

## Effecting Change

To ensure the priority recommendations are implemented and to foster cooperation among key professionals, a *Working Group on DWI System Improvements* was formed by TIRF in November 2003, in consort with the American Judges Association, the American Probation and Parole Association, the Highway Safety Committee of the International Association of Chiefs of Police, and the National Traffic Law Center of the American Prosecutors Research Institute.

The goals of the Working Group are to: identify priority initiatives for improving the efficiency and effectiveness of the DWI system; develop an action plan for

implementing these initiatives; and, encourage the appropriate agencies to take the needed action.

The Working Group has met several times and the proceedings of their meetings include: a set of priority initiatives as well as guiding principles for their implementation that acknowledge the contextual differences between jurisdictions and professions; concrete examples of 'model' programs, policies and innovative practices that have been implemented in jurisdictions and are reflective of the priority recommendations; and, an electronic inventory of promising initiatives occurring across the country.

### Fourteen criminal justice organizations are represented on the Working Group:

American Judges Association

American Probation and Parole Association

California District Attorneys Association

Institute of Police Technology and Management

National Center for State Courts

National Association of State Judicial Educators

National Association of Prosecutor Coordinators

National Criminal Justice Association

National Institute of Corrections

National Judicial College

International Association of Chiefs of Police, Highway Safety Committee

International Association of Chiefs of Police, State and Provincial Police Directorate

National Association of State Alcohol and Drug Abuse Directors

National Traffic Law Center of the American Prosecutors Research Institute



### Sponsor:

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### Visit [www.tirf.org](http://www.tirf.org) to access:

- Electronic versions of all reports
- Working Group activities/ proceedings
- State-specific information
- Electronic inventory of state initiatives



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## DWI System Improvements for Dealing with Hard Core Drinking Drivers Quick Reference Guide



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# DWI System Improvements for Dealing with Hard Core Drinking Drivers

## The Issue

Following two decades of declines in the number of fatalities in drunk driving crashes, recent increases in alcohol-related fatalities have sparked renewed concern about drunk driving. In particular, attention has focused on hard core repeat offenders, who continue to cause so much damage on the highways. Politicians have responded with a wealth of new legislation designed to target this persistent group, to ensure the public is protected and offender behavior is changed.

However, the mere presence of programs, policies, and penalties in the DWI system is not sufficient to guarantee success. There must also be certainty that offenders will be

apprehended, prosecuted, sanctioned and effectively supervised to ensure the sanctions are fulfilled. The process will only be effective and efficient if the system itself is seamless and integrated.

New evidence suggests that the DWI system is anything but efficient and effective. In part, this is because the current system is complex and riddled with inconsistencies, and in part because savvy offenders are familiar with and often motivated to beat the system and exploit its loopholes. Steps must be taken to fill system gaps and streamline processing in order to reduce alcohol-related fatalities.

## Weaknesses in the System

A comprehensive, multi-year study by the Traffic Injury Research Foundation (TIRF) clearly demonstrated that the system is indeed being undermined at all levels, particularly by repeat offenders who avoid apprehension, prosecution, sanctioning and supervision. Priority problems occurring nationwide at all phases of the justice system were identified with assistance from 2,700 police officers in 16 states, 390 prosecutors

in 35 states, 900 judges in 44 states and 890 probation and parole officers in 41 states. Findings have been released in a series of four major reports (DWI System Improvements: Enforcement; Prosecution; Sanctioning; and Monitoring) and synthesized in a single, summary report (Stopping the Revolving Door). Priority problems at a state-specific level are also available to participating jurisdictions.

## Priority System Problems

While some problems are unique to certain professions; others are more cross-cutting and impact the system at all levels. In order of

priority, the problems identified by professionals at each phase are:

<b>Enforcement</b> paperwork test refusal detection evidence medical cooperation failure to appear records testimony resources	<b>Prosecution</b> evidence test refusal motions records penalties failure to appear complex legislation expert witnesses plea agreements	<b>Sanctioning</b> sentence monitoring evidence caseload motions failure to appear records sentencing disparity mandatory minimums juries	<b>Monitoring</b> non-compliance caseload conflicting goals sentencing disparity program design paperwork net-widening records
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## Cross-Cutting Issues

Many of the problems identified by professionals impact effectiveness throughout the justice system. Fortunately, fixing just one

problem in one phase of the system can have positive reverberations throughout the entire system.

