

# The Bottom Line

DWI Courts are specifically for alcohol dependent hardcore DWI offenders.

## DWI Court: First-Time DWI Offenders – In or Out?

Over 1.4 million people are arrested every year for impaired driving, with one-third having a prior DWI<sup>1</sup> conviction.<sup>2</sup> Every year more than 10,000 people are killed in alcohol-impaired crashes<sup>3</sup> with repeat DWI offenders overrepresented in those fatal crashes.<sup>4</sup> Just as concerning, more than half of the alcohol-impaired fatalities every year involve a driver with a BAC<sup>5</sup> of .15 or higher. A driver with a .15 BAC or higher is 20 times more likely to be involved in a fatal crash than a non-drinking driver<sup>6</sup> and nine times more likely to have a prior conviction for DWI in the past three years.<sup>7</sup>

Individuals with a BAC of .15 and/or a prior conviction for DWI are sometimes referred to as hardcore DWI offenders. While every impaired driver on the road is a threat, this particular population of DWI offenders presents an even greater risk of physical injury or death to everyone. Most hardcore DWI offenders are alcohol dependent<sup>8</sup> and unlike the majority of the impaired drivers arrested, unable to control their behavior due to the destructive nature of their addiction. **This is precisely why DWI Court has been designed specifically for hardcore DWI offenders.**

<sup>1</sup>DWI stands for Driving While Impaired. For purposes of this publication, DWI is the same as OWI (Operating While Intoxicated/Impaired) or DUI (Driving Under the Influence). These terms are used interchangeably in the literature. States may have different names for the behavior, but it is all the same: Driving after having consumed alcohol, with the alcohol affecting a person's ability to drive safely.

<sup>2</sup>National Highway Traffic Safety Admin., *Traffic Safety Facts: Laws, Repeat Intoxicated Driver Laws*, January 2008, (DOT HS 810 879).

<sup>3</sup>National Highway Traffic Safety Admin., *Traffic Safety Facts: Research Note, Highlights of 2009 Motor Vehicle Crashes*, August 2010, (DOT HS 811 363).

<sup>4</sup>National Highway Traffic Safety Admin., *Traffic Safety Facts: Laws, Repeat Intoxicated Driver Laws, January 2008*, (DOT HS 810 879).

<sup>5</sup>Blood Alcohol Content, (BAC) is a standard way to measure a person's level of intoxication. All fifty states have .08 BAC as the illegal level for a DWI charge.

<sup>6</sup>National Highway Traffic Safety Admin., *Traffic Safety Facts: Laws, High BAC Laws*, January 2008, (DOT HS 810 883).

<sup>7</sup>National Highway Traffic Safety Admin., *Traffic Safety Facts: 2008 Data, Alcohol-Impaired Driving*, 2009, (DOT HS 811 155).

<sup>8</sup>National Highway Traffic Safety Admin., *A Guide To Sentencing DWI Offenders* (2nd ed. 2005), available at [http://www.nhtsa.dot.gov/people/injury/alcohol/DWIOffenders/A\\_Guide2.pdf](http://www.nhtsa.dot.gov/people/injury/alcohol/DWIOffenders/A_Guide2.pdf).

## **What is a DWI Court?**

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DWI Courts are based on the highly successful Drug Court model that blends accountability and long-term treatment to address the root cause of impaired driving: alcohol and other substance abuse. DWI Courts are post-conviction collaborative courts, consisting of a team of professionals that include the judge, a probation officer, a treatment provider, a defense attorney, a prosecutor and a law enforcement officer; all working together and communicating about the hardcore DWI offender. The team develops a coordinated response to the addiction and related lifestyle issues that have driven the hardcore DWI offender into the criminal justice system.

DWI Court typically lasts between one and three years, and during that time the participant will be tested regularly for alcohol and or drugs, supervision will be intense, and the treatment plan will be individualized and long enough to address the addiction. The participant also frequently appears before the Judge to be held accountable for noncompliant behavior or receive positive reinforcement for progress made since the last court appearance. This coordinated response is proven to help participants achieve sobriety and learn the necessary life skills that will help them remain sober and law abiding long after leaving the DWI Court.

