



## CRITICAL DUI SYSTEM REFORMS: JUDICIARY



Increase the use of validated screening and assessment tools to inform pre-trial and sentencing decisions. Identify opportunities to strengthen sentencing and connect offenders with the most appropriate services.

### Call to Action

The use of comprehensive screening and assessment within the criminal justice system is necessary to inform decision-making. Within the courtroom, the outcomes of this process inform important decisions regarding pre-trial release and conditions as well as sentencing. The more information that judges have about defendants, the better positioned they are to make informed decisions and apply appropriate monitoring and treatment conditions. In particular, judges rely on the screening and assessment process to provide accurate information about risk level (i.e., likelihood of re-offense or non-compliance with conditions), as this is a primary determinant for pre-trial decisions. At the sentencing phase, judges utilize either pre-sentence reports or the findings from assessments to craft the most appropriate sentences for individual offenders. In addition to supplying information about risk level which dictates the intensity of supervision required in each case, the screening and assessment process provides analysis of criminogenic needs that must be addressed to lower recidivism risk and treatment needs that require intervention to facilitate behavior change. As many impaired driving offenders meet the criteria for substance use disorders and co-occurring mental health conditions, judges should be privy to this information as they consider the rehabilitative component of sentencing.

While assessment should serve as the GPS of the criminal justice system and be utilized at the pre-trial phase and, at a minimum, in advance of sentencing, this is not done in some impaired driving cases. Therefore, all judges should consider the following: 1) assessment-driven decision-making can lead to better case outcomes, 2) courts should rely on the use of validated assessment instruments that are specific to the impaired driving population to obtain accurate risk and need results, 3) instruments that meet these criteria are currently available and free for any court interested in using them, and 4) evidence-based programming and approaches to the supervision and treatment of high-risk impaired drivers are available in many jurisdictions and should be considered at the time of sentencing. As leaders within the court, judges have the ability to push for change and require a higher standard of practice. As such, the first step towards improving assessment is conducting an audit of existing processes working towards the application of informed justice in all DUI cases.

### Challenge/ Background

For judges to make fully informed release and sentencing decisions for defendants who present with significant issues (e.g., substance use disorders, mental health disorders, or trauma), it is important to have accurate information about their risk for re-offense and their behavioral health needs. While it is common practice to perform a risk assessment to determine whether an individual presents a threat to public safety, a needs assessment is not always completed. The best practice is to ensure that the court utilizes instruments that will identify both risk and needs and assist judges in determining appropriate conditions which includes supervision and treatment considerations. Too often, impaired drivers are subject to conditions that focus solely on alcohol consumption and other underlying causes of offending (i.e., criminogenic needs) are not identified and subsequently, are not adequately addressed.





### Challenge/ Background

The misuse of alcohol is only one issue that is common to the high-risk impaired driver population. In fact, many of these individuals are polysubstance users who avoid detection due to the limited scope of DUI investigations (i.e., the propensity to stop testing once a blood alcohol concentration (BAC) above the illegal limit is detected). This is one of the many reasons why the process of screening and assessment is so valuable to the court.

The actual process of screening and assessment can vary dramatically from one court to another. In some jurisdictions, judges have access to screening and assessment information at the pre-trial phase and may be able to consider this information when making decisions regarding release. Some courts have dedicated staff including case managers, court coordinators, or clinicians who may be responsible for conducting screening and possibly assessment with certain defendants. It is recommended practice to conduct screening and assessment as early within the criminal justice system as possible so the information obtained can inform decision-making throughout the process. Unfortunately, lack of resources at the pre-trial phase may prevent this from being done. For high volume courts or in jurisdictions where resources are limited, screening and assessment may not be performed at all at this phase. Alternately, it may be reserved for serious or violent crimes (i.e., felonies) where the risk level of the defendant is likely to be higher. It is more common for screening and assessment to be completed as part of the pre-sentence investigation process. In these instances, probation officers are often tasked with compiling information that is presented to the presiding judge in the form of a report. The findings and recommendations contained within the report are considered by the judge as he/she formulates a sentence. Access to information is important when determining conditions in individual cases as every defendant presents with different issues and require varying levels of supervision and intervention. If assessment is not performed, it leaves judges in a position where they are either imposing standard sentences for specific types of offenses or they are imposing sanctions that they believe will be effective based on the information they have about the defendant which may be limited to basic demographic information, criminal history, and any additional details gleaned at trial. This is a worst case scenario and should be avoided if possible.

Unfortunately, merely requiring screening and assessment for this population will not ensure that the court obtains accurate information. As previously discussed, impaired drivers are a unique population among justice-involved individuals and, as such, require the use of specialized tools. In short, DUI offenders tend to present with more pro-social and protective factors than most individuals who have contact with the criminal justice system. As a whole, impaired drivers tend to have higher levels of education, greater rates of employment, and higher socioeconomic status than most categories of offenders. It is also common for DUI offenders to lack an extensive criminal history and they frequently have pro-social ties within the community. If general assessment tools are used in these cases, DUI offenders are commonly classified as low-risk which can be a misclassification of their likelihood to recidivate. Many DUI offenders, particularly repeat and high-BAC offenders, are actually very high-risk and represent a significant public safety threat as their behavior can lead to fatalities. Therefore, many DUI offenders should be subject to intensive monitoring and a variety of stringent conditions upon release into the community. If courts are using





### Challenge/ Background

inappropriate tools, it can affect the decisions that judges make which has the potential to have deadly consequences. The inadequacy of traditional tools for this population is not common knowledge within the judicial system and many courts may operate under the assumption that their current practices are sufficient. For this reason, it is imperative that more education be provided, and courts audit existing practices and modify as necessary.