### Evidence

- Police paperwork, the main source of evidence in a DWI case, may involve 15 or more forms.
- The dynamics of the arrest environment, complexity of statutory requirements, and repetitive nature of the information collected increase the likelihood of errors.
- Savvy repeat offenders often refuse to cooperate with the DWI investigation; rates vary from 5%-70% across jurisdictions.
- DWI cases are among the most challenging technically yet most prosecutors are new to the field and frequently face experienced defense attorneys.
- Errors and technicalities associated with evidence are commonly cited sources of dismissal or acquittal.
- Conviction rates average 66% without breath test results; 85% with breath test results.
- Prosecutors and judges agree that keeping up with evolving scientific and technical issues is challenging.

### Records

- Records containing data and information pertinent to DWI cases are maintained by a diversity of criminal justice and traffic safety agencies; such information is not centralized and often not easily stored.
- Records vary in terms of currency, content and scope, accuracy, completeness, as well as ease and timeliness of access.
- Such information is relevant to a range of determinations including: charging, diversion, pre-trial release, plea agreements, sentencing recommendations by prosecution and probation, sentencing decisions by judges, treatment, and release.
- Lack of timely access to information impedes decision-making at all levels and the consistent identification of repeat offenders.
- Without important information, cases may be dismissed, charges reduced, offenders may receive diversion or benefit from inappropriate plea agreements, and harsher sanctions can be avoided.

### Failure to appear in court

- Estimates of this behavior range from 10-30% and it can occur during pre-trial, trial, or sentencing. Professionals agree this behavior is more common among repeat offenders.
- Law enforcement has limited resources to locate offenders and execute warrants for failure to appear.
- These cases more often result in dismissals or acquittals and contribute to court-backlogs.
- This behavior is perpetuated by nominal penalties and can result in repeat offenders avoiding conviction and subsequent identification as a repeat offender.
- Moreover, it wastes the time and resources of enforcement and court professionals.

### Complex legislation

- Professionals agree DWI statutes are among the most lengthy and complex within criminal legislation.
- The rapid passage of legislation in the last decade has unintentionally resulted in loopholes and inconsistencies that are easily exploited by savvy offenders.

- Loopholes encourage savvy repeat offenders to: escape to hospitals following a crash to avoid detection and conviction; refuse to cooperate with field sobriety tests and breath demands, impeding the collection of critical evidence; fail to appear; and, fail to comply with or complete conditions of sentencing,
- Not only does complex legislation frequently perpetuate these problems: it creates the misperception that more legislation is the solution.

### Resources

- Many police officers lack consistent access to training and devices that aid in the detection of hard core and alcohol tolerant offenders.
- Rural prosecutor offices lack access to basic resources such as computers, making legal and scientific research challenging; new prosecutors are ill-equipped to respond to specialized defense attorneys.
- Judges endure “unfunded mandates” and lack access to probation and treatment resources; 48% of judges report they lack resources to ensure effective monitoring for compliance.
- Probation supervision, a critical piece of the system, is inconsistent and effective programs are frequently unavailable. Moreover, overwhelming caseloads reduce the effectiveness of supervision.

## Solutions

The studies unlocked 64 practical recommendations from professionals, categorized into six major areas, to overcome key problems and improve the efficiency and effectiveness of the DWI system. These

recommendations for system improvements are supported by leading national professional associations representing all phases of the justice system.

- **Communication and Cooperation:** Improve communication and cooperation within and between the professional groups (police, prosecutors, judges, probation officers) as well as among other key stakeholders (e.g., DMV, service providers, medical professionals).
- **Training and Education:** Enhance training and education for all professional groups, especially initiatives that bring together professionals whose work is intimately connected in the system.
- **Technology:** Prioritize the expanded, uniform use of new products and technologies that can improve the identification, processing, and supervision of hard core repeat offenders.
- **Legislation:** Simplify and streamline existing DWI statutes. To achieve this, states should undertake a legislative review that seeks input from key stakeholders and aims to close existing loopholes that permit hard core offenders to avoid prosecution, conviction, and appropriate sanctioning.
- **Record Linkages, Availability and Access:** Develop, improve and evaluate record systems to promote integration and to coordinate data-sharing capabilities among agencies that will ensure timely access to appropriate, accurate, and current information.
- **Resources:** Enhance resources and/or allocate them more effectively to ensure agencies and professionals can achieve their goals and objectives.