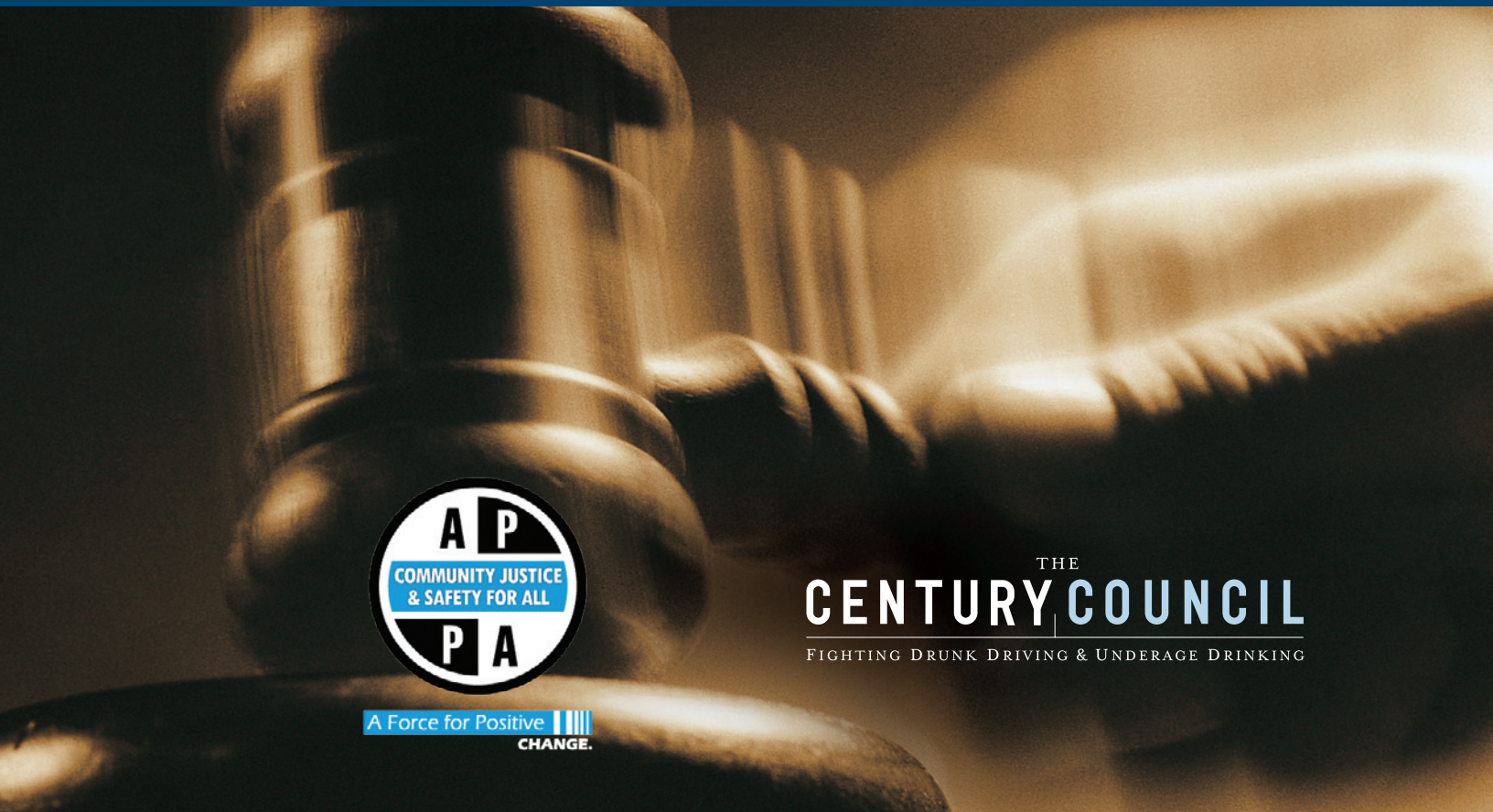





# HARDCORE DRUNK DRIVING COMMUNITY SUPERVISION GUIDE

A Resource Outlining Probation & Parole Challenges, Effective Strategies and Model Programs



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CHANGE.

THE  
**CENTURY COUNCIL**  
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**THE AMERICAN PROBATION & PAROLE ASSOCIATION (APPA)** is an international association composed of members from the United States, Canada and other countries actively involved with probation, parole and community-based corrections, in both adult and juvenile sectors. All levels of government including local, state/provincial, tribal, legislative, executive, judicial, and federal agencies are counted among its constituents. APPA is an affiliate organization within the Council of State Government.

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

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**SECTION I:**

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**THE HARDCORE  
DRUNK DRIVING ISSUE**

# SECTION I:

## THE HARDCORE DRUNK DRIVING ISSUE

### PREFACE

Drunk driving continues to be a serious safety and social problem. Drunk drivers kill thousands of innocent victims, injure countless more, and cause millions of dollars in damage each year. Traffic and criminological researchers have found that the devastation produced by drunk driving is overwhelmingly the result of a specific subgroup of offenders that persistently violates drunken driving laws. These offenders are frequently referred to as hardcore drunk drivers. The enforcement of drunk driving laws seems to be more aggressive now than in the past, however this type of offenders continues to drive while intoxicated completely disregarding the legal, social, and personal ramifications of their actions.

No single discipline of the criminal justice system can be successful at effectively curbing this problem. It is imperative that the justice system responds to drunk drivers in a cohesive manner with aggressive prevention, rehabilitative, and punishment strategies. Therefore, a comprehensive systemic approach is required to successfully identify, prosecute, sentence, supervise, and ultimately, treat hardcore drunk driving (HCDD) offenders. This document is part of a series of publications sponsored by The Century Council and developed by experts in the various areas of the justice system, to identify challenges and opportunities of collaboration within its members, with the ultimate goal of increasing their effectiveness in dealing with hardcore drunk drivers.

In 2002, the National Association of State Judicial Educators and The Century Council's National Hardcore Drunk Driving Project convened a national panel of judges and judicial educators recognized as experts on the issue of drunk driving to examine the judiciary's critical role in reducing hardcore drunk driving. This meeting was the beginning of an effort to provide judges with the tools necessary to effectively adjudicate drunk driving cases. The resulting *"Hardcore Drunk Driving Judicial Guide: A Resource for Outlining Judicial Challenges, Effective Strategies, and Model Programs"* was introduced to more than 4,000 state and local judges in thirty-four state judicial education programs.

Recognizing that Judges are but one element in this system and cannot effectively combat HCDD alone, The Century Council partnered with the National District Attorneys' Association to provide prosecutors with needed tools and suggested courtroom practices- *"Hardcore Drunk Driving Prosecutorial Guide: A Resource for Outlining Prosecutorial Challenges, Effective Strategies, and Model Programs."* This guide serves to coordinate judicial and prosecutorial efforts by educating prosecutors on promising evaluation, monitoring, sentencing, and treatment options.

It became readily apparent that judges and prosecutors typically handle offenders on the front end of the sanctioning process, but community corrections practitioners are involved with HCDD offenders throughout a span of time that includes being charged with drunk driving (pre-trial) through the entering of a plea or determination of guilt to being sentenced and placed on a form of community supervision.

The American Probation and Parole Association and the Century Council convened a group of community supervision and corrections experts to develop the *“Hardcore Drunk Driving Community Supervision Guide: A Resource for Outlining Supervision Challenges, Effective Strategies, and Model Programs.”* This guide combines the latest in evidenced-based supervision practices with treatment strategies known to work with alcohol involved and DUI/DWI offenders. The advisory group assembled to develop this guide began by identifying what would educate and benefit the community corrections field. To that end, the group identified supervision challenges, and where applicable possible solutions to those challenges, promising practices working in their jurisdictions, and an array of resources for community corrections practitioners and administrators to turn to for additional information and guidance.

What is meant by saying that someone is supervised in the community? It means that probation and/or parole officers using a combined approach involving surveillance, treatment, and accountability, enforce the court ordered rules and sentencing meted out to the offenders.

## DEFINING THE PROBLEM

### HARDCORE DRUNK DRIVING OFFENDERS:

Blood Alcohol Level of 0.15 or higher

Repeat drunk driving offenses

Resistant to changing behavior

The first step in this process is to determine what a typical HCDD offender looks like? Do HCDD offenders have specific identifiable characteristics or traits that can be utilized by criminal justice officials to more effectively combat repeat drunk driving?

Most certainly, individuals convicted of driving while intoxicated violations continue to contribute significantly to the criminal justice population every year. According to Uniform

Crime Reporting data, “in 2005, approximately 1.4 million arrests occurred for impaired driving” (Dunlap, Mullins, & Stein, 2008, p.2). This level of arrests has remained constant for many years. Even more shocking is that for many of these individuals, it is neither their first time driving while intoxicated nor their first time getting caught doing so. In fact, according to a study by Maruschak (1999), 34% of offenders in jail and eight percent of offenders on probation reported having three or more prior arrests or convictions for DUI (Dunlap, Mullins, & Stein, 2008) and a study conducted by Fell (1995) found that one-third of DUI arrests each year are repeat offenders.