In addition to improving the assessment of DUI offender risk, courts would also benefit from a greater understanding of needs among this population. Judges undoubtedly recognize that the impaired driving defendants who appear in their courtrooms are likely to suffer from high rates of substance use disorders. After all, substance use (often at very high levels) is an element of the offense of DUI/D. However, a lesser known fact is that many impaired drivers, particularly repeat impaired drivers, suffer from high rates of co-occurring mental health disorders and a history of trauma.

In fact, studies have shown that 45% of repeat impaired drivers have a major mental illness in addition to an alcohol or drug use disorder (Shaffer et al., 2007). The prevalence of mental health conditions is higher among female impaired drivers than their male counterparts (50% vs 33%) and the experience of trauma is pervasive. For judges, it is important to be aware of these issues as it can affect the type of treatment referrals that are made at the time of sentencing. It is standard to require DUI offenders to be referred for in-depth substance use assessment and for that to dictate placement in either an alcohol education or treatment program. However, it is much less likely that these offenders will be referred for a formal mental health evaluation and be required to participate in an integrated treatment program that addresses substance use and mental health issues concurrently.

The failure to diagnose and treat mental health disorders might offer one explanation as to why many repeat DUI offenders fail to change their behavior despite previous sanctions and participation in treatment. In many cases, substance use is secondary to mental health issues with the former being a manifestation of mental health symptoms – i.e., it is common for individuals who experience psychiatric problems to engage in substance use as a means of coping or a form of self-medication. Mental health conditions can also affect criminogenic needs which, in turn, has an impact on recidivism risk. The presence of mental health and mood adjustment issues is one of several risk factors that are common to the impaired driving population. Unfortunately, judges can only make decisions based on the information that is available to them. If impaired drivers are not adequately screened and assessed for both substance use and mental health disorders, judges are not in a position to make targeted referrals for treatment. Participation in generic treatment programs that address alcohol use alone are likely to be ineffective in cases where there are myriad treatment needs. One of the major shortcomings of the system is that the approach to dealing with impaired drivers is predicated on the supposition that a drinking problem is at the root of all DUI behavior. Years of scientific research has proven that this is not always the case and courts that fail to delve beyond surface issues miss an opportunity to intervene in a meaningful and individualized manner.





## Challenge/ Background

Targeted and comprehensive treatment that focuses on multiple needs has a greater chance of producing long-term behavior change even among high-risk and repeat offenders who are historically resistant to behavior modification. Consequently, it is imperative that courts require the use of instruments that go beyond identifying the presence and severity of alcohol and drug use disorders. When dealing with impaired drivers, courts should require the use of tools that will also identify the co-occurring mental health disorders that have been shown to be increasingly prevalent among this population.

Through an enhanced screening and assessment process, judges will be better positioned to identify the level of supervision required in each case as well as the specific needs that require intervention. This can lead to more effective and informed sentencing. However, to ensure that DUI offenders are subject to the most appropriate conditions, judges should also be familiar with the countermeasures that are most effective among this population. Multiple studies and evaluations have identified programs and models that are successful in addressing the needs and behavior of impaired drivers, particularly among high-risk and repeat offenders. While these programs are not available in every jurisdiction, judges should be aware of this research and be knowledgeable about the resources and options that are available within their judicial district.

However, they do not always have guidance on how best to identify these conditions among their court participants or how to effectively collaborate with treatment providers to meet the dual goal of protecting public safety and facilitating long-term behavior change and recovery among clients. Greater integration of behavioral health within the criminal justice system is needed to ensure that individuals who require interventions receive them.

## Strategies to Implement Solutions

To improve assessment practices within the courts, judges should assume a leadership role and request an audit of existing processes. This involves determining what is done at the pre-trial level as well as pre-sentence investigations. As leaders within their courts and communities, judges often have the ability to institute changes and can advocate for the integration of new instruments. To improve practice, the first step is to get a clear picture of what is currently done to identify offender risk and needs. Courts are encouraged to take stock of their existing practices via the following steps:

- Identify current practices and determine whether they are adequate or require changes. Determine which tools are used to screen/assess DUI defendants and whether these instruments are specific to this population.
- If screening and assessment is not performed or is done in a limited capacity, then determine the level of resources required to ensure that this process is completed with all impaired driving defendants. Determine whether additional personnel are required to perform this function or whether it can be outsourced to another entity.





## Strategies to Implement Solutions

- Identify whether screening and assessment can be performed at the county jail as part of the booking process.
- Determine whether screening and assessment can be performed by a pre-trial services agency in a timely fashion and how this information can/should be transmitted to the judge. Identify whether screening and assessment can be performed at the county jail as part of the booking process.
- Determine if screening and assessment can be outsourced to a community treatment provider who has training in behavioral health.
- Identify under which circumstances and/or in which cases screening and assessment is performed as part of pre-trial investigations. Is the information provided to the judge in these reports adequate to make appropriate sentencing decisions (i.e., what details are included – risk level, criminogenic needs, treatment needs)?

The challenges associated with assessment go beyond a mere lack of knowledge of the importance of this practice. Even judges who routinely screen and assess individuals within their courts may be constrained when selecting instruments. In some states (e.g., Texas), judges are statutorily required to administer specific tools and they may be required to rely on the findings when making various decisions. While many of these tools are validated, they typically have not been tested and validated on the impaired driver population. As discussed, impaired drivers are a unique population that tend to score low risk on most general assessment instruments on account of an absence of extensive criminality and fewer criminogenic needs compared to other justice-involved populations.

