyze urine or other samples based on established standards with strict accountability requirements.
4. Testing is administered randomly or at scheduled intervals, but occurs no less than twice a week during the first several months of an individual's enrollment. Frequency thereafter varies depending on participant progress.
6. The scope of testing is sufficiently broad to detect the participant's primary drug of choice as well as other potential drugs of abuse, including alcohol.
7. Elements contributing to the reliability and validity of a urinalysis testing process include, but are not limited to, quality control and quality assurance procedures for ensuring the integrity of the process and procedures for verifying accuracy when test results are contested.
8. The BDTC is immediately notified when a participant has tested positive, has failed to submit to AOD testing, has submitted the sample of another, or has adulterated a sample.
9. The coordinated strategy for responding to noncompliance includes prompt responses to positive tests, missed tests, and fraudulent tests.

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

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

Perhaps the most unique aspect that differentiates DWI courts from drug courts is the issue of transportation. Defendants in the DWI courts face the suspension or revocation of their privileges to drive as a direct result of their arrests. The DWI Courts insist/enforce defendants adhere to any and all restrictions on their driving privileges and will impose sanctions on them for violating those restrictions.

**Performance benchmarks:**

1. DWI court defendants are not be allowed to use lack of transportation as an excuse for not meeting the court's program requirements.
2. DWI Courts deal directly with defendants on the issue of transportation discussing alternative means such as public transportation, taxi service and/or family/significant other transport. Documentation of such must be submitted during court appearances.
- 3.

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

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.

**Performance Benchmarks:**

1. Management, monitoring, and evaluation processes began during initial planning. As part of the comprehensive planning process, the 8<sup>th</sup> Judicial District established specific and measurable goals which defined the parameters of data collection and information management.
2. Monitoring and management data are assembled in useful formats for regular review by program leaders and managers.
3. Monitoring reports were prepared by the evaluator and project director and reviewed monthly by the DWI/Drug Court Teams at both sites. They were used to analyze program operations, gauge effectiveness, modify procedures when necessary, and refine goals.

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

Ultimately, the success of the DWI court is based on the resources within the community, coupled with its ability to find and justify additional resources or funding as needed. It appears that outcomes are the key to sustainability.

## **Part V: Logic Model**

Recovery Solutions Inc. (RSI) used qualitative research methods within the context of the logic model, which included interviews, focus groups, surveys of stakeholders and participants, and a review of documents, to measure the effectiveness of the implementation as reflected in Exhibit 1.1.

Inputs. During the interview, key stakeholders noted the importance of the initial planning phase in launching the program. Many of the program components were already in place, including the Buffalo Drug and Niagara Falls Drug Treatment Courts, COURTS Program, Probation-based Intense DWI Supervision Program, a history of collaboration between the city, county and state levels of the criminal justice system, and an established treatment consortium.

Throughputs. Throughputs crucial to successful implementation included the goals and key agencies involved in planning the program. The primary goals included: (1) Judicial oversight and offender accountability, (2) ensuring that DWI offenders receive supervision, support and structure, (3) helping offenders build a new foundation and a new positive support system, and (4) reducing the occurrence of local crime.

Several entities were involved in the formation of the program, including Buffalo and Niagara City Court, the Niagara and Erie County Probation Departments ,the Erie and Niagara County District Attorneys Office, Legal Aid and Assigned Council Programs, the Erie and Niagara County Jails and Correctional Departments and the Presiding DWI Court Judges

Output. The major implementation components include case management and monitoring, probation supervision, judicial contact, and the use of sanctions and rewards. Two contracted case managers provided case management in addition to supervision of offenders that was provided by the respective probation departments. The case managers' work with participants identified during their pre-trial stages and facilitates entry into the program at the time sentencing. The project Directors work closely with offenders, substance abuse and mental health providers, institutional staff, jails and corrections, service providers, probation officers, judges, attorneys, and other court staff. The case managers' responsibilities encompass conducting assessment, attending team meetings, developing individualized service plans for offenders, facilitating and coordinating probation activity with treatment and other needs (medical, mental health, vocational), and attending court hearings.