Social science research has provided important findings to aid criminal justice practitioners when working with drunk drivers. How should the community corrections field combat those DUI offenders classified as hardcore drunk drivers (HCDD). These offenders are defined in this document as those who are charged with operating a motor vehicle with blood alcohol levels (BAC's) of 0.15 or higher and/or have multiple drunk driving arrests, and are highly resistant to changing their behavior despite previous exposure to consequences, treatment, or education. The literature indicates that HCDD offenders have common characteristics. Behaviorally, they demonstrate aggressive, hostile, and thrill seeking tendencies. The 2007 National Roadside Survey of Alcohol and Drug Abuse by Drivers found that of “drivers with moderate (between zero and .08) and high (.08+) BAC's, the significantly largest percentage were classified as heavy and binge drinkers” (p. 69).

Furthermore, two noteworthy studies, Jones & Lacey (2000) and Siegel et al (2000), identified common characteristics among individuals with repeat drunk driving offenses. Some of the commonalities included median age of 35 years old, high school or less level of education, mostly blue-collar workers, prior traffic and criminal offenses, predominately white males, and high percentage of alcohol dependency diagnoses (Jones & Lacey, 2000; Siegel et al, 2000; as cited by the National Hardcore Drunk Driver Project, n.d.). Additionally, the Siegel study (2000) identified that:

- 98% of the sample was diagnosed with alcohol abuse
- 75% of the sample was diagnosed with alcohol dependence
- 60% of the sample had a history of drug abuse
- 69% of the sample experienced a psychiatric disorder sometime in their lifetime
- 62% of the sample never attended a driver intervention program
- 33% of the sample never participated in an alcohol/drug program

The literature also shows that offenders choosing to drive intoxicated commit other crimes as evidenced by criminal histories (Siegel, 2000; Wells-Parker, Cosby, & Landrum, 1986). In fact, a study by the Center for Drug & Alcohol Research at the University of Kentucky found that a higher prevalence of criminal activity was associated with multiple DUI arrests (Webster et al, 2009). Specifically, “probationers with multiple DUI arrests were more likely than non-DUI offenders to have committed auto theft, drug trafficking, assault and illegal weapons possession” (Webster et al., 2009, p. 10).

Also, the Siegel Study revealed that its control group was heavily involved in the criminal justice system. They had a mean average of 7.1 convictions for DUI and 29 arrests for any criminal offense. Domestic violence constituted a significant percentage of these criminal offenses. It is clear from these research findings that hardcore drunk drivers cross-pollinate the criminal justice system. As a corollary, successfully changing the long-term behavior of hardcore drunk drivers can have a widespread impact across the entire criminal justice system.

Even though hardcore drunk drivers comprise a relatively small proportion of drivers, the impact of hardcore drunk driving in human and monetary costs far exceeds their actual numbers:

- It is estimated that while drivers with BACs in excess of .15 are only 1 percent of all drivers on weekend nights, they are involved in nearly 50 percent of all fatal crashes at that time (Simpson et al. 1996).
- About one-third of all drivers arrested for DWI are repeat offenders and over half have a BAC over .15 (Hedlund and McCartt June 2002).
- In the United States in 2007, 25 percent of all drivers killed in motor vehicle crashes and 60 percent of all drivers involved in an alcohol-related fatal crash had BAC levels of .15 or greater (FARS 2007).
- Drivers with a BAC of .15 or above are 385 times more likely to be involved in a single vehicle fatal crash than the average non-drinking driver (Zador, 1991).
- In 2007, 17,036 people were killed in alcohol-related traffic crashes and 275,000 were injured in the United States (NHTSA 2008).

In a recent study by the Century Council (2007), HCDD offenders participating in DUI Courts from across the country were asked a series of questions to probe the reality of the problem, their perceptions of getting caught driving intoxicated, and determine what, if anything, would deter them from drinking and driving. These questions revealed some frightening information about these offenders:

- Self-reported averages of three prior DUI arrests and 2.6 DUI convictions
- Average blood-alcohol levels was 0.20 (more than twice the legal limit)
- 80% reported drinking and driving at least a few times a month
- 11% reported drinking and driving every day
- 86% reported not waiting more than hour after their DUI arrest to drink and drive again
- 32% reported not waiting all after their DUI arrest to drink and drive again

Most of the respondents in this study, convicted of DUI offenses, reported believing that if they drove while intoxicated beyond the legal limits, they would be stopped (73%), arrested (95%), and convicted (97%). Many respondents indicated that more severe sanctions at their first DUI arrest would have made an impact on their choosing to drink and drive subsequently (80%). However, 19% of HCDD offenders admitted that “they would be unlikely to change their behavior even if more severe sanctions had been applied after their first conviction”.

A number of options are available to judges when sentencing DUI offenders. Staggered sentencing, which combines both periods of incarceration and community supervision, is demonstrating some success with the DUI offender population; yet, DUI offenders, even repeat offenders, are most often sentenced to straight probation. In fact, DUI offenders comprise one-fifth of the probation population in the U.S. (Glaze & Palla, 2004).

## REALITIES OF HCDD OFFENDERS AND COMMUNITY SUPERVISION

It is difficult to determine the actual number of HCDD offenders being arrested and entering the system each year. One reason for this is that prior records may indicate only a traffic court violation rather than an alcohol-related driving incident. Another reason is that non-compatible information reporting systems and lack of information sharing between jurisdictions thwarts the ability to obtain an accurate account of all prior drunk driving offenses. Finally, driving records often do not indicate participation (or the number of times participated) in diversion programs; therefore, those prior incidents are not included in prior history reports.

The reality of working with HCDD offenders is that unless a fatality has occurred, the HCDD offender is most likely to be released back into the community, often with little or no bond and no pre-trial supervision (NHTSA, 2008). Considering the majority of HCDD offenders are charged as misdemeanors, some would argue that probation officers have more serious offenders on which to focus their time, attention, and resources. However, as illustrated above, the HCDD offender poses a significant public safety risk to the community with the potential for serious, long-reaching consequences and thus should be subject to more formal community supervision.

The term “community supervision” can encompass a variety of functions. Typically, community supervision is defined as the conditional release and supervision of defendants/offenders in a community setting. A conditional release of a defendant/offender to community supervision can occur at varying times in the criminal justice process, including pre-trial, pre-sentence, and post-sentence. Additionally, the availability of various community corrections supervision strategies vary by jurisdiction as resources vary. This document will look at recommendations for supervising the HCDD defendant/offender across all of these varying times throughout the justice process.

## CHALLENGES TO SUPERVISING THE HCDD DEFENDENT/OFFENDER

Community corrections personnel, in most cases probation<sup>1</sup> officers, are responsible for supervising the vast majority of individuals convicted of driving while intoxicated (NHTSA, 2008). Probation officers are charged with ensuring public safety; holding offenders accountable for their actions; and, facilitating behavioral change in offenders. The evidence-based practices literature provides probation officers with guidance on how to achieve these goals more effectively; however, probation officers still face many struggles in supervising the HCDD offender including:

- Lack of support from many judges in ordering appropriate conditions of supervision
- Large probation workload/caseload allocations in some areas
- Lack of funding for adequate supervision of HCDD offenders
  - Many probation departments lack funding necessary to implement the technological tools recommended for supervising this offender type (such as electronic monitoring, remote-alcohol monitoring, etc.).
- Unavailability of appropriate treatment resources
  - Some jurisdictions lack treatment facilities (such as detox centers, residential treatment facilities) and resources (such as Alcoholics Anonymous groups, vocational rehabilitation centers) to adequately deal with needs identified through needs assessment.
- Lack of resources to utilize technologies
  - The new technologies designed to assist in the supervision of offenders requires the availability of resources such as cell phone towers, land lines for electronic monitoring, etc.
  - Furthermore, even in instances where these technologies are available, a number of offenders lack the financial means to pay for their use (which is often a requirement of participating in such technological supervision).
- Overcrowded jails
  - Due to constant pressure to reduce overcrowded jails, judges are reluctant to send offenders to jail on violation charges. This reluctance diminishes the capacity of probation to enforce supervision conditions.
- Offender transportation
  - Particularly in rural jurisdictions, offenders may face difficulty in securing transportation to attend court hearings and supervision requirements such as treatment meetings and office visits.
- Resistance to organizational change and new interventions
  - Because of ever-increasing workloads and stagnant or shrinking funding, some organizations have difficulty in their ability to commit energy, time and resources into creating policies to deal with specialized offender populations.
- Ever-changing priorities, conflicting and divergent supervision priorities
  - Probation is subject to the mandates handed down with new laws requiring more attention given to one type of offender over the other. The focus of these mandates change as political and social agendas change.

