



The Working Group

on DWI System Improvements

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Persistent Offenders

The education resources of the Working Group on DWI System Improvements are produced by the **Traffic Injury Research Foundation** with funding from **Anheuser-Busch**. The Working Group on DWI System Improvements is a prestigious coalition of senior leaders of organisations representing frontline professionals in all segments of the criminal DWI system (law enforcement, prosecution, judiciary, supervision, and treatment).

What are some common characteristics of persistent DWI offenders?

- Experiences of persistent DWI offenders in the justice system are quite dissimilar to those of first-time DWI offenders. Repeat offenders are often more adept at traversing the system and are better-informed about what to expect as well as strategies designed to mitigate or delay negative consequences. Unlike most first-time offenders, persistent DWI offenders manifest a different profile and issues. Persistent DWI offenders tend to be:
 - Less educated (Jones and Lacy 2001; Nochajski and Stasiewicz 2006),
 - From lower income levels (Nochajski and Stasiewicz 2006),
 - More likely to be divorced, separated, widowed or never married (Wieczorek and Nochajski 2005; Simpson and Mayhew 1991),
 - Arrested with higher BACs of .18 or over .20 (Wanberg et al. 2005), and
 - More likely to refuse to provide a roadside breath sample (Robertson and Simpson 2002).
 - Further, persistent DWI offenders have a higher lifetime prevalence of drug dependence, alcohol dependence and alcohol abuse as well as higher prevalence of conduct disorder, bipolar disorder PTSD and generalized anxiety disorder (Nelson et al. 2012).
- They are more likely to have more life-time traffic offenses and be involved in crashes more frequently than first DWI offenders (McMillen et al. 1992a; Nochajski and Wieczorek 2000; Wieczorek and Nochajski 2005).



- Of additional concern, repeat DWI offenders are more likely to have criminal histories involving substance-related crimes only and more than one-third had a more extensive criminal history (Labrie et al. 2007).

What are important planning, policy and practice considerations associated with persistent DWI offenders?

- **Identify and implement research-supported strategies.** Representatives of each part of the criminal justice system need to be knowledgeable about evidence-based and promising policies and practices. Practitioners need to remain abreast of research related to effective and ineffective strategies to manage DWI offenders specifically, and understand criminal behavior, substance abuse and mental health conditions generally.
- **Ensure all aspects of the DWI system have staff well-versed in dealing with DWI offenders.** Designating an individual as a DWI offender does not mean all individuals who commit DWI offenses can be identified by one set of general assumptions. Jurisdictions should consider, if practicable and feasible, specialization in DWI for all phases of the system by dedicating duties and caseloads specific to managing DWI offenders. In low population jurisdictions, it is suggested at least one practitioner from each segment of the criminal justice system (e.g., law enforcement, prosecution, defense, probation, judges, treatment) be identified and designated as a DWI subject matter expert who can provide support to other staff.
- **Identify issues and strengths of DWI first offenders early in the process.** Ideally, identifying problem behaviors, substance abuse concerns and mental health issues as well as pro-social endeavors and supports during the pre-trial release phase can inform the setting of appropriate bond or pre-trial supervision conditions. Moreover, early detection of factors that may hinder or help facilitate compliance during the pre-trial period can help guide the selection of early interventions. This approach can help expedite potentially positive outcomes prior to the final disposition of a case and help guide effective planning and responses throughout the remaining processes (e.g., sentencing, conditions of supervision).
- **Use validated assessment tools.** Proven and validated assessment tools for a DWI population are useful to gauge the potential risk of future offending, substance abuse and mental health issues and other factors. It is vital to examine past criminal history and driving records. Collateral contacts with family members, employers and significant others should also be initiated and completed to test the reliability of self-reported information shared by an offender. This information can provide much-needed insight into an individual's past and current behaviors, substance use and potential mental health concerns as well as relationship, vocational and avocational strengths.
 - An initial substance abuse and mental health screening should be administered, at the earliest possible point in the process, to help determine whether it is prudent to require a more comprehensive clinical assessment completed by a certified substance abuse or mental health professional.
 - Appraise existing relationships and activities (e.g., close and healthy family, support, employment, religious affiliation, recreational involvement) of DWI offenders which support or reinforce pro-social behaviors and attitudes. Interventions and conditions of supervision should avoid, to the greatest extent possible, disrupting these supportive activities and relationships.