As mentioned earlier, community supervision is performed jointly by both the court staff and probation. Participant contacts with community supervision are individualized and randomly conducted (unannounced home visits and, breathalyzers and drug tests). All participants are expected to abide by a lengthy set of conditions (e.g., no bars, no alcohol, no new arrests). The primary DWI Judge oversees all participants and court cases. Program participants appear before the same judge throughout the duration of the program. During the hearing, the judge talks with each participant, asks questions, provides verbal support, and if necessary, imposes/upholds individualized sanctions.

Prior to the court hearing, case managers and probation concerns are provided to the judge with updates on each participant on the court docket. Sanctions used in the program are graduated and include, community service, writing assignments, and jail. Rewards include reducing the frequency of court appearances and probation contacts, extending curfew and when appropriate, phasing the offender out of treatment.

Desired Outcomes. The short-term outcomes that the program hopes to achieve are the provision of Substance Abuse and Mental Health Services, treatment, medication, acclimation to the community from jail, gainful employment and or educational improvements. Long-term outcomes include reduction in recidivism and re-incarceration and the restoration of participants as productive members of the community.

Logic Model

**Community Context**

- Public Safety
- Availability of community supervision and treatment

**Inputs: Buffalo and Niagara City Courts**

Planning and Technical assistance

**Existing local resources**

- Drug Courts
- Erie County Forensic Department
- Treatment programs
- Erie and Niagara County Probation

**Throughputs: Hybrid DWI Courts Planning**

**Goals**

- Ensuring support/ structure upon referral
- Eliminate re-occurrence
- Reduce recidivism

**Key Agencies Involved**

- Buffalo and Niagara Drug Courts
- Treatment Providers
- Erie and Niagara County Probation Departments

**Target Population:** non-violent felony offenders whose alcoholism disorder appears to have contributed significantly to their current arrest and conviction.

**Outputs: Buffalo Treatment Court – C0-occurring Tract Implementation**

**Case Management**

- Begins pre-sentencing
- DWI case managers provides assessment, develops release plan, and facilitates treatment
- Communicates with judge, probation, jails, attorneys, and service providers

**Service Provided**

- Referrals made to available community services (e.g., Substance and Mental Health providers, education, employment and Medicaid)

**Supervision/Monitoring**

- Court Staff and or Probation or both
- Monitoring, curfew, random drug tests, multiple contacts each month (home, office, and work)

**Judicial Contact**

- DWI Court Judge
- Twice Monthly appearances
- Sanctions: community service, writing assignments, and jail

**Rewards**

- Reduced contacts/court appearances, extended curfew
- Verbal support
- SCRAM removal (minimum 6 months)

**Desired Outcomes**

**Short Term**

- Drug and Alcohol free
- Stabilization
- Employment
- Acclimate to community
- Medication Compliance
- Support Systems

**Long Term**

- Reduce recidivism
- Prevent re-occurrence
- Community safety

“The long history of positive outcomes for drug courts generated the question: If drug court programs can reduce recidivism among the populations they now serve, could the drug court model, applied to impaired drivers be as successful”? The planners indicated a positive response to their initial observation and query and launched the planning phase of the project. They expressed experiences and concluded that “Punishment, unaccompanied by treatment and accountability, is an ineffective deterrent for the repeat DWI offender”. The outcome for the offender is continued dependence on alcohol; for the community, continued peril.

The program is open to felony offenders who have been convicted of DWI, so long as they have not caused an injury in an accident other than to themselves past or present.

Key stakeholders<sup>10</sup> spoke favorably about the effectiveness of the program. They indicated that from their direct observation of the courts it appeared that coercive power is the key to admitting DWI offenders into treatment quickly and for a period of time that is long enough to make a difference. This proposition is unequivocally supported by the empirical data on substance abuse treatment programs. Data consistently show that treatment, when completed, is effective. However, most alcoholics, given a choice, will not enter a treatment program voluntarily. Accordingly, stakeholders indicated that, if treatment is to fulfill its considerable promise as a key component of DWI reduction policy, DWI offenders not only must enter treatment but must remain in treatment and complete the program.