- Implementation of promising practices/evidenced-based programming
  - Although many community corrections agencies are attempting to incorporate promising and evidence-based practices and programming within their supervision programs, many still struggle to develop and/or apply them to specialized offender-types (such as HCDD offenders).
- Ineffective partnerships and communication with treatment providers
- Inter-agency communication
  - Some jurisdictions experience policy and technology barriers, hardware & software compatibility which prevents them from sharing pertinent information, such as treatment information. Agencies should explore the use of waivers or memorandums of understanding/memorandums of agreement to facilitate the sharing of information. Through these agreements, agencies can define and identify specific information points that can be shared between agencies for the purpose of providing the most efficacious services to offenders.
  - For example, a waiver between a probation agency and a treatment agency can accommodate requirements related to the Health Insurance Portability and Accountability Act (HIPAA) to ensure probation agencies are able to receive essential information related to an HCDD offender's treatment information.
- Inter/Intra state issues of supervision
  - Probation agencies should develop working relationships with other jurisdictions to ease communication when HCDD offenders are being transferred between jurisdictions. Additionally, working relationships with law enforcement in these jurisdictions can assist with supervising HCDD offenders in areas where Crossing County or state lines poses jurisdictional complications.
- Poly-drug use of HCDD offenders
- Competing case goals inherent to supervising substance abusing offenders (case monitoring versus substance abuse intervention)
- Mental health issues of HCDD offenders
  - This population frequently uses alcohol as a way to mask or self-medicate for mental health issues such as depression and anxiety disorders, which can complicate and confuse the intervention process.
- Cultural/language barriers
  - Many jurisdictions are experiencing an influx of diverse populations. These jurisdictions need to be prepared to overcome these language and cultural barriers.
- Failure to apply the responsivity principle when dealing with this population
  - Women are the fastest growing population of HCDD offenders.

SECTION II:

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COMMUNITY  
CORRECTIONS

# SECTION II:

## COMMUNITY CORRECTIONS

### THE ACTIVE ROLE OF COMMUNITY CORRECTIONS IN SUPERVISING THE HARDCORE DRUNK DRIVING OFFENDER

Community correction's role is to provide a more effective and cost-efficient alternative to incarcerating defendants/offenders at varying stages of the criminal justice process. As mentioned earlier, many different programs are amalgamated into the term community corrections and vary by jurisdiction. Examples of community corrections alternatives may include pre-trial programs, reporting centers, electronic monitoring programs, fines, and/or probation and parole programs.

The most recognizable form of community corrections is probation. The responsibilities of probation officers have evolved over the years. Not too long ago, the role of community supervision during a "get tough on crime era" was primarily to provide supervision to offenders in the community; thereby, ensuring public safety. Today, the role of probation has evolved to require a balanced approach of protecting the community by monitoring offenders, while at the same time being a catalyst for behavioral change to affect each individual offender's likelihood of not recommitting. These dual, and often divergent, roles lead to a seemingly disparate array of duties.

A primary role assumed by probation officers is to supervise offenders who are placed on community supervision through the courts (whether they are pre-trial defendants or post-adjudicated/sentenced offenders). In this role, probation officers, at a minimum, are charged with managing the supervision contract established between the court and the offender.

#### CRIMINOGENIC NEEDS:

Dynamic (changeable) risk factors that are directly associated with an offender's criminal behavior.

At the same time, probation officers are also charged with being agents of behavioral change—meaning in addition to ensuring that offenders are adhering

to the requirements set forth by the court, they are also responsible for identifying and providing access to programs, services, and interventions that address the criminogenic needs behind each individual offender's criminal behavior. Criminogenic needs are dynamic (or changeable) risk factors that are directly associated with an offender's criminal behavior (e.g. criminal personality; antisocial attitudes, values, and beliefs; low self control; criminal peers; substance abuse; and dysfunctional family). Effectively balancing both of these practice aspects can help ensure success for both short-term as well as long-term behavioral change. For probation officers dealing with HCDD offenders, identifying and successfully applying interventions to overcome their proven resistance to change can be a challenging task.

Probation officers are also responsible for reporting to the court. Probation officers spend much of their time in service to the courts, investigating and writing pre-trial or pre-sentence investigation reports, preparing sentencing recommendations, and preparing reports for the court to update them on progress and compliance or non-compliance of defendants/offenders in regards to their supervision requirements. Even though probation officers do not have control over those who come into their supervision caseload, they are in a unique position to develop pre-sentence reports for judges that recommend supervision conditions which will enhance their ability to supervise the HCDD offender toward a more effective outcome and enhanced public safety. This task is essential for probation to be able to inform the court of what should be considered part of each defendants/offender's sentence and conditions of supervision.

Likewise for parole officers, being able to inform the release conditions for prison inmates preparing to re-enter the community is vital. In recent years, the emphasis on reentry of offenders has altered the role of parole in preparing offenders for release back into the community. Today, parole supervision agencies are taking a much more active role in early involvement with those offenders slated for release, including developing and investigating release plans (for housing, employment, services), working toward reunification of offenders with their families, re-assessing offenders' risk/needs, identifying appropriate resources for interventions, and ensuring compliance with conditions imposed by the releasing authorities.

Probation and parole agencies should strive to utilize evidenced-based practices, or "those initiatives, programs, or actions that research has shown to be effective" (Reentry Policy Council 2005, 249) for all offenders under supervision. The National Institute of Corrections and the Crime and Justice Institute have developed "Eight Evidenced-Based Principles for Effective Interventions" (Bogue et al. 2004, 3) which have begun to be implemented in community supervision programs nationwide. These evidenced-based practices should certainly be applied in programs supervising HCDD offenders and will be addressed throughout this guide:

## Eight Evidenced-Based Principles for Effective Interventions

1. Assess actuarial<sup>2</sup> risk/needs
2. Enhance intrinsic motivation<sup>3</sup>
3. Target interventions
  - Risk Principle<sup>4</sup>: prioritize supervision and treatment resources for high-risk offenders
  - Need Principle<sup>5</sup>: target interventions to criminogenic needs
  - Responsivity Principle: be responsive to temperament, learning style, motivation, culture, and gender when assigning programs
  - Dosage<sup>6</sup>: structure 40-70% of high-risk offenders' time for 3-9 months
  - Treatment: integrate treatment into the full sentence/sanction requirements
4. Skill train with directed practice (use cognitive-behavioral treatment methods)
5. Increase positive reinforcement
6. Engage in ongoing support in natural communities
7. Measure relevant processes/practices
8. Provide measurement feedback

Many larger probation departments have developed specialized units/caseloads designed to provide intensive supervision for certain offense types (including HCDD offenders). These specialized units/caseloads often have fewer offenders on the caseload, thereby, allowing probation to dedicate more concentrated time to provide targeted supervision and closer monitoring of the HCDD offender. However, many probation departments do not have the resources or capacity to develop specialized units/caseloads and rely on probation officers with general caseload responsibilities (meaning they supervise an array of offender types on the same caseload) to provide comparable supervision services.

The goal of this guide is to provide information to both, those with specialized DUI units caseloads and those without, and to enhance the supervision practices being prescribed for the HCDD offender.

In supervising offenders on their caseload, it is important to keep in mind that unlike other professionals in the criminal justice system, probation and parole is only able to exert influence, not control, over the supervision conditions and requirements imposed on the offenders they supervise. The role of the probation and parole officer is dictated in many aspects by what is determined by a judge or releasing authority.

<sup>2</sup>Actuarial risk and needs refer to those factors associated with recidivism such as: prior criminal history, employment and educational history, mental health information. This type of assessment is similar to that of insurance companies in assigning risk level on new insurance clients.

<sup>3</sup>Intrinsic motivation refers to things that motivates an individual internally rather than from external motivational items such as money or accolades.

<sup>4</sup>The risk principle refers to prioritizing supervision and treatment interventions towards offenders with a greater risk of re-offending based upon assessment information.

<sup>5</sup>The need principle refers to targeting interventions to address an offender's greatest criminogenic needs.

<sup>6</sup>Dosage refers to the administration of a therapeutic agent in prescribed amounts.

## IMPLEMENTING A MULTI-DISCIPLINARY APPROACH

It is essential for probation to reach out to other justice and community stakeholders for support to ensure compliance with supervision conditions; to assess resources available for targeting risk and need areas that must be addressed to elicit behavior change; and, access information they can provide to judges enabling them to impose appropriate and sufficient supervision conditions. Because of the diversity that exists in the agencies and organizations available in each community, it is impossible to provide an exhaustive list of who could support probation efforts in supervising HCDD's in every jurisdiction. However, the following section provides a list of potential agency partners and suggestions on ways in which you may collaborate:

**LAW ENFORCEMENT:** Besides serving as the arm of the justice system that is tasked with being the first responders to crime in our communities, law enforcement serves as the “on the street” eyes and ears of the justice system. They are the professionals that probation, parole, judges, and other justice professionals often rely on to keep them informed about individuals who are under probation supervision. Developing working relationships with law enforcement may benefit probation officers in supervising HCDD offenders in various ways. These include keeping probation officers apprised of new criminal activity, recidivism, contacts/arrests, address changes, so that swift, necessary responses can be taken.

**PROSECUTORS:** A good working relationship with prosecutors is important to the development of effective sentences for HCDD offenders and to the responses to violations of probation, as well as the response to successful compliance with probation of HCDD offenders. Probation agencies should ensure information is shared with prosecutors on the latest research on evidence-based practices that help promote effective outcomes for HCDD offenders. Furthermore, probation should actively engage prosecutors on a regular basis to review each agency's policies, procedures and practices related to HCDD offenders.