The misclassification of risk levels can have significant implications. In some instances, it may prevent individuals from being placed in intensive supervision programs or treatment courts. Unfortunately, judges who rely on assessments to identify individuals who require a higher level of supervision may not be receiving accurate information about the impaired drivers in their courts. Repeat DUI offenders are at high-risk to continue to engage in dangerous behavior and put the public at risk. This is demonstrated by their multiple convictions and failure to separate drinking from driving. If these individuals are classified as low risk, judges may not require intensive monitoring which could lead to a lack of accountability. Also, if jurisdictions rely on assessment findings to determine treatment court eligibility (i.e., only high-risk offenders are eligible for participation in drug or DUI courts), any inaccurate classifications could prevent an offender who would benefit from the DUI court model from participating. Judges have recently expressed concerns about whether they can maintain funding for these courts if the bulk of their client pool fails to meet eligibility criteria on account of inaccurate assessment findings.





## Strategies to Implement Solutions

Luckily, the shortcomings of existing instruments have been identified and in recent years, two new tools were developed that are designed to provide criminal justice practitioners with more accurate information about impaired drivers. These instruments were designed and validated to accurately capture DUI offender risk level and behavioral health needs. Two of these instruments – the Impaired Driver Assessment (IDA) and the [Computerized Assessment and Referral System \(CARS\)](#) – are reliable tools that are available to courts free of cost. The IDA is primarily a risk assessment that provides accurate information on offender risk level and identifies criminogenic needs. CARS is primarily a needs assessment and identifies specific substance use and mental health disorders while also providing an indication of offender risk level. Judges should substitute existing generic assessments for one or both of these instruments in order to inform sentencing decisions in impaired driving cases. The information that these tools generate will provide judges with the information required to make decisions regarding the appropriate intensity of supervision and treatment interventions that address the specific needs of each DUI offender.

Another area where the court has the opportunity to build additional capacity is at the level of pre-trial services. Ideally, this is the point in the system where screening and assessment would be performed and impaired drivers could be connected with treatment services as needed. In order to strengthen pre-trial services, the following recommendations should be taken into consideration and are highlighted at <http://stophrid.com>.

- Implement evidence-based early interventions during the pre-trial period for high-risk impaired drivers as a means of reducing public safety risk to the community. Interventions attached to pre-trial release conditions, detention, and other pre-trial programs provide measures to prevent subsequent impaired driving offenses during the pre-trial period and often allow for quick responses to aid in substance abuse rehabilitation and recovery when needed. Interventions include community supervision, use of alcohol monitoring devices, and in some cases, treatment.
- Utilize validated screening and assessment tools to properly identify the risk and needs of DUI offenders at this phase to inform judges about how to appropriately assign pre-trial interventions. These instruments should identify risk and treatment needs including measures that examine mental health and criminogenic factors that influence these behaviors.
- Offender monitoring is critical in ensuring accountability, particularly among repeat DUI offenders who are more likely to be non-compliant with conditions. Supervision of offenders most commonly occurs at the post-conviction phase when offenders are subject to terms of probation or parole upon re-entry. Technology has evolved to become extremely sophisticated to aid in monitoring and supervising the impaired driving population and enhancing public safety. These devices when used as intended, can effectively monitor offenders, facilitate behavior change, and reduce recidivism rates among this population. At the pre-trial phase, the court should consider imposing these monitoring technologies as appropriate and dependent upon the risk level of the defendant. In some jurisdictions, use of technology such as ignition interlocks can be incentivized by offering “credit” for time served on the device pre-trial.





## Strategies to Implement Solutions

- Explore whether pre-trial diversion is appropriate for first-time DUI offenders or individuals who are low-risk. In these instances, the prosecution typically determines eligibility and makes a recommendation for these individuals to be diverted from the formal system. This can reduce system burden however, any diversion program for DUI offenders should have specific parameters to maximize accountability and ensure that individuals cannot enter the program more than once.
- Identify whether evidence-based models such as Target 25 or comparable approaches that incorporate screening/assessment, monitoring, accountability, and treatment referrals are viable options for DUI defendants.
- To establish strong pre-trial services, a champion is needed within the jurisdiction to push for resources and improved practices. Ideally, this individual will be a leader within the judicial district as well as the community; as such, the person who typically assumes this role is a judge who can act as a quarterback within the system and a conveyor of stakeholders. Strong leadership is a vital component for success among any impaired driving program or initiative.
- A dedicated pre-trial services agency guarantees that there is a single entity responsible for managing all pre-trial functions under a single organization. This allows for better coordination among stakeholders and review of process elements as well as management of the programs and services offered. Establishing a dedicated agency provides better staff direction and motivation to critical work priorities and creates clearer lines of communication. The pre-trial services agency should be a separate, independent entity although jurisdictions may incorporate pre-trial services agencies within a larger parent organization.
- Supervision methods that should be considered as part of pre-trial services should include: alcohol monitoring devices such as ignition interlocks, transdermal/continuous alcohol monitoring devices, or remote/home alcohol monitoring devices; drug testing technologies and methods as necessary; active supervision and reporting to an authority. At the pre-trial stage, supervision is usually conducted by community corrections, probation, or in some instances local law enforcement agencies. It is imperative to hold offenders accountable for violations and to apply swift, certain, and meaningful sanctions. All violations should be reported to the court so decisions can be made regarding whether a defendant should remain in the community or detained pending trial.

In addition to incorporating the use of appropriate instruments and strengthening pre-trial practices, judges should also receive education on a variety of key concepts and issue areas. By providing judges with more education and information about the impaired driver population along with issues that they are likely to encounter in the courtroom, they will be better prepared to impose meaningful sentences. Judges should receive more educational opportunities regarding the following:





## Strategies to Implement Solutions

- Research regarding the characteristics of impaired drivers.
- Information about how to identify the signs and symptoms of substance use disorders, mental health conditions, and trauma among defendants.
- Information about how to implement trauma-informed judicial practice within the courtroom.
- Education and training opportunities on strategies to enhance screening and assessment as well as tools that are available that are specific to the impaired driver population.
- Research about the effectiveness of various monitoring technologies and testing methods that can be used among the impaired driver population to increase accountability.
- Research and education about treatment methods and programs that have proven to be effective among impaired drivers.
- Up-to-date information about the various programs and treatment options that are available within their community.