Although several respondents considered it too early to tell whether the program has had an impact on recidivism, many indicated that the program will be successful because of the intensive supervision and the fact that the program participants know what is expected of them. They pointed to the fact that none of the 61 initial participants were arrested again for drunken driving during the programs first 18 months. Both judges agree that “They make it very clear and simple for participants. If alcohol is in their system they are responsible for it.” Seven participants over this reporting period were sanctioned to jail for a period ranging from 7-10days for tampering with the SCRAM device. One stakeholder, the DWI STOP coordinator stated that his initial impression of the program was that it was simply another last chance for our worst offenders, an additional chance to stay out of jail, which he did not favor. However, he now believes “that it is so intrusive, that the program is able to look after them even if they are not in jail in an effective way so they are not drinking and driving”.

The key stakeholders with whom we spoke felt that there has not necessarily been an expansion in the services available since the program started. “We utilized existing treatment resources Participants themselves had a diverse opinion of the effectiveness of the program. Some mentioned it was “pretty successful” because of the support and increased supervision; others said that a lot of people go in the wrong direction no matter what the courts do. Several program participants echoed the sentiment that success depends on the individual and that some people

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<sup>10</sup> Key Stakeholders are members of the Buffalo Drug Court Team or Advisory Committee.

just do not care. Participants acknowledged that the program was there to make sure they got help (especially for those who want it) and that many treatment and support programs are offered by the Court.

Several key stakeholders noted the importance of the judicial appearances, indicating that having to report to the judge makes a difference, particularly because offenders know they will receive an immediate consequence, which makes them more accountable. Program participants themselves generally felt positively about the judicial appearances, indicating that by enabling them to see the progressions (and losses) of other participants, they can see where they are themselves. Participants indicated that the judges are there to keep them from going back to drinking and that the status hearings keep them on track. Some participants were quick to add that if they are not improving and doing what they are supposed to, the judge will put them in jail. Ninety-six percent (96%) of participants indicated that time with the judge was an important factor in maintaining their program. Several participants indicated that wearing the SCRAM monitor is a constant reminder that the Judge is watching. Some went on to say that every time the bracelet vibrated it was like having the Judge say ‘Don’t do it’.

Stakeholders applauded both sites on how the judges respond to relapse or other violations with immediate sanctions, including increased frequency of status hearings, increased frequency of alcohol or drug screening, increased case management appointments in the C.O.U.R.T.S. office, increased treatment attendance, curfew, community service, or jail. Stakeholders who upon initiation of the program questioned the relationship between court and probation staff all noted the emergence of a supervision continuum. They cited the fluidity of responsibilities most notably that upon removal of the SCRAM bracelet, participants are subject to increased probationary contacts, possible referral to the ignition interlock program, addition of a GPS monitor and unannounced home visits.

In addition key stakeholders felt that participant involvement with DUI/Drug Court for a minimum period of 1 year and a maximum period not to exceed 2 years based on successful completion of all phases of the program was adequate. They appeared content with process and noted that even after completing the program, participants will continue with intensive supervision probation for three to four years or whatever period of their remaining time on the five original years of probation remained.

Regarding the impact of the program on the judicial system, the general impression was that if the program is effective, the courts would not have to deal with the same offenders again and again. Although the program requires at least 30-35 hours per month of the judge’s time, which is fairly intensive and emotionally taxing, the judge indicated that it is time well spent, productive and rewarding as they are able to make a difference in the overall quality of life within the community. Interestingly, some key stakeholders mentioned that the program might also have a “domino effect” in that if you take one person in a family and turn him or her around, everyone else in the family may be positively affected.

Several key stakeholders felt that the intensive supervision required for all DWI court participants was crucial to the success of the offender. In contrast when community treatment staff responded they indicated that frequency of appearances for some participants added additional stressors in their clients life. However, key stakeholders from criminal justice and STOP DWI were unanimous in their views and all looked at the offender who drives while impaired as extraordinarily dangerous; they stressed the point that risk, coupled with the quick dissipation of alcohol from a person's biological system makes increased supervision a necessity. They indicated that public safety remains the paramount concern, and therefore more frequent monitoring by the court, the probation department, and treatment providers must occur. They concluded that "Since there is a potential for a greater level of danger to the public, supervision must be tighter, and the response to violations must be faster and stricter".