**COURTS:** Judges are essential in reducing the occurrence of HCDD and can be one of the most crucial partners for probation. It is essential for probation officers to be able to exert swift and certain responses to non-compliance with supervision conditions, and having an established working relationship with the bench can facilitate non-compliant HCDD offenders being addressed expeditiously whether the case is handled through a judicial or administrative process. Probation administration should establish periodic discussions with the court on sentencing practices, violations and appropriate responses in order to maintain quality evidenced-based practices.

**PARTNERS IN PREVENTION:** The first step in developing prevention strategies is to identify and engage major stakeholders in the arena of justice prevention planning. These stakeholders typically include judges, prosecutors, defense attorneys, treatment providers, community-based service programs, mental health services, and community leaders. In the realm of prevention, probation has not always been considered as a partner. However, as the one criminal justice agency who is often involved with the offender for the longest period during the life of a case from pre-trial determination through discharge from supervision, they employ the justice professionals who, based upon their extensive, first-hand working relationship with the HCDD offender, can offer ways of identifying key risk factors that can be addressed through prevention programming. In developing prevention programs for HCDD offenders, probation officers can offer prevention partners ideas regarding what motivates HCDD offenders to drink and drive, interventions that may keep these individuals from driving while intoxicated, and other valuable information that will help address this issue.

**SUBSTANCE ABUSE ASSESSORS AND TREATMENT PROVIDERS:**

Substance abuse assessors and treatment providers play a crucial role in the planning for and intervention and supervision of HCDD offenders. Ideally, all HCDD offenders will receive a comprehensive alcohol/substance abuse assessment by a licensed or certified assessor. It is essential that the results of these assessments be shared with probation officers for inclusion in the development of pre-sentence reports as well as supervision and treatment plans; therefore, probation officers need to establish relationships with assessors and treatment providers in order for essential information to be gathered. This may include the development of information sharing protocols between the two agencies to be in compliance with the Health Insurance Portability and Accountability Act (HIPAA) regulations. Additionally, many HCDD offenders will require treatment interventions (e.g. detoxification; individual, group, or family AOD counseling). The formation of working relationships with treatment providers will allow them to contribute to the development of measureable treatment goals, as well as provide an ally for the probation officer in monitoring compliance with supervision conditions.

**BOOKING OFFICERS/JAIL/PRISON STAFF:** Forming relationships with booking officers and jail/prison staff can prove to be invaluable for probation officers. Booking officers can provide probation officers with important screening/assessment information often collected during the jail/prison intake process. Additionally, jail/prison staff can provide anecdotal information to probation officers on the HCDD offenders' demeanor, programming (if appropriate), and visitor/phone log information to inform the probation officer of potential networks of support (e.g. family, friends).

**FAMILIES AND INFORMAL NETWORKS OF SOCIAL SUPPORTS:** An HCDD offender’s family is potentially an invaluable source of information and support. The Family Support Approach developed by Family Justice touts the importance of engaging families and networks of informal social support as essential in improving outcomes for criminal offenders (Family Justice, n.d.). These networks of support can be leveraged to assist the HCDD offender in meeting their supervision and treatment goals, as well as to provide information to the probation officer when the offender is not complying with his or her supervision requirements.

**TECHNOLOGY PROVIDERS:** Probation administrators and officers need to develop relationships with agencies providing their chosen technologies (e.g., remote alcohol monitoring devices, ignition interlock, electronic monitoring or reporting equipment, alcohol or drug testing mechanisms). Probation needs to be aware of what supervision technologies are available, the benefits/barriers to their use in the particular jurisdiction, and training required to use the technology and analyze the reports.

**COURT ADMINISTRATORS:** Probation officers are often charged with ensuring that offenders pay fines, restitution, court fees, etc. In jurisdictions where fines, restitution, and court fees are paid directly to the court, probation officers should establish a good working relationship with court administrators to track the timely payment of these monies to ensure compliance with supervision conditions. In instances where an HCDD offender is behind on the payment of these monies, a good working relationship will increase the likelihood that a court administrator will alert the probation officer so a swift response can be imposed. Additionally, developing working relationships with court administrators will also serve to increase the likelihood that requests for court action (e.g. violation or revocation) be processed and added to the court docket in a timely manner. Shared information systems may provide a more efficient procedure for accomplishing this process by creating automatic alerts when payments are made.

**POLICY MAKERS:** The state legislature and county commissioners are important allies to have in addressing hardcore drunk driving issues. Probation is in a unique position to inform the legislature and county board on trends, successful and unsuccessful policies and strategies, and reforms and policies needed to adequately supervise HCDD offenders.

**DWI/DUI COURTS:** Probation officers with HCDD offenders on their caseloads may be asked to coordinate with local DWI/DUI courts.

**RELEASING AUTHORITIES:** For reentry purposes, forming relationships with releasing authorities can assist parole officers in developing more effective supervision and treatment plans. Likewise, releasing authorities can share information with parole officers regarding past and current assessment information, treatment and programming interventions, and other vital information to ensuring successful reentry back into the community.

## SECTION III:

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# COMMUNITY SUPERVISION STRATEGIES

## APPLICATION OF STRATEGIES FOR SUPERVISING THE HARDCORE DRUNK DRIVING OFFENDER IN THE COMMUNITY

Ideally, probation officers supervising HCDD offenders will have a variety of probation strategies and options in their supervision toolkit for ensuring compliance with supervision conditions as well as, facilitating behavioral change that will keep the HCDD from re-offending.

The responsivity principle requires individual characteristics (such as learning style, culture, gender, motivation level) be considered when assigning individuals to programs (Clawson, Bogue, & Joplin, 2005). Essentially, this means the court and probation should avoid cookie-cutter supervision and treatment strategies that fail to address individual risk and need factors that have been identified through actuarial assessments. Evidenced-based practices recommend that the responsivity principle be considered in implementing probation supervision and treatment strategies (Clawson, Bogue & Joplin, 2005).

### PRE-TRIAL COMMUNITY SUPERVISION:

Community supervision may be ordered for HCDD offenders who have been arrested for driving while intoxicated, but their case has not been tried. Pre-trial services support the judicial system by assisting with bail decisions, risk screening, information gathering and compilation and, in some cases, the supervision of released defendants (Pre-trial Justice Institute, n.d.).

#### CHALLENGE:

**Some Prosecutors and Defense Attorneys may not agree to comprehensive assessment at this point in the justice process.**

These pre-trial programs recognize that defendants coming into the system under the influence of alcohol and/or substances present unique challenges and have developed many strategies to target this population more effectively (Pre-trial Justice Institute, n.d.). For example, pre-trial officers typically have access to, at a minimum, the arrest report and prior criminal history information. Many pre-trial officers also conduct personal interviews with the defendant to collect information pertaining to employment, education, residence, ties to the community (for making release decisions), mental health status, as well as alcohol/substance abuse issues. This information is then synthesized and the pre-trial officer makes a recommendation to the judge regarding release and, if released, supervision conditions. Pre-

trial defendants can have a number of conditions imposed on them by a judge pending their appearance at their trial. Summarily, pre-trial officers should be assessing HCDD defendants, preparing release recommendations for the judge, and, in some instances, are charged with supervising the pre-trial defendants released on community supervision and reporting back to the judge prior to their trial date.

**PRE-TRIAL ASSESSMENT:** One of the suggestions coming out of the *“Hardcore Drunk Driving Judicial Guide: A Resource for Outlining Judicial Challenges, Effective Strategies, and Model Programs”* (hereafter *“Judicial Guide”*) developed by the Century Council is that it is essential for judges to mandate alcohol assessments. This can be a key source of information about drinking and driving habits. For the HCDD defendant, at a minimum, a screening for potential alcohol/substance abuse issues must be conducted as early as possible in the criminal justice process. Ideally, a comprehensive assessment is required by the court from a qualified substance-abuse counselor to identify treatment needs and recommendations. The literature states that early assessment and treatment is the most efficacious response to issues involving alcohol and substance abuse (Allen, 2004). Furthermore, “failure to fully appreciate and employ formal, validated assessment procedures is regrettable in the field of alcohol treatment practice” (Allen, 2004, para. 8). Assessment does not necessarily guarantee successful treatment; however, “chances for successful rehabilitation are clearly enhanced if specific patient needs can be more accurately identified and if treatment can be tailored accordingly” (Allen 1991, p. 183).

**PRE-TRIAL RECOMMENDATIONS:** After screening/assessment, pre-trial officers are often charged with drafting recommendations for the judge which include specific conditions of release. These conditions are aimed at ensuring the defendant will appear for upcoming court hearings crime free, as well as to assist pre-trial officers with enforcing supervision. In working with the HCDD defendant, it is recommended that, in addition to standard release conditions, pre-trial service officers recommend conditions tailored to address the safety concerns of releasing a HCDD back into the community.