Judges, particularly new judges, may be unfamiliar with the intricacies of state DUI laws and, in the absence of training, have difficulty interpreting or applying them in certain cases. While judges may be constrained by mandatory minimums and other sentencing guidelines, they usually have discretion in determining the conditions that individual offenders must adhere to. In order to improve sentencing in DUI cases, judges must receive education and be kept apprised of the evidence-based program, monitoring, and treatment options that are available within their respective jurisdiction and appropriate for impaired driving offenders with varying risk levels and needs.

As criminal justice reform initiatives continue to gain momentum, more policies are being introduced to decrease incarceration rates which will lead to more individuals serving their sentences under community supervision. For judges, the information obtained from assessments as well as pre-sentence reports should be considered as part of the standard sentencing process. When arriving at sentencing decisions, it is recommended that judges weigh the following in light of the information that is available to them:

- Is the sentence appropriate, proportional, and fair? In other words, is the harm caused by the offense weighed against the rehabilitative needs of the offender?
- Are any suggested placements in programs informed by assessment outcomes? Are low-risk offenders being kept separate from high-risk offenders?
- Are intensive supervision programs available for high-risk offenders?
- For offenders who will serve their sentence under community supervision, what level of intensity is required to ensure accountability?
- Is a period of incarceration warranted or can the offender be effectively rehabilitated within the community without posing too great a threat to public safety?





## Strategies to Implement Solutions

- Are the conditions of the sentence supported by evidence? In other words, have the countermeasures being ordered as part of the sentence proven to be effective in reducing recidivism and/or changing behavior among impaired drivers?
- Is the court taking advantage of the most appropriate technologies to supervise the offender upon their release (e.g., ignition interlock, continuous alcohol monitoring, remote breath testing, drug screening, etc.)?
- What are the most appropriate treatment options for the individual based on the needs identified through the assessment process? If the assessment was limited to substance use, consider requiring additional assessments to identify the presence of any mental health disorders or trauma.

Not all judges are aware of recent research and evaluations in the impaired driving field. While educational opportunities are available, there may be few trainings that are specific to traffic safety and impaired driving issues. Judges should explore what educational opportunities are available on issues relevant to these cases and attend as appropriate. Some resources to consider include:

- National Judicial College (NJC) course on alcohol and drug-impaired driving. In addition to in-person courses, NJC also hosts a series of National Highway Traffic Safety Administration (NHTSA) webinars on impaired driving issues each year as a way to provide greater access to resources and research on impaired driving topics.
- National Association of Drug Court Professionals (NADCP) and the National Center for DWI Courts (NCDC) offer a variety of foundational and operational tune-up trainings for treatment courts. In addition, the annual training conference provides judges and other practitioners with opportunities to learn about best practices and issues relevant to the sentencing, supervision, and treatment of impaired drivers. Publications, webinars, and a variety of other educational resources are available via these organizations.
- State treatment court associations and state judicial organizations offer annual educational opportunities and might have bench books available for judges on impaired driving issues.
- Traffic Safety Resource Prosecutors (TSRPs), NHTSA Regional Judicial Outreach Liaisons (JOLs), and state Judicial Outreach Liaisons are available to provide training and offer guidance on impaired driving issues. Judges are encouraged to contact these individuals if they have specific questions or training needs.





## Strategies to Implement Solutions

Overall, the goal in all impaired driving cases should be to impose the most effective sentence. When dealing with high-risk impaired drivers, judges should always consider the following and incorporate these elements as appropriate:

- Use screening/assessment instruments that are validated among the impaired driving population to accurately assess each offender's risk level and specific treatment needs.
  - Identify the presence of both substance use disorders and mental health disorders, both of which are common among this population, particularly repeat offenders.
- Identify high-risk offenders and ensure that they are placed under intensive supervision to maximize accountability.
- Impose swift, certain, and meaningful sanctions which can include periods of incarceration, community supervision, alcohol/drug testing, monitoring technologies, fines, community service, and successful completion of treatment.
- Require that offenders who are assessed as having substance use disorders, mental health disorders, or co-occurring disorders be referred to appropriate treatment interventions.
- Rely on alcohol and drug testing as well as the use of other monitoring technologies such as ignition interlocks and continuous alcohol monitoring to identify offenders who are non-compliant. Instances of non-compliance should result in the application of graduated sanctions.
- Use an individualized approach and move away from one-size-fits-all or cookie-cutter approaches to sentencing as much as possible. While judicial discretion may be limited due to mandatory minimums and other sentencing guidelines, each DUI offender will have specific risk factors and treatment needs. These should be taken into consideration at the time of sentencing to ensure that conditions are appropriate.

## Stakeholders

When seeking to improve screening and assessment practices and also offer a greater continuum of services within the DUI system, much of the justice system should be involved. As mentioned, the judge holds a great deal of credibility and therefore, should be the one to convene stakeholders and assume a leadership role within the system. Judges are encouraged to bring together pre-trial services agencies and staff, correctional staff, probation, court staff, prosecutors, defense counsel, treatment providers, and county officials to advocate for change. This group of stakeholders should identify potential opportunities to build system capacity and identify when it is most appropriate to conduct screening and assessment after reviewing existing workflow and court processes. Local officials should be involved in this process so they can be educated on the importance of providing a continuum of services to protect public safety, reduce recidivism, and rehabilitate offenders. These officials can support any reform efforts by allocating funds/resources or promoting changes in practice.