Key stakeholders were also asked about the effectiveness of case management. Opinions about the ability of the DWI case management team to provide access to treatment were favorable. Key stakeholders rated the following variables from, most important to least important as the essentials for the success of the program.

1. Judicial Monitoring (Greater accountability, due to having to report to the judge twice monthly),
2. On site Case Management/Resource Coordination (immediacy of action, linking participants into an appropriate level of care when problems arise),
3. Relationship with probation
4. Number of treatment facilities available to the program,
5. Use of sanctioning, and
6. Frequent drug testing

In summary they viewed this activity as a series of inter-related functions that provide for a coordinated team strategy and seamless collaboration across the treatment and justice systems as an essential element for an integrated and effective DWI court. They identified five core functions of case management in the DWI courts. They are: (1) assessment; (2) planning; (3) linking; (4) monitoring; and (5) advocacy.

Key stakeholders were also asked about the effectiveness of the program in facilitating family awareness. Most felt that the program helped offenders develop a better sense of family relationships and family responsibility. Several key stakeholders spoke positively about the support the program receives from family members, indicating that family members often attend court hearings and that case managers and probation staff meet with and sometimes receive phone calls from them, which keeps the team informed about the participant's progress. However, it appears based on initial findings that there are unique characteristics attributable to those who drive while impaired by alcohol. Alcoholics or alcohol abusers, unlike users of illicit drugs who participate in Drug Court, may not have lost the support of their families and friends, and in many cases may still have some semblance of functional lifestyles. Similarly, while involvement with the court may be considered inconvenient or embarrassing, the

alcoholic's family and friends may enable the alcoholic to continue to drink by covering up or denying the problem. As a result, the DWI offender initially is often in a greater state of denial than other addicts and more resistant to the goals of the DWI court team and specifically to supervision efforts.

## **Part VI: Summary of Quantitative and Qualitative findings, defendant-related outcomes**

The Quantitative and Qualitative findings relied on four methods of data collection:

1. Evaluators informally observed the DWI court process and role performance of key staff.
2. Structured interviews were conducted with key stakeholders of the 8<sup>th</sup> Judicial District DWI Project, the judiciary, county agencies, and treatment providers.
3. A non-identifier survey was administered to key personnel from partnering agencies.
4. Data was collected and analyzed from the Buffalo City Court, C.O.U.R.T.S. Program and Niagara Falls City Court.

### **Stakeholder and DWI Court Team Member Interview**

Overall, the goal of the DWI Court team is to increase public safety by reducing DWI recidivism through an intense, multi-phased system of judicial supervision, immediate response to non-compliance and intensive case management by court staff and intensive community supervision through the probation department coupled with substance-abuse treatment.

Those interviewed praise the intensity of commitment the DWI Court team members demonstrate in spite of the occasional challenges they face. They assert that participants benefit from a team that is both consistent and flexible. In general, participants are empowered by taking personal responsibility and benefit from the well-monitored, long-term, intense treatment of the DWI Court program.

### ***Qualitative Findings***

Qualitative process-related findings from the anonymous survey of confidential structured interviews and researcher observations indicate that:

- ❖ According to the key stakeholders and DWI Court team members, the primary goal of the program is to increase public safety regarding criminal offenses related to drug and alcohol addiction.