At a minimum, pre-trial recommendations for HCDD defendants should include:

- Abstain from alcohol use
- Regular appointments with pre-trial officer or probation officer
- Comply with all scheduled court appearances

Ideally, pre-trial officers also should consider making these additional recommendations for HCDD defendants:

- Temporary revocation of the defendant’s driving privileges
- Refrain from frequenting establishments that sell alcohol
- Completion of a comprehensive assessment by a substance abuse counselor
- Engage in treatment as recommended by the substance abuse counselor
- Achieving/retaining employment or other gainful activities if employment is not an option
- Remote alcohol monitoring devices/ignition interlock monitoring (or other random to continuous alcohol monitoring technologies)

## **PRE-TRIAL SUPERVISION:**

### **CHALLENGE:**

**Due process considerations related to placing conditions on individuals not formally adjudicated by the court.**

Pre-trial service workers often are overloaded with new defendants coming in on a daily basis, with varying criminal charges, risk levels, and needs. Their decisions to release and recommendations for release conditions are, for the most part, based on information available at that immediate moment. Stated otherwise, recommendations are often based on standardized factors rather than individualized factors. To that end, at a minimum, pre-trial supervision of HCDD defendants should include regular reporting, notifying/reminding defendants of their court appearances and attempting to ensure defendants’ appearance before the court. Ideally, in addition to the minimum practices, pre-trial supervision for the HCDD defendants could also include:

- Enforcement of all supervision conditions set forth from the court
- Determining appropriate level of supervision (low, medium, high)
- Home visits
- Employment visits
- Use of electronic monitoring (if appropriate)

**PRE-TRIAL REPORTING:** An essential function of pre-trial supervision is reporting back to the judge the compliance and/or non-compliance of the HCDD defendant with the supervision conditions. The pre-trial officer also should address and report their perceptions of the defendant’s willingness to receive treatment for alcohol issues and to address other areas of need identified through any assessment that may have been completed. This information will enable the judge to make appropriate sentencing decisions reflective of the defendant’s willingness to change their behavior.

## PRE-SENTENCE COMMUNITY SUPERVISION:

Pre-sentence community supervision includes offenders who have either plead guilty or been found guilty of the alleged charges and are awaiting their sentencing. In instances where the court becomes aware of individuals intending to plead guilty to the charges alleged, a pre-plea sentencing report can be initiated by the court. However, in cases where the court is not aware of a plea arrangement or when the defendant has requested a trial and has been found guilty, it is recommended that judges refrain from imposing sentence until a pre-sentence report can be completed.

The “*Judicial Guide*” on HCDD recommends the completion of a pre-sentence investigation to enable judges to choose appropriate sanctions to affect recidivism as well as treatment requirements to begin a therapeutic process with the offender. Typically, after a plea has been entered, completion of the pre-sentence report and possibly supervision of these offenders is transferred from pre-trial officers to probation officers. During this period, judges may impose conditions for supervision to ensure that the HCDD offender appears for his/her sentencing date. In order to assist the judges in making the appropriate sentencing decision, it is recommended that probation officers complete a pre-sentence investigation for HCDD offenders.

Ideally, a pre-plea/pre-sentence report should include:

- Current offense information
- Criminal history report
- Offender demographic information
- Available screening/assessment information
- Interview with the HCDD offender
- Interview with victim (if relevant)
- Physical/mental health history
- Treatment history (including what kind of treatment received, time frames, if treatment was completed, etc.)
- Employment history
- Income information
- Military information
- Educational/vocational information
- Financial information (to inform restitution payment, fines, etc.)

Ideally, in addition to the information listed above, pre-sentence officers will also seek to:

- Conduct home visits and interviews with family members and collateral contacts (such as employers, treatment professionals, mental health providers).
- Obtain information on all vehicles registered to the HCDD as well as vehicles the HCDD offenders may have access to for tracking purposes.
- Complete a comprehensive risk and needs assessment to identify level of supervision required and the potential need for technology to assist in monitoring and supervision.
- Begin to identify programs, services, and interventions that can be recommended for the HCDD offender to participate in during community supervision for inclusion, by the judge, in the supervision contract.
- Schedule plan for the HCDD offenders' payment of victim restitution and other appropriate fines and fees.

It is also recommended that pre-sentence report writers research statutory mandatory/minimum sentences for this population and how they can be satisfied using a variety of resources and interventions for recommendation to the judge. It may be prudent to err on the side of caution and request additional conditions of supervision for the HCDD offender if there are areas of potential concern that have not yet been fully investigated. These additional conditions can and should be removed or relaxed later if they are determined to not be necessary in the individual case.

## **POST-SENTENCE PROBATION SUPERVISION:**

Many larger probation agencies now designate certain offender types to “specialized caseloads” within their agency. Probation officers should be cautioned to not assume that all HCDD offenders coming on their caseload encompass the same risk level nor present the same intervention needs.

Once a HCDD offender is placed on community supervision, it is incumbent upon the probation officer to review the conditions of supervision imposed by the sentencing judge and formulate a supervision plan in concert with the offender. This approach encourages compliance with supervision conditions and facilitates participation in treatment and intervention programs designed to target criminogenic factors to reduce recidivism and address any substance abuse or mental health needs.

There are three essential elements of community supervision practice that are key to helping probation officers promote compliance with supervision conditions and address needs to facilitate behavioral change, ensure public safety and reduce recidivism. These three elements are: (1) utilization of risk and needs assessment tools; (2) development of supervision and treatment plans based on assessment data; and, the (3) implementation of graduated responses.

### **CHALLENGE TO ASSESSMENT OF HCDD OFFENDERS:**

**Access to relevant data such as criminal/traffic history reports from other jurisdictions and treatment histories.**

**Short timelines for having reports completed (such as PSI's) prior to court appearances.**

**UTILIZATION OF ASSESSMENT TOOLS:** The use of assessment tools that identify both static (historical attributes of an offender that cannot be changed, such as age, age of first offense, number of prior convictions) and dynamic (personal attributes that can be changed over time, such as employment or educational status, family dysfunction, negative peer associations) criminogenic factors is essential in predicting risk of reoffending and identifying needs to be targeted for change (Latessa & Lowenkamp, 2005). Information obtained from risk and needs assessments helps probation officers determine appropriate supervision levels and identify and assign appropriate interventions for supervising HCDD offenders (Dunlap, Mullins, & Stein, 2008).

Ideally, at this point in the process, HCDD offenders would have received a comprehensive assessment of risk, needs, as well as alcohol/substance abuse and mental health issues. If that is not the case, the completion of this assessment should be the probation officer's first step. Similarly, it may be beneficial for probation officers to re-assess the HCDD offender, even if a comprehensive assessment has already been completed during the pre-trial stage, given that sometimes there is a significant span of time between pre-trial and sentencing. Also, given the expectation that exposure to interventions alters an individual's risk and needs, the HCDD offender may have participated in interventions during the pre-trial and/or pre-sentencing stage that would necessitate a re-assessment.

In some situations, HCDD offenders may be mistakenly assessed as low-risk offenders because their prior offenses are likely to be low-level and nonviolent-non-felony (Dunlap, Mullins, & Stein, 2008). Additionally, this sub-population of offenders is often typically functional in the sense that they can often maintain employment, family roles and

responsibilities, and other pro-social demands. However, the low-risk assessment score should not be taken at face value; HCDD offenders pose a significant risk for public safety for several reasons. First, their incidents for offending are not always foreseeable or predictable. Second, the consequences of their actions, while often unintended, are often long-reaching and potentially fatal. Finally, this population may not be seen as a typical “criminal offender” in that they often do maintain normal, functioning lives. Currently there is no single, widely used tool that accurately predicts both risk of drinking again, and drinking and driving again. Therefore, it is recommended that all HCDD offenders begin community supervision as high-risk offenders until they are deemed appropriate for lower risk classifications.

When assessed for substance abuse problems, HCDD offenders may not necessarily be determined as having an alcohol use/abuse problem. In those cases, it is likely that alcohol use/abuse is not their primary issue area that needs immediate attention. This is why it is essential to conduct comprehensive needs assessments on each HCDD offender to isolate and prioritize each need area on an individual basis. It is important to keep in mind that the treatment needs of the HCDD are not universal; each HCDD offender will present their own unique needs which should be targeted for intervention.

The isolation of risk levels and individualized needs assist probation officers in prioritizing their caseloads and corresponding case considerations. Over time, identifying which HCDD offenders are high risk, moderate risk, and low risk helps probation officers determine which ones will require more time (e.g., office time, home visits, work visits) and resources (e.g., alcohol testing, technological monitoring, treatment). This level of prioritization helps probation officers maximize their use of limited resources more effectively.

Additionally, a growing body of research reveals that low risk offenders who are subject to intensive interventions and programming often produce little, if any, positive effect on recidivism rates (Bogue, et al. 2004). There is also evidence to suggest that subjecting low risk offenders to intensive services can backfire and result in increasing their chances of re-offending (Latessa & Lowenkamp, 2006; Bonta, Wallace-Capretta, & Rooney, 2000). Potential reasons for this include low risk offenders may actually adopt the antisocial attitudes and behaviors of high risk offenders with whom they are placed and/or placement of low risk offenders in intensive interventions may actually disrupt any positive social bonds or activities that may have existed prior to their placement. However, it is still important to hold low risk offenders accountable for their behavior (Latessa & Lowenkamp, 2006).