## Legislative/ Policy Change

Significant limitations that courts may face in instituting any significant changes in practice and sentencing are often found in statute. Judges may be required to impose certain conditions in impaired driving cases even if the circumstances of the case indicate that a different approach may be preferable. Mandatory minimum sentences including specified periods of incarceration or probation, mandatory fines and fees, and the use of specific monitoring technologies may all be required as a function of state law. Moreover, in some states DUI offenders with a certain number of priors may be required to participate in certain programs. While this may be appropriate, particularly if the program is evidence-based (e.g., 24/7 Sobriety Program or DWI courts) and is designed to increase the intensity of monitoring or accountability for repeat offenders, limiting judicial discretion can affect the ability that judges have to place offenders in programs that may be more appropriate based on the details or their case or their identified needs.

In the context of this discussion, the change that is needed in most jurisdictions is moving overly prescriptive language that mandates the use of state-specific assessment instruments. These statutes typically require that one instrument be used with all offenders in the criminal justice system and, as outlined above, these tools may be ineffective in accurately identifying the risk level and treatment needs of impaired drivers. If placement in treatment courts or other programs is contingent on risk classifications derived from these instruments, states could severely limit the number of offenders who are eligible to participate. To address this problem, policymakers should consider avoiding naming a specific tool and instead specify that screening and assessment instruments used among the impaired driving population should be validated among these offenders to accurately capture risk and also be capable of identifying a range of needs including substance use disorders and any co-occurring mental health conditions.

## Innovation in Action

A number of courts have opted to evaluate their assessment approach when dealing with DUI offenders after recognizing that existing tools were inadequate for use among this population. In particular, DWI court judges have begun to rely more heavily on CARS and IDA to provide them with the information they need to create effective and individualized sentences that balance an appropriate level of monitoring with targeted treatment interventions that address all offender needs. This approach which is comprehensive in nature is more likely to lead to offender accountability and behavior change. The following provides detailed information about the Computerized Assessment and Referral System (CARS), which has been identified as a revolutionary and game-changing assessment that will assist practitioners at every intercept of the criminal justice system make informed decisions.

CARS was initially developed with grant funding from the National Institute on Alcohol Abuse and Alcoholism (NIAAA), which provided support to the Division on Addiction at Cambridge Health Alliance (CHA). The assessment itself is adapted from the World Health Organization's (WHO) Composite International Diagnostic Interview (CIDI). The CIDI is a reliable and internationally-validated instrument that has the added benefit of being developed for use by lay interviewers. As a result, the CIDI has been used extensively in research, including the National Comorbidity Survey. The team at CHA worked to adapt and repackage CIDI content in a format more suitable for use in clinical settings and with DUI offenders.





## Innovation in Action

CARS is both a risk and needs assessment. Unlike traditional paper-and-pencil assessments, CARS combines a standardized substance use and mental health assessment with a user-friendly interface. The tool is operated on free, open source software that generates immediate personalized diagnostic reports that contain information about a client's mental health profile, a summary of risk factors, and targeted referrals to treatment services within their geographic area that match their individual needs. Similar to the CIDI, CARS has been developed in such a way that its use is not limited to clinicians and/or researchers; instead, the computerized and user-friendly nature of CARS allows practitioners who lack clinical training or experience in the area of mental health to perform the assessment. In fact, though some personalized training in the use of the instrument and clinical training is recommended, individuals with the most basic computer skills can easily follow the instructions in the CARS training manual to learn how to administer the assessment. Further, those administering the tool typically become skilled clinical interviewers simply by conducting multiple guided interviews.

CARS is available in three formats – a full assessment, an interviewer-administered screener, and a self-administered screener. The full assessment is divided into modules addressing various mental disorders and psychosocial factors. The instrument provides immediate diagnostic information for multiple DSM-V Axis I disorders including major depressive disorder, bipolar disorder, anxiety disorders (e.g., post-traumatic stress disorder), substance use disorders, conduct disorder, and so forth. Extensive skip logic within the tool enhances its efficiency. In the full assessment, respondents first complete a screening module, and are then only referred to modules for which the client screened into, again increasing the efficiency of the instrument. If a respondent answers questions in a way that does not suggest the presence of a disorder, CARS moves the respondent onto the next module they screened into. In addition, there is flexibility within the administration of the full assessment, allowing the individual or program administering the tool to tailor it to reduce time burden. Users can select any subset of modules to be turned on or off; practitioners can also determine whether they want to assess individuals for the presence of disorders throughout their lifetime or in the past 12 months. The full assessment includes a module devoted to DUI behaviors and risk factors, including other criminal behaviors, drinking motives, and drinking contexts. The assessment can take a couple of hours to complete and provides detailed diagnostic information.

The CARS screeners are often a more viable option in courts or programs that lack the resources or time to conduct the complete assessment. Recognizing that resources are limited, the CHA team created the two versions of the screener to allow for more options and to provide practitioners with an accurate indication of risk as well as identify needs areas that require further follow-up. The screener takes an average of 15-40 minutes to complete which is largely dependent on the degree to which the client shares information. The screener module also includes a section that asks specifically about past 12-month changes in many facets of a person's life including family members and dependents, illness and health, financial stability, employment, legal issues, social life, and so forth. This provides a valuable snapshot of recent stressors that might affect mental health and recovery.





## Innovation in Action

Another feature that distinguishes CARS from traditional assessments is the built-in referral database. Traditional assessments simply identify disorders that people have or are at risk of developing. CARS goes one step further and bridges the gap between identifying problems and connecting individuals with services in the community. Each CARS report includes a list of targeted referrals that match clients to services based on their ZIP Code and individual treatment needs. These services can include hospitals, outpatient treatment programs, detox programs, halfway houses, self-help programs, and so forth. The referral database also has the functionality to input public transportation options (such as bus routes) for each service which is useful as many DUI offenders lack driving privileges. The referral portion of the system can reduce the workload of the individual administering the assessment and make it easier for clients to find appropriate services and interventions within their community that offer programming specific to their treatment needs. Courts or agencies should consult with probation departments to determine if a list of treatment providers within the county/community already exists. If not, the process of populating the database can be done in a piecemeal fashion over time.