- Assign achievable, individualized supervision conditions. These conditions should be realistic, relevant and/or supported by research to promote behavior change.
 - **Conditions of supervision are selected with consideration of the likelihood probationers will successfully complete or abide by imposed conditions while on probation, and thereby avoid unnecessary technical probation violations.** Court-ordered financial obligations should not impoverish probationers or impede them from obtaining life necessities. Avoid *piling on* of conditions without considering the ability of probationers to comply with or complete conditions. Further, monitoring an excessive number of conditions for individual probationers when many probation officers struggle to manage caseloads, creates a risk more serious violations will not be identified. Finally, if courts are unwilling or unable to respond to violations of condition, it begs the question why they are imposed in the first place.
 - **Relevant.** Imposing conditions of individualized supervision are more likely to produce positive probation outcomes. Consideration must be given to the availability of appropriate treatment and the ability of probationers to reasonably engage in the treatment (e.g., scheduling to avoid conflict with employment, lack of childcare, limited transportation options). Relevant treatment should be able to effectively and appropriately provide services considering offender characteristics (e.g., sex, culture, substance abuse and mental health issues) in their totality, as well as the ability to pay for services.
 - **Research-supported.** Conditions of supervision supported by the research are more likely to facilitate long-term positive change in behaviors and attitudes of persistent DWI offenders. Conditions of supervision should encourage DWI probationers to be productive and pro-social community members while also being held accountable for their crime. Consider whether each DWI offender requires active probation supervision.
- **Maintain rather than disrupt protective factors.** Judges and probation officers must be prudent when imposing conditions of supervision to ensure they do not obstruct the protective factors and pro-social activities of DWI offenders (e.g., employment, education, time with family). For example, requiring office visits with probation officers, completion of community service tasks, or attendance in testing or programming during work hours may jeopardize the employment of DWI offenders. To this end, consideration of the assessed needs of DWI probationers in a responsive manner can inform supervision conditions.
- **Implement policies and practices permitting swift, certain, and proportional responses to offender behaviors.** Behavioral science suggests justice system responses to violations or accomplishments must be swift or timely to have the greatest impact on behavior change. These responses should also be anticipated and understood (certain) by probationers to achieve ideal outcomes. Also, responses should be proportional to the infractions committed or achievement accomplished by probationers. The use of a graduated approach can reinforce beliefs and perceptions that responses are reasonable, just and deserved (Hawken & Kleinman 2009; Kilmer et al. 2013; O'Connell et al. 2013). The implementation of swift, certain and proportional responses can be accomplished by judicial or court personnel actions or by probation officers' administrative actions. Providing incentives with greater frequency than punishments is a more effective way to encourage compliance. In other words, when learning new skills and making behavioral changes, people appear to respond better and maintain learned behaviors for longer periods of time when approached with *carrots* rather than *sticks*. Behavioral scientists recommend applying a much higher ratio of positive reinforcements to negative reinforcements to better achieve sustained behavioral change. Responses should also be



individualized because what is punishing or rewarding for one probationer is equally punishing or rewarding for another (Gendreau & Goggin 1995; Meyers & Smith 1995; Higgins & Silverman 1999; Azrin 1980; Bandura et al.1963; Bandura 1996).