- ❖ The DWI teams are located entirely on site at both courts.. Consistency, communication and teamwork of court staff and probation in the coordination and monitoring of participants are essential components of the Buffalo & Niagara Falls DWI Court model.
- ❖ Although the DWI functions as a Judge-centered team, the unique roles of the case managers and the relationship with probation were viewed by almost all informants as critical to the success of the court.
- ❖ Stakeholders consistently related the initial impact of the DWI Court to the increased communication between the courts , treatment system and probation that previously functioned in relative isolation.
- ❖ The DWI Court routinely provides coordinated intensive community supervision and responds rapidly to changes in the treatment and compliance status of participants.
- ❖ Stakeholders and team members collectively describe the DWI Court program as a positive, self-empowering, long-term tool that improves the quality of life for participants, their families/friends, and Erie and Niagara County Communities. Enhanced by staff dedication, the program encourages personal responsibility, provides mentoring and peer review, and sets people up for success rather than failure.
- ❖ The retention rate for the (61) DWI Court participants from formal admission to date is (97%) Of the eight (8) who were referred pre-sentencing six (6) followed the conditions set by the court and two (2) who were found in non-compliance were sentenced and not allowed to participate in the DWI Court program.
- ❖ Stakeholders identified the ultimate beneficiaries of a successful DWI Court program are the communities involved. Those who immediately benefit are those within the DWI population who have multiple offenses with still intact homes, children, health, social, vocational and psychological functioning to lose, if their substance dependency issues are left untreated.
- ❖ Chronic DWI offenders who are treated in the program are users of drugs and/or alcohol who may have been charged for other offenses in addition to DWI.
- ❖ Stakeholders praise the intensity of commitment DWI Court team members demonstrate. They say participants are empowered by taking personal responsibility and benefits from the well-monitored, long term, intense treatment for program participants.
- ❖ Clinician Global Assessment of Functioning (GAF scores using the DSM IV - TR) ratings indicated defendants opting into DWI Court have higher scores (60-70) and what appears to be higher adaptive social, vocational & psychological functioning than Drug Court participants.

- ❖ When developing treatment options for this population, it has become clear that it is not as important to understand which problem occurred first in the client's life as it is to provide treatment using an immediate integrated model.
- ❖ The primary weaknesses of the program within Erie County had been the mis-communication between probation and program staff in regards to operational procedures and role refinement. Initial responsibilities were mixed and confusion with program purpose. The openness of the probation department's intensive supervision program and the DWI court has grown into a shared purpose and resource sharing. The participant enrollment process has been streamlined and shared mission of community safety has evolved.
- ❖ Challenges to the DWI Court program include insufficient full-time personnel at the probation department, lack of funding for probation staff and transportation issues due to vastness of the county and lack of adequate public transportation.

#### **DWI Court Staff Meeting Observation**

- ❖ The team was observed to work effectively and efficiently. Cases are thoroughly reviewed and action is taken when team members reach consensus. Consistency is maintained with sanction and rewards across participants who exhibit similar behaviors and attitudes.
- ❖ Probation partnership and implementation of effective communication check and balances have enhanced program accountability.
- ❖ The team expressed interest in each participant's social support system, their medical and transportation challenges which can impede admission, phase and program completion.

#### **DWI Court Hearing Observation**

- ❖ All DWI Court participants are required to attend weekly court hearings. Each participant heard by the DWI Court Judge was treated with consideration and firm direction.
- ❖ Sanctions due to non compliance were swift and consistent.
- ❖ Participants demonstrate solidarity with the program and encouraged each other in their long short-term objectives.

## DWI Court participant Demographics

- ❖ The majority (79%) of participants (48) in the program are between the ages of 34 and 50. 9 (14%) are between the ages of 20 to 33 and the remaining are fifty one to seventy four. Average age = 41. The large majority (77%) of clients are male (47) and forty five participants are Caucasian (74%).
- ❖ 23 participants have acquired some college education and forty nine (49) were employed (80%) at the time of their admission into the program. Twenty four participants (40%) reported their income as below \$10,000 annually. Six reported being married (10%) and the rest reported being single and or divorced. Thirty four (58%) reported having children. 100% of the 61 participants had prior treatment attempts
- ❖ All participants in the sample population have been diagnosed with alcohol dependence diagnosis (according to the Diagnostic Statistics Manual IV - TR section 303.90)
- ❖ 31 participants (51%) reported a secondary drug of choice, with THC being the most prevalent (70%) followed by cocaine (29%).
- ❖ On average, the mental health status of participants showed no evidence (V71.09 at this time) of mental health problems or suicidal ideations. However, some participants reported experiencing mild symptoms of anxiety, nervousness, and/or depression at the time of assessment. This reflected possible disorders of DSM IV - TR diagnoses of Adjustment Disorders with Mixed Anxiety and Depressed Mood (section 309.28). These diagnoses are situational reactions to life crises and stressors (multiple DWI offenses). These diagnosis need to be confirmed by trained practitioners. Most addictions professionals are not trained, nor would look at these potential conditions as they may be induced by the alcoholism diagnosis.
- ❖ Half of the program participants (50%) report a history of familial alcoholism. Another thirty-eight (38%) percent were unsure of their family's past behavior. The mean age of reported