For all versions of CARS, individual diagnostic reports are generated within seconds after the screening or assessment is complete. The reports provide information about the mental health disorders for which a person qualifies or is at risk, his or her experience of symptoms, as well as a summary of bio-psycho-social risk factors. The reports are written using simple language and lack psychiatric terms so that they are easy to review with clients. Practitioners have noted that these reports are valuable and can help in establishing a rapport with clients as review of the findings conveys transparency and also provides an opportunity for these individuals to begin thinking about the behavior and other relevant issues. This has the potential to move them towards readiness for change.

CARS is available, free of cost, to any court or criminal justice agency interested in improving the screening and assessment of impaired drivers. The software along with accompanying background information and training materials are available online at [carstrainingcenter.org](http://carstrainingcenter.org). Since its release in the summer of 2017, CARS has been used in every facet of the justice system including pre-trial services, traditional courts, treatment courts, probation/community corrections agencies, treatment providers, etc. The feedback has been strong as practitioners report that the use of CARS has improved their ability to identify and address the treatment needs of impaired drivers, particularly mental health issues that they were previously unable to diagnose. The state of Colorado integrated CARS within its felony DUI offender treatment program and the state of Louisiana is set to include CARS within a new case management system. Spanish versions of the screens are available for download.

## Resources

[\*Computerized Assessment and Referral System \(CARS\)\*](#)

[\*Practical Consideration Related to Release and Sentencing for Defendants who have Behavioral Health Needs: A Judicial Guide \(Council of State Governments, 2017\)\*](#)

[\*Essential Components of Trauma-Informed Judicial Practice \(SAMHSA, 2013\)\*](#)

[\*Impaired Driving Risk Assessment: A Primer for Practitioners \(Robertson, Wood, & Holmes, 2014\)\*](#)

[\*National GAINS Center for Behavioral Health and Justice \(SAMHSA\)\*](#)





## CRITICAL DUI SYSTEM REFORMS: JUDICIARY



Increase the implementation of DWI and hybrid (DWI/drug) courts across the country to improve the supervision and treatment of high-risk impaired drivers.

### Call to Action

To change behavior, it is necessary to identify and address the factors that place an individual on the road to criminality. Each person who has contact with the criminal justice system has unique criminogenic risk factors, treatment needs, and issues that may require support (e.g., housing needs, lack of or limited support network, unemployment, etc.). It is imperative that practitioners look at the totality of an offender's circumstances and take this into consideration at the time of sentencing, supervision, and treatment. This individualized approach to justice has been embraced by treatment courts. Since the inception of drug courts in Miami in 1989, the model has grown exponentially with more than 3,000 courts established throughout the country. As more jurisdictions realized the value of drug courts, there was further recognition that the model could be adapted to deal with other types of offenders who suffered from high rates of substance use and/or mental health disorders. One such model is the DWI court with the first program established in Las Cruces, New Mexico in 1995.

Through the years, research has supported the use of this model among high-risk and repeat impaired drivers. Multiple studies and evaluations have demonstrated that these courts are highly effective in reducing recidivism, changing behavior, and saving the system costs over time. Unfortunately, DWI courts remain the most underutilized of all treatment court models. At present, there are approximately 260 standalone DWI courts and in excess of 400 hybrid courts (combination drug/DWI courts) in the country. To significantly reduce recidivism among high-risk impaired drivers, more DWI courts or tracks should be implemented across the country to ensure that repeat offenders are held accountable while their criminogenic and treatment needs are identified and effectively addressed. Ideally, every judicial district within the country should have at least one DWI court to ensure that high-risk impaired drivers can be adequately supervised.

### Challenge/ Background

DWI courts are specialized, post-conviction court programs that provide a structure of intensive supervision, accountability, and treatment for participants. These specialty courts follow the well-established drug court model and are based on the premise that impaired driving can be prevented if the underlying causes associated with the offending (e.g., substance dependence, mental health issues, trauma, etc.) are identified and addressed. Unlike the drug court model, offenders who participate in DWI courts do not have their convictions expunged upon successful completion of the program. They may be able to avoid lengthy periods of incarceration and serve more of their sentence in the community under intensive supervision.

The population that these courts are developed for are individuals who are not deterred by traditional sanctions and are most resistant to behavior change as demonstrated by their multiple convictions. In addition to being at high-risk for recidivism, DWI court participants are often classified as 'high need' which means that they also require treatment to address a myriad of issues that are associated with their criminal thinking and behavior. Each participant is given an individualized supervision and treatment plan that is designed to address both their risk level and needs. For courts to have positive outcomes it is imperative that they maintain fidelity to the program model and adhere to the National Center for DWI Courts' (NCDC) [Ten Guiding Principles](#). Multiple evaluations and studies have consistently shown that courts that follow these principles reduce recidivism among high-risk clients.





## Challenge/ Background

Research has consistently shown that DWI courts that maintain fidelity to the Ten Guiding Principles produce significant reductions in recidivism among high-risk impaired drivers. A robust 2012 meta-analysis (Mitchell et al.) found significantly better outcomes for DWI court participants compared to offenders subject to traditional probation; the best courts were found to reduce recidivism by as much as 60%. Another study conducted in Michigan by NPC Research found that DWI court participants were re-arrested significantly less often than comparison group offenders who were sentenced to traditional probation (Carey et al., 2008). In a two-year period, offenders in the comparison group were more than three times more likely to be re-arrested for any charge and were nineteen times more likely to be re-arrested for a DWI charge than DWI court participants. Other evaluations of DWI court programs in Arizona, California, and Georgia found that graduates had lower recidivism rates than offenders processed through traditional courts (Marlowe et al., 2009). For example, the evaluation of three Georgia DWI courts found that DWI court outcomes yielded a 15% recidivism rate compared to a recidivism rate of 35% among DWI offenders who were processed through a traditional court (Fell et al., 2011). It is estimated that these courts prevented between 47 and 122 repeat DWI arrests over a four-year period.