- **Effective use of alcohol-monitoring technology.** There are numerous technological tools that provide more consistent monitoring and promote positive outcomes for persistent DWI offenders. Suitable technology used in concert with appropriate behavioral and psychological interventions can improve outcomes. Technological applications offer flexibility and varying level of intensity to deliver the appropriate level of supervision based on risk to reoffend. These technologies allow for individualized and customized responses to compliance and non-compliance with court-ordered conditions.
 - **Breath alcohol testing devices.** These devices accurately measure breath alcohol concentration (BrAC) when devices are properly calibrated and maintained. The science of breath alcohol testing, and the correlation of results with blood alcohol testing (BAC) is well-established. In general, two types of breath testing devices are used in the processing and supervision of DWI offenders: small hand-held breath testing devices and larger desktop breath testing devices used for evidential purposes. Hand-held devices are common supervision tools utilized by probation officers in the field and initiatives like the 24-7 program in South Dakota.
 - **Remote alcohol detection.** There are primarily two types of technologies that measure BAC or BrAC remotely and collect, store and transfer data to a supervising agency.
 - **Transdermal Alcohol Monitoring.** A device worn by the DWI offender (often an ankle bracelet) that continuously measures BAC through perspiration through the skin up to every 30 minutes or as scheduled by probation officers. The second technology is a stand-alone breath testing unit that can be installed in the residence of DWI offenders (or other convenient location) and DWI offenders must perform tests during designated windows of time or when prompted to do so. These units may also be equipped with camera capabilities to capture images of the person performing the test.
 - **Alcohol ignition interlock devices (IID).** These devices require drivers to provide a breath sample with a BAC below .02 or .25 (depending on state regulations) before they can start their vehicle. Most often the IID is connected to the starter of a vehicle, and the flow of power to the engine is interrupted until an acceptable breath alcohol sample is provided. These devices also require random running re-tests after a vehicle has been started to ensure that drivers remain alcohol-free throughout their trip (the IID allows ample time to pull to the side of the road). Drivers are made well-aware of how this process functions prior to driving a car with an IID. Data from vehicle events are captured in a data recorder. A growing number of manufacturers have integrated a camera feature to capture an image of the person providing the breath sample. Data are downloaded from the device at the completion of each service interval (usually 30, 60 or 90 days) and reported to various authorities as required, and offenders may be prompted to return to the service center earlier if several violation are incurred. The calibration of devices is checked regularly to ensure the accuracy of the BAC test results.
 - **Other technological tools.** There are many different tracking and monitoring solutions provide real-time location, home confinement capabilities, automated call services and kiosk check-in locations; some with remote alcohol sensing technologies. There are also a variety of tools that can be used to screen for drug usage. Finally, the importance of having integrated information systems or, at least, access to data from other criminal justice and department of motor vehicle



systems to efficiently monitor DWI probationers and contacts they may have with police, such as alcohol-related arrests and driving infractions, cannot be overstated.

Appropriate treatment alternatives. It is essential DWI system practitioners are schooled in the latest science related to substance abuse treatment, mental health services, and associated behavioral issues. There is no substance abuse, mental health or behavioral issues treatment approach appropriate or effective for everyone. As such, court-ordered treatment requirements should consider the availability of an approach or regimen designed to address issues specific to the individual characteristics of probationers (e.g., sex, culture, past trauma, type of substance abused) prior to sentencing. Finally, few people ever successfully remain alcohol or drug free throughout the treatment or recovery periods. Successful long-term abstinence is often preceded by one or more relapse incidents. Relapse during treatment attempts should be anticipated.

What are some of the general characteristics of persistent DWI defendants from public defenders' experiences?

Persistent DWI defendants are more likely to be high-risk to re-offend and require more intensive services and interventions. They may present with one or more of the following:

- Anti-social behaviors, attitudes and friends
- Severe substance abuse issues, including:
 - poly-substance use (e.g., combining prescription medications or illegal drugs with alcohol)
 - failure to recognize they have a problem
 - resistance to change and treatment
- Mental health issues:
 - failure to take prescription medications and substituting alcohol
 - exhibiting suicidal thoughts
- Prior criminal offenses and/or driving violations
 - previous alcohol-related, non-traffic offenses (e.g., domestic abuse, disorderly conduct, assault)

Persistent offenders may also be:

- Older, problem drinkers with a constellation of other issues.
- Risk-taking young drivers with high-BACs, previous driving violations and other identified problem behaviors. They may exhibit a propensity for poor judgment, making poor choices and engaging in risky behavior.
- Considered impoverished or have limited income. The criminal justice process may maintain or accelerate the cycle of poverty, resulting in the inability to pay fines and fees while maintaining employment due to the conviction and loss of transportation. Large fines and fees may become insurmountable obstacles to low-income offenders rendering them unable to regain driving privileges due to their inability to pay court-ordered financial obligations and treatment costs and because of their lack of reliable transportation to attend treatment, employment or other required activities.
- Survivors of traumatic events or abuse with ineffective coping skills.
- Stuck in jail, unable to post bail or waiting for an opening in a treatment facility.