participant first intoxication was 15 and the mean age of their heaviest alcohol use was 25 years of age.

- ❖ 42 (68%) of the participants reported being arrested at least once prior to their 20<sup>th</sup> birthday.

#### Secondary Data (Data provided by the DWI Court Program)

- ❖ It appears likely that public safety increased during the funding period. Out of 215 drug tests, only four (.02%) yielded positive results. Of the 1842 SCRAM monitored days there were four alerts (.02%).
- ❖ No participants were sanctioned for driving without a license.
- ❖ Probation home visits reported 100% compliance with unannounced breathalyzers and no violations were filed during the first 18 months of the program.
- ❖ There were sixty one (61) total participants at the end of the fifth quarter of the funding period, with an average of 11 new clients per quarter.
- ❖ The objective was to provide a long-term continuum of treatment and support services for participants. Over the initial eighteen months, individual treatment occurrences totaled one thousand and seven (1007); group counseling totaled two thousand four hundred and twenty (2420). Participants kept (95%) of all scheduled treatment appearances. There were three thousand three hundred and thirty (3330) documented support group meetings attended (AA & NA).
- ❖ Program accountability was upheld by mandating weekly participant appearances before the DWI Court Judge. During the initial eighteen months a total of ten sanctions were set by the DWI Court Judge. Four participants (4) received a court admonishment for non appearance at treatment and six (6) received jail sanctions ranging from 3-7 days for tampering or failure to appear in court.
- ❖ During the funding period participant arrest data was checked and documented to measure recidivism reduction. There were no re-arrests by the end of the four-quarter report period.

**Major Accomplishments.** The interviewed stakeholders collectively describe the DWI Court program as a positive, self-empowering, long-term tool that improves the degree of accountability. Of the sixty one (61) DWI Court participants, fifty two (52) are still active in the DWI Court program. There have been nine (9) participants who have met the criteria for completion of the DWI Court Phase of their probationary sentence and are now under probation supervision. This group was enrolled during the pilot stage and placed into the implementation phase. The DWI Court has a 100% retention rate. As of 12-31-07 there has been no (0) DWI related re-arrests for any active participant or for those who have completed the DWI Court Phase of their probationary sentence.

Upon review of initial findings one stakeholder stated that “Drunk driving is a bigger killer than guns and violence combined”. It is important to realize that we fully expect that both active participants and post graduate participants will remain compliant with the conditions set by the court or they will go to jail.

#### **Comments - Critical Elements**

*A team approach, early intervention, assessment and information sharing, an emphasis on defendant-based (in contrast to case-based) outcomes- all have as their goal long-term problem solving for the defendant that reduces the likelihood of re-offense and re-incarnation. All of the participants in the court room play a role in securing for each defendant the treatment that has the potential to be most helpful and have a collective responsibility to supervise and monitor each defendant in fulfilling court and treatment obligations.*

*The findings of this report suggest that the DWI Court offers a model distinct from traditional practices and has the potential to promote positive outcomes for defendants and the public. However, If the various systems that have facilitated the creation of the DWI Court fail to sustain their respective commitments, the resulting elimination of the DWI Courts may further exacerbate the problems of, recidivism and the lack of viable treatment diversions that existed prior to its creation.*

# APPENDIX I

# APPENDIX II

# APPENDIX III

# APPENDIX IV

# APPENDIX V

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