Multiple studies have shown that investment in DWI courts leads to savings over time as these programs reduce recidivism. For example, an evaluation by NPC Research found that there was a savings of \$3.19 for every dollar invested in DWI courts (Carey et al., 2014). Studies of Maryland DWI courts found that the programs produce average net cost savings of \$1,505 per participant and \$5,436 per graduate (Mackin et al., 2009a; 2009b). Lastly, a multisite evaluation of Minnesota DWI Courts determined that the program produced a 200% return on investment (NPC Research, 2014). The combined savings of seven DWI courts exceeded \$1.4 million over a two-year period. To learn more about the structure and implementation of these courts, refer to the supervision phase of the system.

DWI courts that follow best practices are structured in phases. The number of phases and phase requirements are determined by individual DWI courts although there are frequently five stages including acute stabilization, clinical stabilization, pro-social habilitation, adaptive habilitation, and continuing care. The court team determines when clients should advance from one phase to another; this decision is made based on compliance and overall performance. Upon completion of the final phase, clients are then eligible to “graduate” from the DWI court. NCDC recommends that graduation occur only when clients have a minimum of 90 days in Phase 5 as well as 90 days of proven sobriety. Courts should also require that these clients successfully complete all treatment conditions, remain compliant with supervision requirements, demonstrate their ability to maintain a recovery network and participate in pro-social activities within the community, and develop a continuing care plan.

In contrast to the traditional court process which is adversarial in nature, DWI courts rely heavily on a team approach. Judges, prosecutors, defense counsel, law enforcement, probation officers, treatment practitioners, and other stakeholders work collaboratively with court participants and foster an environment of support and accountability. The judge is the leader and they set the tone for their court and the team. A collaborative approach is employed which facilitates dialogue among judicial entities that may not always have direct lines of communication; this practice decreases opportunities for individuals to slip through cracks in the system and avoid accountability. It also shows participants that they have people invested in their success and recovery.





## Barriers

There are several reasons why DUI courts have not proliferated at the same rate as other treatment court models such as drug courts and veterans treatment courts. These include:

- **Lack of judicial leadership.** A DWI court originates with a judge who is willing to establish the model and build a team. Impaired driving offenders, particularly repeat offenders, are not an overly sympathetic population despite the high rates of substance use and mental health disorders that are tied to their offending. Many judges would rather oversee a traditional court or a treatment court that serves another client population.
- **Concerns about public safety.** Clients within a DWI court are perhaps the highest risk of all. At any time, they could relapse and engage in criminal behavior that leads to the death of an innocent person. Many judges do not want to assume that level of responsibility. There are concerns that should one of their clients commit another offense or cause a serious crash that the entire program will be blamed or shutdown. For this reason, policymakers may also be opposed to the establishment of these courts. Treatment courts are incorrectly viewed as a program that is “soft on crime” and many elected officials are in favor of sanctions that seem more punitive.
- **Mixed findings and fidelity to the model.** While the majority of evaluations demonstrate that DWI court participants have significantly better outcomes when compared to offenders subject to traditional probation, there have been mixed findings. Some courts perform significantly better than others and a few have been found to have poor outcomes. The reason for this disparity is explained by the degree to which the programs implement best practices and maintain fidelity to the Guiding Principles. If courts do not follow these evidence-based practices they can do more harm than good. This is the reason why DWI court teams are expected to complete foundational trainings, submit court plans, and receive technical assistance and operational tune-ups on an ongoing basis.





## Barriers

- **Perceived costs/lack of resources.** The costs to establish any treatment court can be a significant obstacle to overcome, particularly in jurisdictions that have limited resources at their disposal. In addition to paying for court costs, personnel, administration, and other funds needed to establish and continue to run these courts, consideration must also be given to indigent clients. Some courts receive grant funds to cover costs of start-up and others receive ongoing funding. Not only is funding an issue for establishing these programs, it can also be a barrier to entry for participants. Most programs operate on an offender pay model for monitoring, testing, and treatment. Some courts have additional funds set aside to offset the price of these services for offenders who cannot afford them.
- **Eligibility.** Offender entry into the program can be yet another challenge. Many DWI courts are voluntary. Repeat offenders may be given the choice to participate in a DWI court instead of serving a lengthy prison sentence. While there are incentives, not every eligible offender will opt into the program. Moreover, some states have strictly defined eligibility criteria that not every offender meets. If jurisdictions rely on assessment findings to determine treatment court eligibility and the instruments they use are not validated for impaired drivers, many potential court clients could be deemed ineligible due to misclassification of their risk level. If this occurs on a consistent basis, judges may not be able to justify the existence of their court or maintain funding due to a low number of participants.
- **Court volume.** Tied to the issue of program eligibility is court volume. Decision-makers sometimes have concerns about whether treatment courts, and DWI courts in particular, serve enough clients. Most of these courts have fewer than 100 clients per year and the question of whether this is having a large enough impact is often posed.

## Strategies to Implement Solutions

Each of the aforementioned barriers and concerns can be addressed through education and by maintaining fidelity to principles. First, judicial leadership can be cultivated by identifying judges who are interested in making a significant difference and are willing to take on risk for the sake of large rewards. By establishing these courts, judges can facilitate behavior change and reduce recidivism among individuals who present a significant public safety risk and absent incapacitation, will probably continue to drive impaired. Establishing and presiding over a DWI court will save lives.