## **DWI Court is for Hardcore DWI Offenders**

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The first sentence of Guiding Principle #1<sup>9</sup> states: *“DWI Court should select a target population that possesses significant criminal and substance dependency histories and strive to*

*alter those behaviors that present a clear danger to their respective communities.”* DWI Courts recognize that some individuals will not change their behavior without additional resources being used to monitor and encourage that change. DWI Court brings all of those resources together in a focused effort. Eligibility for DWI Court should be based on a dependence to alcohol and determined by a validated screening and assessment.

The success of DWI Courts has led some advocates to suggest that *all* first-time DWI offenders should be placed in DWI Courts. This is not recommended for three reasons.

1. Research indicates that two-thirds of first-time DWI offenders learn from their arrest and prosecution and do not reoffend.
2. Research demonstrates that punishing someone too harshly or placing them in treatment unnecessarily can have adverse effects.
3. No jurisdiction has unlimited resources.

## **First-Time DWI Offenders And Recidivism**

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Approximately 65% to 80% of individuals arrested for a first-time DWI do not repeat the offense. For most first-time offenders, the humiliation and stigma of a criminal record, court appearances and possibly time in jail are sufficient to deter future impaired driving. Therefore, the intensive regimen of a DWI Court will often be an unnecessary expenditure. Moreover, there is substantial evidence that mixing non-addicted and low-risk<sup>10</sup> individuals with more serious offenders can negatively affect outcomes. The non-addicted person may develop attitudes

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<sup>9</sup>DWI Courts follow the Ten Key Components as well as the Ten Guiding Principles for DWI Courts as established by the National Association of Drug Court Professionals (NADCP). A complete discussion of The Ten Guiding Principles for DWI Courts is available at: <http://www.dwicourts.org/learn/about-dwi-courts/-guiding-principles>.

<sup>10</sup>As used here, “low-risk” means that the person does not meet the DSM-IV-TR Diagnostic Criteria for Antisocial Personality Disorder and has no history of alcohol or drug abuse treatment.

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and new relationships that actually encourage the very behavior the criminal justice system is trying to eliminate.<sup>11</sup> Finally, DWI Court participants must attend several hours per week of treatment and supervision services, and this can interfere with their ability to maintain employment and other productive activities. Such interference would only be justified if there was a serious risk of recidivist behavior.

## DWI Courts Are Resource Driven

DWI Courts are more cost effective than traditional courts<sup>12</sup> because a DWI Court uses resources more strategically and effectively. However, DWI Courts are resource intensive. Team members meet on a regular basis, along with regular court sessions to review participants' behavior. Initially participants report to treatment 3 or more times a week, along with random and frequent alcohol and drug testing. Probation officers will do home and work visits to ensure compliance with court orders. This is all part of an intensive effort to ensure participants follow the court's orders and begin to change their behavior. To require this type of intensive program for individuals that will not return to the criminal justice system is counter-productive and a waste of limited resources.

## First-Time DWI Offenders In DWI Court

The decision to accept a first-time offender in DWI Court should be dictated by the clinical diagnosis. It must be the ultimate criteria for admittance. A person who is clinically diagnosed alcohol dependent, whether a first-time offender or a repeat offender, is a good candidate for DWI Court.

In addition, a DWI Court examines the entire criminal history of the prospective participant. Many of these individuals will have a significant history of traffic or criminal arrests which may or may not involve alcohol or other drugs. Many also have a repetitive pattern of substance abuse violations (e.g., underage drinking, public intoxication, disorderly conduct, etc.).<sup>13</sup>

When considering a high BAC first-time offender, and local resources, there are three additional concerns:

1. The limited capacity of the DWI Court often prevents placement of first-time high BAC DWI offenders in the DWI Court. With large numbers of repeat DWI offenders in every community, courts must determine if they can justify the admittance of a first-time offender, even one with a high BAC. With limited resources, priority should be focused on those who are the most dangerous: the repeat offenders.
2. Accepting first-time DWI offenders dilutes the impact on the community. Generally, the more DWIs a person accumulates, the more that offender costs society, regardless of whether the repeat offender causes a crash. At a minimum, these costs include court processing, law enforcement processing, and jail/prison incarceration costs. Repeat offenders cause a disproportionate number of DWI fatalities and crashes. If a DWI Court fails to treat the underlying causes of the repeat offender's criminal behavior, it risks failing to have a significant impact on its host community.
3. DWI Courts are intensive and last from one year to 18 months with some lasting even longer. Many limited jurisdiction courts do not have the authority to supervise a first-time misdemeanor DWI offense for that length of time. Additionally, because it is a low-level misdemeanor, the DWI Court team may not have at its disposal a significant enough