### COMPONENTS OF A SUPERVISION & TREATMENT PLAN:

- Supervision conditions as set forth by the sentencing judge
- Supervision conditions based on actuarial risk/needs assessments
- Treatment interventions based on individual assessment data
- Measureable goals and objectives (with input from the HCDD offender)
- Defined timetables for achieving goals
- Individualized graduated responses
- Identification and explanation of use of technological monitoring strategies

### DEVELOPMENT OF SUPERVISION &

**TREATMENT PLANS:** Supervision and treatment plan development is a crucial part of the probation supervision process. Conditions of supervision set forth by the sentencing judge need to be incorporated. Additionally, probation officers should take care to collect ancillary or collateral information to supplement the identification of risk factors and needs to be targeted. Such ancillary information can be collected from family members, employers, co-workers, friends, previous treatment providers, health and mental health providers, and other contacts identified by the HCDD offender. All available information can then be synthesized by the probation officer to guide the development of the supervision and treatment plan.

The supervision and treatment plan developed for HCDD offenders should be a dynamic document. The probation officer should be provided with sufficient flexibility to amend the case plan as the HCDD offenders risk level and needs change. It is anticipated that as the HCDD offender is introduced to interventions and as they complete their goals, their case plan will need to be revised to identify new supervision and treatment goals.

**THE SUPERVISION PLAN:** The supervision plan should encompass measures which promote compliance with court-ordered conditions and other extraneous conditions identified as necessary through risk and needs assessment, as well as include explanations of potential responses for compliance and non-compliance. The objectives in the supervision plan should adhere to the three “R’s” of supervision (Wicklund, 2005):

1. **Realistic:** few in number and attainable.
2. **Relevant:** tailored to individual risk and needs, based upon recent assessment data, and tailored to fit the most urgent risk/need (e.g. if substance abuse is the most critical factor, then address that first through interventions, then begin to work on employment or education, etc.); and
3. **Research-based:** based on research known to change behavior.

Given the diversity of offenders in the United States, it is impossible to provide an exhaustive list of potential elements to include in a HCDD offender's supervision and treatment plan. However, as stated previously, it is stressed that all HCDD offenders begin community supervision as a high-risk offender until deemed appropriate to lower the supervision level.

In today's world of community supervision, there are numerous technologies which can aid probation officers in monitoring HCDD offenders. When appropriate, the use of these technologies allows probation officers to more effectively manage their caseloads and promote public safety by providing continuous monitoring of offenders. In supervision of the HCDD offender, it is recommended that probation officers utilize tools and technologies to randomly and continuously monitor their use of alcohol and other substances. However, it is important to emphasize that the use of technology is only a tool in the probation officer's toolkit; it should not be used as a replacement for good supervision strategies.

Traditional urine tests designed to measure alcohol use are only capable of detecting the presence of alcohol in someone's urine for only a couple of hours after consumption. An emergent testing option goes beyond this to detect Ethyl Glucuronide (EtG), a metabolite of ethanol alcohol. The presence of this metabolite can be detected through urine testing even after the presence of ethanol has dissipated, as far back as 3-4 days (or 80 hours) (Alcohol Test Info, n.d.). While not widespread, some agencies are testing the effectiveness of EtG testing for their alcohol-involved offenders.

There are many tools and technologies available to enhance offender monitoring. The following table summarizes some of the recommended tools and technologies to consider when supervising the HCDD offender.

**TECHNOLOGY IS A TOOL,  
NOT A REPLACEMENT FOR GOOD  
SUPERVISION PRACTICE.**

## TOOLS AND TECHNOLOGIES TO ASSIST IN THE SUPERVISION OF DWI OFFENDERS

(Source: Dunlap, Mullins, & Stein, 2008)

### ELECTRONIC MONITORING

An electronic monitor is a device that is placed on an individual and used to monitor his or her location and activities. It is typically used as an alternative to incarceration or as a condition of community supervision.

#### How it can aid in supervision of DWI offenders:

- Provides structure and close supervision, enables offenders to obtain or maintain employment, and supports and reinforces rehabilitation and treatment.
- EM devices can also have alcohol sensors attached to determine the use of alcohol. Offenders on sentencing alternatives, such as staggered sentencing, are often required to use EM devices

with alcohol sensors as a supervision strategy.

- EM tends to be less expensive than incarceration and assists in reducing jail overcrowding.
- EM devices can be added as a sanction for noncompliant behavior or removed as an incentive for compliance. In most cases, the cost associated with EM is assessed to the offender and not having to pay is an incentive for compliant behavior.
- Officers can use hand-held devices to conduct “drive-by” verifications.
- EM devices may actively or passively report data to an officer or central monitoring agency.

### CONTINUOUS TRANSDERMAL ALCOHOL TESTING

Continuous transdermal alcohol testing is a valid way to determine whether an offender has consumed a small, moderate, or large amount of alcohol. It is designed to be used as a screening device to determine alcohol use and not to produce a specific BAC reading. The monitoring device is a passive, non-invasive tool that monitors alcohol consumption 24 hours a day 7 days a week for an extended time. The tamper-and water-resistant bracelet captures transdermal alcohol reading from continuous samples of vaporous or insensible perspiration collected from the air above the skin. (Robertson, Vanlaar, & Simpson, 2006). Cost for the continuous transdermal alcohol testing device is usually charged to the offender which often denies indigent offenders access. Indigent funds should be established allowing access for those who are unable to pay.

#### How it can aid in supervision of DWI offenders:

- Random breath tests are only able to show if the offender has alcohol in their system at the time the test is given. Continuous transdermal alcohol monitoring monitors alcohol consumption 24 hours a day, seven days a week.
- Continuous transdermal alcohol testing will ensure compliance with court-ordered terms of abstinence.
- Officers are provided with access to Web-based reports to obtain a variety of progress reports specific to their caseload and receive customized notification of events and alerts.
- The device can be recommended at the beginning of supervision for any repeat or high-BAC offender. It can then be removed as an incentive for compliant behavior or added back as a sanction for noncompliant behavior.
- Continuous transdermal alcohol testing can be used in a variety of programs including pre-trial, probation, specialty courts, treatment, and re-entry and parole.

## IGNITION INTERLOCK DEVICES

An ignition interlock is a device that is installed on motor vehicles to prohibit individuals under the influence of alcohol from operating the vehicle. Individuals are required to blow into the device before starting the vehicle. If the device detects alcohol, it will prevent the vehicle from starting. In addition, at random times during the operation of the vehicle, the driver will be prompted to blow into the device to ensure they are not under the influence. When used as a condition of supervision in conjunction with a monitoring and reporting the ignition interlock system provides DWI offenders with an alternative to full license suspension. Use of the system for repeat or high BAC offenders is often required by legislation and/or mandated by the motor vehicle department or other administrative authority. For example, 37 States have enacted legislation providing for its integration into the DWI adjudication and sentencing process. Cost for the ignition interlock is usually charged to the offender which often denies indigent offenders access. Indigent funds should be established allowing access for those who are unable to pay.

### How it can aid in supervision of DWI offenders:

- Installation of an Ignition Interlock device allows the DWI offender to remain employed, in school, and involved in other prosocial activities when a driver's license has been suspended.
- Ignition interlock devices prevent the vehicle from being started if the breath sample provided by the driver contains more than a predetermined blood alcohol concentration.
- A report of the BAC level at the time of every ignition start-up is maintained in the unit.
- Data obtained through the recording devices show patterns of abuse that can lead to DWIs and the information offers insight into offender behaviors and triggers for relapse.
- "The interlock is very effective while it is on the vehicle, and the net benefit (accumulated during time on and off the interlock) in terms of reduced recidivism is substantial." (Robertson, R.D., Vanlaar, W.G.M., & Simpson, H. M. (2006). Ignition interlocks from research to practice: A primer for judges. Ottawa, Ontario, Canada: Traffic Injury Research Foundation, p. 8).

## BREATH, BLOOD, AND URINALYSIS TESTING

DWI offenders are usually required to abstain from the use of alcohol or drugs during the term of supervision. The chemical analysis of breath, blood, or urine testing can be used to monitor court-mandated compliance and detect the specific amount of alcohol and/or drugs in the offenders system. Breath and urinalysis (UA) testing allows the supervision officers to randomly test for the use of alcohol and other drugs during office or home contacts. The offender also can be referred to a hospital or a lab for urinalysis or blood testing.

### How it can aid in supervision of DWI offenders:

- With the proper equipment, or with equipment used by law enforcement officers, supervision officers can give quick on-the-spot breath tests to determine a specific BAC.
- Supervision officers can request that an offender submit to urinalysis testing, for the detection of drugs other than alcohol, during office or home contacts.
- Because breath and UA testing can be required on a random basis varying schedules can be developed.
- Testing can also be increased (sanction) or decreased (incentive) as needed to reward compliant behaviors or sanction noncompliant behavior.