To quell the concerns of policymakers, elected officials, and the public, before these courts are established an advisory committee that includes stakeholders and community representatives should be formed. The purpose of these committees is to educate the community regarding DWI court practices and solicit support in the rehabilitative process. Greater transparency and clear statement of goals is also important when trying to gain support within the community. When the court is active, these same individuals should be encouraged to attend hearings and graduations to see how the program operates and the difference it makes in individual lives.





## Strategies to Implement Solutions

For courts to achieve successful outcomes and reduce recidivism, it is imperative that they adhere to the Ten Guiding Principles. These principles were established by NCDC and are meant to guide court teams as they implement their programs and oversee participants. By maintaining fidelity to these principles, courts ensure that they are targeting the right population, using the right practices, and ensuring that common challenges can be addressed. The research is clear – courts that follow the principles have positive outcomes and those that do not can have negligible success or harm.

While there are costs associated with implementation, these can be offset on account of the tremendous cost-savings that these courts create within communities. Reductions in recidivism means lessened costs associated with the judicial process and incarceration as well as the tremendous costs associated with crashes, injuries, and fatalities. There is a large body of cost-savings literature that demonstrates the value of these courts. It is also common for courts to secure grant funding to help cover start-up and ongoing administration costs. Highway safety offices often provide these grants that utilize Federal highway safety money to help cover costs associated with establishing courts, training, and overseeing administration and court staffing. Several courts have taken a more creative approach by applying for 501 (c)3 status to have the court run as if it were a non-profit.

The first of the Ten Guiding Principles is to target the right population. DWI courts are designed for high-risk impaired drivers. Criminal justice practitioners should be educated on which assessment instruments to rely upon when determining whether offenders are classified as high-risk. Only instruments that are validated among the impaired driving population (e.g., DUI-RANT, IDA, CARS) will produce accurate risk results.

In addition to the above considerations, to increase buy-in for the DWI court model and to facilitate implementation, the following actions can be employed:

- Educate judges on the DWI court model and encourage them to take a leadership role in their community by implementing a proven countermeasure that reduces recidivism among high-risk offenders and reduces system costs.
- Identify specific barriers to DWI court implementation in individual jurisdictions and address any misperceptions about the model.
- Demonstrate to policymakers as well as other community stakeholders that DWI courts are a necessary component within the DUI system. The literature regarding effectiveness and cost-savings should be provided to make a compelling case to stakeholders. To establish a new court, relevant stakeholders must support the premise and work of treatment courts and understand that they are the best place for many of these offenders as the court structure facilitates accountability and behavior change.





## Strategies to Implement Solutions

## Innovation in Action

- Identify dedicated practitioners who could form the basis of a DWI court and ensure that all required positions are filled.
- Determine if traffic safety or criminal justice grant funds are available to help offset the initial costs of implementing and overseeing a DWI court. If necessary, identify other creative ways to develop revenue streams for the court.
- Explore ways to take DWI courts to scale by exploring whether there is support for a tracked/tiered approach that would allow the program to accept a greater number of repeat offenders.

One issue that has been raised regarding DWI courts is the level of investment in a program that ultimately serves a small number of offenders (typically under 100 clients annually). Some decision-makers have felt that for these programs to have a significant impact, they must be taken to scale and accommodate a larger number of repeat offenders. This approach has successfully been implemented in San Joaquin County, California. The DWI Monitoring Court overseen by Judge Richard Vlavianos is responsible for monitoring every repeat impaired driving offender within the county. The program was established through grant funding from the California Office of Traffic Safety (OTS) and has had great success in reducing recidivism among participants in the years it has been operational. The program has also been evaluated and is in the process of undergoing a cost-benefit analysis conducted by NPC Research.

A long-time proponent of treatment courts, Judge Vlavianos realized that many of the repeat offenders in his program required intensive monitoring but did not necessarily present with a high level of treatment needs. This led him to adopt a tiered approach to supervising high-risk impaired drivers. His court operates through two tracks and a process of risk triage is utilized upfront to determine where offenders should be placed. Court compliance managers administer the DWI-RANT to determine which quadrant within the risk-needs matrix offenders can be classified. The majority of repeat offenders in his court are not found to have a high level of treatment needs. These individuals are placed in Track 1 which is the 'monitoring track.' These offenders are subject to intensive monitoring but are not referred to intensive treatment interventions. They are also required to report to court less frequently than offenders who are placed in Track 2. Non-compliance with monitoring conditions typically results in Track 1 clients being referred to Track 2 so their status can be re-evaluated, and decisions can be made regarding adjustments to supervision conditions and treatment referrals. Clients who are identified as having high needs are placed in Track 2 or the 'treatment track.' This track operates like a traditional DWI court and clients are required to frequently report to court, adhere to a variety of intensive monitoring conditions, have their progress monitored, and graduated sanctions applied for non-compliance. Judge Vlavianos uses the CARS assessment with all Track 2 clients to identify their specific treatment needs and facilitate referrals to appropriate interventions within the community.





## Innovation in Action

Since the court's inception, the program has greatly reduced recidivism among participants and San Joaquin County has seen a reduction in alcohol-impaired driving crashes. This approach to the supervision of a large volume of repeat/high-risk offenders has become a model that other jurisdictions have sought to replicate. Trainings have been held to educate other DUI court teams about the value of taking a more global approach and relying on the process of risk triaging to make determinations about how DUI offenders should be supervised according to level of risk and needs.

## Resources

---

[\*National Center for DWI Courts \(NCDC\)\*](#)

[\*NCDC publications and DWI court resources\*](#)

[\*A National Report on Drug Courts and Other Problem-Solving Courts in the United States \(NADCP, 2016\)\*](#)

[\*San Joaquin County DUI Monitoring Court Process and Outcome Evaluation \(NPC Research, 2012\)\*](#)  
[\*Survey of DWI Courts \(NHTSA, 2016\)\*](#)