What traditional supervision strategies are most effective to reduce repeat offending by DWI probationers?

Emphasize public safety, offender accountability, and behavioral change and include the following measures:

- Investigate, collect, and report relevant and timely information that will aid in determining appropriate interventions and treatment needs for DWI offenders at multiple stages of the DWI system.
- Assign achievable, individualized case or supervision plans that outline supervision conditions, strategies and treatment services designed to hold DWI offenders accountable and promote behavior change. Conditions of supervised probation, which are mandatory and therefore monitored and enforced, should be realistic, relevant and/or supported by research.
 - **Realistic.** Conditions of supervision are selected with consideration of the likelihood probationers will successfully complete or abide by imposed conditions while on probation, and thereby avoid unnecessary technical probation violations. Fines, fees, surcharges or other required payments imposed by legislation should first acknowledge the ability of offenders to make payments prior to imposing unreasonable monetary demands. In this regard, court-ordered financial obligations should not impoverish probationers or impede them from obtaining life necessities. In addition, “piling on” of conditions without considering the ability of probationers to comply with or complete conditions should be avoided. Imposing a plethora of unrelated requirements may in fact impede the successful completion of a probation sentence. Of equal concern, the capacity of probation departments and the assigned probation officers to effectively monitor, supervise or facilitate the conditions of supervision, as well as the ability and willingness of court-related personnel to respond quickly and in an efficacious manner should be considered as part of sentencing.
 - **Relevant.** Probation officers are encouraged to impose conditions of supervision that are individualized and most likely to produce positive probation outcomes. Conditions of supervision imposed simply because that is “the way it has always been done” should be re-evaluated. Assessments, as previously discussed, can assist in developing supervision requirements that address risk and encourage behavior change. When treatment is ordered, consideration must be given to the availability of appropriate treatment and the ability of probationers to reasonably engage in the treatment (e.g., scheduling to avoid conflict with employment, lack of childcare, limited transportation options).
 - **Research-supported.** Conditions of supervision supported by the research are more likely to facilitate long-term positive change in behaviors and attitudes of DWI offenders. Conditions of supervision should encourage DWI probationers to be productive and pro-social community members while also being held accountable for their crime. The first consideration is whether each DWI offender requires active probation supervision.
- Maintain rather than disrupt protective factors. Court personnel and probation officers must be judicious when imposing conditions to ensure they do not hinder protective factors possessed by DWI offenders (e.g., employment, education, pro-social activities or time with family). To illustrate, requiring office visits with probation officers, completion of community service tasks, or attendance in testing or programming during work hours may jeopardize the employment of DWI offenders.
- Respond to violations or accomplishments with swiftness or timeliness to have the greatest impact on behaviors. These responses should also be anticipated and understood (certainty principle) by probationers to achieve ideal outcomes. In this regard, every violation and accomplishment must



be met with an anticipated result. Additionally, responses should be proportional to the infractions committed or attainment accomplished by probationers. The use of a graduated approach can reinforce beliefs and perceptions that responses are reasonable, just and deserved (Hawken & Kleinman 2009; Kilmer et al. 2013; O'Connell et al. 2013).

- Develop partnerships with programs, agencies, and organisations in the community that can enhance/support the supervision and treatment of DWI offenders.

What educational materials does The Working Group on DWI System Improvements provide?

The efforts of the Working Group on DWI System Improvements have served to identify critical system needs, to make needed educational materials available, to articulate the complex issues associated with program and policy implementation embedded within broader systems, and to give voice to the concerns of practitioners in the DWI system and identify achievable solutions. The Working Group provides educational primers, policy documents, and guides for DWI system professionals to help strengthen the efficiency and effectiveness of the DWI system.

Key topics discussed on this site include:

- Impaired drivers;
- Impaired driving programs and policies;
- Strategies to improve the DWI System;
- DWI Dashboard; and,
- other special topics.

Each of these topics contains a series of fact sheets structured in a question and answer format which are available for free download and sharing (with attribution). These resources are designed to support the training efforts for agencies that work within the DWI system.

To view more fact sheets, or to get more information about alcohol, its effects on driving skills, and impaired driving, visit dwiwg.tirf.ca.



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Traffic Injury Research Foundation

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