**THE TREATMENT PLAN:** The treatment plan for the HCDD offender should be based on the needs assessment as well as a substance abuse assessment. These assessment results collectively identify areas in need of intervention and assist the treatment provider in devising a comprehensive plan. In doing so, the probation officer should ensure that the treatment provider is sensitive to the responsivity principle (i.e., matching HCDD offenders to appropriate treatment interventions based on individualized factors) and dosage (i.e., the right intervention, at the right levels, at the right times). Like the supervision plan, the treatment plan should outline responses to compliant/non-compliant behavior. Probation officers should be prepared for when the substance dependant HCDD offender relapses, since it is often not necessarily a question of if relapse will occur, but rather, when relapse will occur.

**GRADUATED RESPONSES:** One of the most significant ways judges and administrators can support probation in its efforts to keep offenders out of jail/prison is to support resources which provide probation officers a continuum of options to respond to both successes and violations (Pew, 2007). Graduated responses should be designed in such a way as to provide a structure and standardization to the implementation of responses, while still allowing flexibility and discretion based upon the probation officer's knowledge of the individual and case history (Nagy, 2007). The courts and agency administrators should provide line supervisors and probation officers the authority to administer immediate intermediate responses, or responses that do not require judicial approval. This authority ensures swift and certain response, which evidenced-based practice suggests maximizes the impact of the response (Bogue et al, 2004).

Research consistently shows that positive reinforcement is more effective in shaping behavior than consequences (Pew, 2007). However, so often in the justice system we tend to focus on only the negative sanctions. Acknowledgement of success should be swift and certain; offenders should receive reinforcement for the positive behavior as soon as possible. The key is to make sure there is a progression in the incentive process, by setting small goals (with almost certain attainability) tied to an equivalent incentive so that the offender experiences success. As the successful events increase, so should the incentives. Additionally, incentives should be tailored to the offender. Having a “laundry list” of incentives may be easy for the probation officer, but they may not be meaningful to each offender and may hinder their desire to achieve the goal to reach that incentive. Incentives that require little or no resources include deferring a payment towards fines, reducing a reporting requirement, presenting a certificate of achievement, verbal praise or eliminating certain conditions of supervision (such as weekly court appearances, home confinement, and curfew).

The use of graduated sanctions has been identified throughout the literature as one of the five best practices for probation (LAO, 2009). For some offenders, an established system of graduated sanctions acts as a deterrent and interrupts the cycle of reoffending (LAO, 2009).

Similar to incentives, sanctions should follow the same logic: be swift, certain, graduated, and meaningful. Additionally, the sanction should be proportionate and tailored to fit not only the individual, but also the violation. For example, if an HCDD offender failed a breathalyzer test, incarceration should not necessarily be the immediate response; perhaps a more tailored response may be to increase the frequency of their testing. Additionally, it is important to discuss the violation with the offender before imposing sanctions to ascertain the circumstances surrounding the situation. For example, if an HCDD offender failed to attend a scheduled office visit, find out the reason the offender failed to attend. It could have been they were scheduled to work or did not have transportation. In these instances, sanctioning the offender for missing the meeting could have a reverse effect as you are punishing them for maintaining steady employment (which may be a condition of supervision thus they were forced to choose which condition to adhere to) or punishing them for something that may have been outside of their control. In this case, missing the meeting was not the primary issue. The primary issue to be addressed was the failure to communicate the scheduling conflict to the probation officer—a significant difference in motivations.

SECTION IV:

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MEASURING SUCCESS

## MEASURING SUCCESS

In measuring success or failure of community supervision, we generally tend to think of recidivism as the ultimate measure. The problem with solely relying on recidivism as a standard measure of success or failure is that it can be defined in so many different ways by different individuals, departments/programs, and jurisdictions. It can be defined as a new arrest, a new conviction, a new violation, a relapse incident, and/or revocation/incarceration. Furthermore, differing timeframes of when a behavior is considered as recidivism can differ as well (e.g. during supervision, one or more years after supervision, while in or out of treatment programs, while utilizing or not utilizing technology supervision). While measures of recidivism are important, it is also important for each probation department to develop their own measures of success. These measures may differ between offender types, risk levels, specialized caseload, etc., but having clearly defined measures of success for all of these areas, outside of only recidivism rates, is fruitful in identifying what is working, and what is not.

The first step to defining these measures for the HCDD is to involve stakeholders in the process. Those individuals may differ from jurisdiction to jurisdiction, but at a minimum should include judges, prosecutors, defense attorneys, probation administrators, treatment providers, victim advocates, community members, and possibly the offenders themselves.

Once measures of success are identified by stakeholders, it is essential to gather information, or data, on these measures to be able to report back to the stakeholders how the program or components of the program are working. This data is essential in identifying not only what is working, but also what is not working so that modifications can be made. This information can also be useful in identifying programs/resources that are needed, but not currently available so the stakeholders can work on adding that program/resource to the available resources.

Ideally, to most efficiently collect the data necessary to measure defined outcomes, practitioners and information technology specialists should work to design information systems in a user-friendly manner. Often times, information systems are developed to collect a multitude of information, with no real understanding of how that information is going to be used (if at all), how it is going to be extracted and analyzed, and what the data truly means. It is essential for the stakeholders to identify what to measure and then identify what information will be able to inform those measures so that information specialists can design programs to meet those needs. Unlimited amounts of data can be collected, but unless the data speaks to an identified measure of success and how that data is entered and analyzed, it is nothing more than a useless piece of information. To facilitate the input of meaningful data, it is essential that those charged with entering information into the system be cognizant of the importance of the information they are entering and how it will be used. Additionally, it is imperative for these individuals to receive training on the information system so the information gets entered correctly. In the case where automated systems do not exist, it is imperative that a paper process be developed to effectively and efficiently record, collect and analyze data.

# CONCLUSION

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# CONCLUSION:

Hard core drunk driving is a personal, social, and legal issue that cannot be ignored by the criminal justice system. To realistically have any kind of impact on changing the thinking and behavior of this group of offenders, a systemic approach must be undertaken. A united strategy must be implemented from community and legislative policies to law enforcement and prosecution, from judicial intervention to supervision and treatment. It is clear, that the majority of HCDD offenders end up on community supervision, either in lieu of incarceration or after a period of incarceration. For community corrections, this offender population presents unique challenges in its charge to protect the community from this population committing new crimes.

One challenge community corrections face in supervising this population is in receiving accurate assessment information. As demonstrated in this document, HCDD offenders do not always score high-risk on assessment instruments. One reason for this is that many assessments place high score values on the seriousness of the present offense (misdemeanor, felony); consequently, since most DUI offenses are considered misdemeanors, this has an effect on the resulting risk score. Many times, information on prior criminal history (such as previous drunk driving arrests that may have been pleaded down to a non-DUI offense) is not available for various reasons; thus, having an impact on risk scores. Additionally, HCDD offenders are often able to maintain employment, which is used in scoring risk level. These factors may lead probation officers to not consider these offenders as a threat to the community; however, the research clearly shows that this population of offenders is significantly dangerous to the community when not monitored closely. For this reason, this guide recommends that all HCDD offenders begin any form of community supervision on high-risk until it can be determined otherwise through assessment and the completion of assigned interventions.

Another challenge posed by this offender population is that regardless of the consequences, they continue to drink and drive; thereby endangering their own lives as well as innocent citizens. Even though a high percentage of hardcore drunk drivers or repeat offenders reported that they believed drinking drivers would be arrested and convicted for drunk driving, they continued to do so anyway.

HCDD offenders demonstrate high-risk and impulsive/thrill seeking behaviors which requires community corrections to have a continuum of services, interventions, and responses to counter these behaviors appropriately.

Community corrections professionals are in a unique position to have an impact on system efforts directed towards HCDD offenders. As the single justice entity that is typically involved with offenders from the beginning to the end of the judicial process, community corrections can play a leading role along with law enforcement, judges, prosecutors, treatment, and prevention partners in the development and implementation of effective strategies to promote public safety, facilitate behavioral change, and reduce the number of hardcore drunk drivers endangering the roads each day.

# GLOSSARY OF TERMS

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# GLOSSARY OF TERMS

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

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

**ASSESSMENT:** Depending on the discipline, the term “assessment” can refer to a variety of methods to determine the nature of a problem and course of action needed to correct the problem. In general, criminal justice assessment tools fall into three basic categories: screening instruments, comprehensive risk/needs assessments, and specialized tools.

**SCREENING INSTRUMENTS:** Are generally quick and easy to use and focus more on static risk factors, such as a person’s criminal history or potential substance use concerns. Screening tools can be useful in making quick determinations about in-or-out decisions (e.g., who should be detained, who should be released on their own recognizance), in helping to classify offenders into risk low, moderate or high risk categories or whether a more thorough substance abuse or mental health assessment should be conducted. However, their usefulness is somewhat limited since they do not help the practitioner identify an offender’s criminogenic factors or the unique issues they have related to substance abuse or mental health.

**COMPREHENSIVE RISK/NEEDS ASSESSMENTS:** Cover all major risk and needs factors (both static and dynamic) and helps ascertain levels of risk/need that is correlated with outcome measures like recidivism. These assessments can also be useful in re-assessment to determine if needs changed after interventions have been introduced. The results from these assessments should be used to facilitate the development of case plans that can be aimed at addressing full range of factors.