<sup>11</sup>See Douglas B. Marlowe, *Evidence-Based Sentencing for Drug Offenders: An Analysis of Prognostic Risks and Criminogenic Needs*, 1 Chap. J. Crim. Just. 167, 183-200 (2009) (discussing the importance of assessing the risks and needs of the person to be sentenced); David S. DeMatteo et al., *Secondary Prevention Services for Clients Who are Low Risk in Drug Court: A Conceptual Model*, 52 *Crime & Delinq.* 114 (2006) (reviewing negative effects of mixing low-risk and high-risk participants in Drug Courts).

<sup>12</sup>Michigan State Court Administrative Office, & NPC, Research, *Michigan DUI Courts Outcome Evaluation: Final Report*. (2008, March, re-release), Portland, OR & Lansing, MI: Authors. Available at [http://www.npcresearch.com/Files/MI\\_DUL\\_Outcome\\_Evaluation\\_FINAL\\_REPORT\\_Re-Release\\_March\\_2008.pdf](http://www.npcresearch.com/Files/MI_DUL_Outcome_Evaluation_FINAL_REPORT_Re-Release_March_2008.pdf).

<sup>13</sup>National Highway Traffic Safety Admin., *A Guide To Sentencing DWI Offenders* (2nd ed. 2005), available at [http://www.nhtsa.dot.gov/people/injury/alcohol/DWIOffenders/A\\_Guide2.pdf](http://www.nhtsa.dot.gov/people/injury/alcohol/DWIOffenders/A_Guide2.pdf).

consequence to motivate or coerce the first-time offender into beginning and then completing treatment.

For those DWI offenders not alcohol dependent, alternative sentencing options are available that deter most first offenders from recidivating. Such alternatives include:

- Placing the offender under general probation supervision outside the DWI Court program.
- Provide the offender access to a continuum of alcohol, drug, and other related treatment services as a continuing condition of probation.
- Increased offender visits to the probation office. Monitor the offender by frequent, random, and observed alcohol and drug testing.
- Utilize current technologies and medications to help maintain abstinence.
- Develop partnerships with community-based organizations that generate local support for sobriety.

## **Identifying The Future Hardcore DWI Offender**

Without clearly identifying a client's needs, strengths, and resources along each of these important bio-psychosocial domains, the clinician will have considerable difficulty in developing a clinically sound treatment plan. A clinically competent and objective assessment of the impaired-driving offender must address a number of bio-psychosocial domains including:

- alcohol use severity and drug involvement
- level of needed care
- medical and mental health status
- extent of social support systems
- individual motivation to change

Judges should be aware of the importance of the alcohol or drug screening, and the assessment and clinical evaluation of first-time DWI offenders so the offender can be placed in the appropriate treatment regimen. First-time DWI offenders who are found not to be alcohol dependent do not need the comprehensive services provided by a DWI Court.

## **Conclusion**

DWI Courts should carefully consider admission of the first-time DWI offender, with the general understanding that it is more appropriate to target the addicted, repeat offender. A clinically competent and objective assessment of the impaired-driving offender is essential for proper placement. Each DWI Court must also consider issues of local public safety, political and community acceptance, demographics, staffing, program capacity, community resources, and treatment services when contemplating appropriate placement of the first-time DWI offender. Lastly, courts should consider available alternatives outside the DWI Court which may be adequate to address the issues related to the first-time DWI offender.

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The NCDC, a professional services division of the National Association of Drug Court Professionals (NADCP), is the only dedicated advocacy, policy, training and technical support organization for DWI Courts in the nation. For more information about DWI Courts go to [www.dwicourts.org](http://www.dwicourts.org).

**NCDC • 1029 North Royal Street • Alexandria, Virginia 22314 • (703) 575-9400**