**SPECIALIZED TOOLS:** Specialized tools include things like alcohol and drug assessment. Typically, these types of assessments are ones that we refer offenders to other professionals for. The key is when these referrals are made for these types of assessments that we obtain and consider the results in our own case and supervision plan.

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

**BLOOD ALCOHOL CONCENTRATION:** BAC is measured in grams of alcohol per 100 milliliters of blood. A BAC of .01 indicates .01 grams of alcohol per 100 milliliters of blood. As of July 2004, all 50 states and the District of Columbia have passed legislation establishing a driver with a BAC of .08 is considered legally intoxicated. Additionally, 42 states and the District of Columbia have laws and penalties for those who drive with elevated or “high” BAC levels.

**COMMUNITY CORRECTIONS:** A component of the criminal justice system which offers programs and services in the community and/or viable alternatives to incarceration for individuals at various stages of the criminal justice process. Community corrections may include bail/bond programs; behavior change strategies; restitution, fines and fees collection; probation and parole supervision; electronic monitoring; community service; and day reporting centers.

**COMMUNITY SUPERVISION:** Refers to the conditional release and supervision of defendants/offenders in a community setting. A conditional release of a defendant/offender to community supervision can occur at varying times in the criminal justice process, including pre-trial, pre-sentence, and post-sentence. Additionally, the availability of various community corrections supervision strategies vary by jurisdiction as resources vary.

**DIVERSION PROGRAMS:** A criminal justice program run by either a police department, court, a district attorney’s office, probation department or outside agency designed to enable offenders the opportunity to avoid criminal charges and a criminal record by completing various requirements dictated by the program (e.g. drug treatment, counseling, community service). Successful completion of all requirements could result in dismissal or reduction of charges; whereas, non-completion of requirements could result in more serious action being taken by the court.

**HEAVY ALCOHOL USE:** Five or more drinks on the same occasion on 5 or more days in the past 30 days.

**INTENSIVE SUPERVISION PROGRAMS (ISP):** These programs are often viewed as an alternative to incarceration. Persons sentenced to ISP programs are typically those who, in the absence of intensive supervision, would have been sentenced to imprisonment. No two jurisdictions operate intensive supervision in exactly the same way. However, one characteristic of all ISP programs is that they provide for very strict terms of probation or parole. This increased level of control is usually achieved through reduced case loads, increased number of contacts, and a range of required activities that can include treatment services, victim restitution, community service, employment, random urine and alcohol testing, electronic monitoring, and payment of a supervision fee.

**PAROLE:** Any form of release of an offender from an institution (jail, prison) to the community by a releasing authority (parole board) prior to the expiration of an imposed sentence. Upon release, the offender may be subject to an array of supervision terms and conditions.

**PROBATION:** A sentencing option whereby an offender who has been found guilty of a crime is permitted to remain in the community under court supervision. Typically, the court will impose conditions of supervision, such as paying a fine, completing community service activities, participating in drug and/mental health treatment, and education/employment requirements, which will be monitored by a probation officer. Failure to comply with the imposed terms could result in the offender being incarcerated to finish out the imposed sentence.

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

**RESPONSIVITY:** Refers to the practice of considering individual characteristics (such as learning style, culture, gender, motivation level) when assigning individuals to community supervision and treatment programs.

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

**STAGGERED SENTENCING:** A court-ordered sentence, most notably used with DWI offenders, which mixes periods of incarceration with periods of community supervision. The court places an offender on probation for a specified time period, and orders a period of incarceration to be served in two or more installments occurring during the probation period. These installments are spaced several months to one year apart. The offender must serve the first incarceration segment immediately or soon after the sentencing date, and is advised by the court of the dates on which the offender must begin serving subsequent incarceration segments. If the offender attains goals during the periods of community supervision (such as treatment goals, sobriety goals, compliance goals) then the offender can submit a motion to the sentencing judge to waive the second installment of incarceration. This sentencing model allows the offender to influence their sentencing outcomes. (NHTSA, 2004).

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APPENDIX A

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MODEL PROGRAMS

# MODEL PROGRAMS:

## **VIRGINIA: Alcohol Safety Action Program (VASAP)**

VASAP provides a network of probationary, administrative, case management, and client services that is readily adaptable and expandable to meet local and state needs. It works with local employee assistance programs in combating the problems of substance abuse, provides funds for local law enforcement training and assistance in grant funding requests, and offers attorneys and judges knowledge and a wider variety of intervention programs to dispose of DUI/DUID cases in a manner appropriate to both community and offender needs.

VASAP is the only statewide court-related DUI/DUID intervention program in the nation, diverting thousands of offenders annually from costly incarceration in local jails, thus realizing substantial savings to the commonwealth. Offenders placed on probation by the court are given a restricted license and ordered to report to their local ASAP within 15 days. There, a case manager classifies the offender to determine the appropriate education and/or treatment services. The offender pays a fee determined by program assignment. The case manager supervises each case to ensure that probation requirements are fulfilled.

VASAP is completely funded by offender fees and government grants. Many studies on a national basis have found that the ASAP program is extremely cost-effective as well as extremely successful.

Following conviction, all offenders receive a mandatory alcohol assessment/evaluation to determine the nature and extent of their alcohol problems. The cost ranges from \$250 - \$350 and is paid by the offender.

The assessment is conducted either pre-trial or post-sentencing. The court does not take the results of the assessment into consideration in final sentencing.

Assessments are conducted by a state administrative agency specialist.

Treatment for high BAC and repeat offenders is mandatory. All offenders are required to attend alcohol education or treatment as recommended by the assessment.

Offenders failing to comply with the terms of their program are not eligible for license reinstatement and may be returned to the court for further action.

Virginia does not have dedicated detention and treatment facilities that target the hardcore drunk driver.

Information Retrieved from [http://www.1800duilaws.com/dui\\_schools/va\\_duischools.asp](http://www.1800duilaws.com/dui_schools/va_duischools.asp)

## **NEW YORK: Westchester County, White Plains, NY – Department of Probation DWI Enforcement Unit**

Westchester County (White Plains, NY) Department of Probation DWI Enforcement Unit, has established an offense specific surveillance and enforcement system to ensure that repeat DWI offenders comply with the court-ordered restrictions on alcohol/drug consumption and driving while impaired. Department policy and supervision strategies with clear relevance to the DWI offenders have been established. Fourteen probation officers are assigned to the Probation Departments DWI Enforcement Unit and supervise and conduct surveillance over the approximately 1,300 DWI offenders.

Following are some of the DWI Offender Enforcement Unit's policies and practices.

### **Department of Probation Policy**

- A monthly fee of \$30 is assessed on all probationers.
- Probation officers conduct warrantless searches.
- Probation officers assigned to the DWI Unit are authorized to issue traffic tickets for DWI offenses.
- All offenders convicted of DWI/Drugs are referred to the DWI Unit for supervision. All cases are referred to an approved treatment agency/facility for services by the unit.
- People sentenced to probation supervision by a court or conditional release commission with a specific condition to submit to a recognized drug test is tested randomly or on an as needed basis.
- Probation Electronic Home Monitoring is made available for eligible offenders as an alternative to incarceration or detention.
- Probationers with revoked licenses may be eligible for restricted driving privileges contingent on the installation of a court ordered ignition interlock system. Costs associated with the interlock are the responsibility of the probationer.
- A completed report containing information on adherence to the order and conditions of probation are submitted to the court that has the sole discretion for re-licensing.

### **Practices**

- In-person supervision contacts with offenders are conducted randomly depending on the offenders' involvement in treatment, results of alcohol/drug screens, and overall supervision progress.
- All probationers are required to enroll in and successfully complete a State-approved treatment program. Probation officers insure compliance with treatment conditions through coordination with treatment agencies.

- Probation officers arrest probationers for DWI.
- DWI offenders may be fitted with ignition interlock for limited driving privileges. All DWI felony probationers must participate in the interlock program when they become eligible to drive.
- DOP is piloting in-vehicle cameras to ensure the probationer is the person providing the breath sample in order to start the vehicle, and global positioning system to monitor the exact location of the probationer.
- Probation officers take immediate appropriate action with probationers who are found consuming alcohol and/or illicit substances in violation of their court order and conditions of probation. The probation officers conduct unannounced resident checks day and night (Operation Night Watch) to test for alcohol/drug use, to confiscate alcohol/drugs in their possession, and to intervene early in the relapse cycle to facilitate inpatient and/or outpatient treatment.
- Victim Impact Panels for DWI offenders are conducted bi-monthly in partnership with Mothers Against Drunk Driving (MADD).

On May 9, 2006, NHTSA recognized the Westchester County (White Plains, NY) Department of Probation DWI Enforcement Unit for its excellent performance in keeping probationers convicted of DWI from repeating offenses.

For more information on the Westchester County Department of Probation DWI Enforcement Unit contact:

Westchester County Department of Probation:

Rocco A. Pozzi, Commissioner

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