



DWI System Improvements for Dealing with Hard Core Drinking Drivers

MONITORING



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RESEARCH
FOUNDATION

A DRIVING FORCE FOR SAFETY

DWI System Improvements for Dealing with Hard Core Drinking Drivers

Monitoring 

Robyn D. Robertson and Herb M. Simpson

**This study was made possible by a charitable contribution from
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The Traffic Injury Research Foundation

The mission of the Traffic Injury Research Foundation (TIRF) is to reduce traffic-related deaths and injuries. TIRF is an independent, charitable road safety institute. Since its inception in 1964, TIRF has become internationally recognized for its accomplishments in identifying the causes of road crashes and developing programs and policies to address them effectively.

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July 2003

Traffic Injury Research Foundation
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ISBN: 0-920071-35-X

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Acknowledgements —●

This report is the fourth in a series dealing with DWI system improvements. The first dealt with enforcement issues -- problems in the detection and apprehension of hard core drinking drivers; the second dealt with the prosecution of these offenders; and the third with their adjudication and sanctioning. The current report examines ways to improve the monitoring of these offenders. It would not have been possible without the assistance and participation of probation and parole officers across the United States.

We acknowledge with special gratitude the technical expertise and assistance provided by William Burrell, formally the Chief of Supervision Services for the Probation Division of the Administrative Office of the Courts in New Jersey, and currently an associate professor for the Department of Criminal Justice at Temple University in Philadelphia, PA, and Zachary Dal Pra, Deputy Chief, Assessment and Program Development, Maricopa County Adult Probation, Arizona. The efforts of these two exceptional professionals allowed us to provide the level of detail and explanation required to convey the complexity of the monitoring phase and accurately communicate the concerns and recommendations of probation and parole officers nationwide.

We also express appreciation to the individuals who reviewed and provided comments on a draft of this report: William Burrell, and Zachary Dal Pra (see above), Carl Wicklund, Executive Director of the America Probation and Parole Association (APPA), and Andrew Molloy, President-elect, APPA.

We acknowledge with gratitude the APPA who facilitated the organization of workshops with probation and treatment professionals from 7 states, representing 9 organizations -- their names and affiliations appear in Appendix A. We also acknowledge the 10 probation officers and treatment professionals who participated in the workshops. Their passion, expertise and experience provided valuable insights into monitoring problems and how to solve them. Their names and affiliations are provided in Appendix B.

We are also grateful to the Board of Directors of the APPA for their assistance with identifying professionals experienced in DWI cases who could be surveyed to determine



the generality of the findings obtained from the workshops and to gain further insights into monitoring problems and their solutions. A total of 890 probation and parole officers from 41 states provided us with their views, opinions, and experiences. Gratitude is also extended to Carl Wicklund (see above) for his guidance, assistance and expertise throughout the completion of this phase.

In addition to the authors of this report, other members of TIRF staff who facilitated various aspects of the project were: Doug Beirness, Dan Mayhew, Barbara Koppe, Steve Brown, Gisele Perron, Emerita D'Sylva, and previous employees, Manon des Groseilliers and Rebecca Val.

The project was made possible by a charitable contribution from the Anheuser-Busch Companies, whose substantial support and encouragement is gratefully acknowledged.

The opinions expressed in this report are those of the authors and do not necessarily represent the views or opinions of the sponsor, the APPA, administrators, senior directors or chiefs, and individual officers participating in this project.



List of Abbreviations Used in the Report

AJA	American Judges Association
ALS	Administrative License Suspension
ALR	Administrative License Revocation
BAC	Blood Alcohol Concentration
CSO	Community Service Order
DMV	Department of Motor Vehicles
DWI	Driving While Impaired. See footnote, page 2
DWS	Driving While Suspended
DWR	Driving While Revoked
EM	Electronic Monitoring. See footnote, page xvii
FARS	Fatal Accident Reporting System
FBI	Federal Bureau of Investigation
FTA	Failure to Appear
ISP	Intensive Supervision Probation
NCSC	National Center for State Courts
NDR	National Driver Register
NHTSA	National Highway Traffic Safety Administration
NTSB	National Transportation Safety Board
PBJ	Probation Before Judgment
PBT	Preliminary Breath Test
PSR	Pre-sentence Report
SFST	Standardized Field Sobriety Test
VIP	Victim Impact Panel
VOP	Violation of Probation



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Executive Summary —●

Synopsis

- ◆ This is the fourth report from a major study designed to identify ways to improve the efficiency and effectiveness of the criminal DWI¹ system for dealing with hard core drinking drivers.
- ◆ The present report underscores the need for system improvements by identifying key problems in the monitoring of DWI offenders and recommending practical solutions derived from prior research and validated by the experiences of almost a thousand probation and parole officers² who participated in the project.

Background

- ◆ Unprecedented declines occurred in the drinking-driving problem during the 1980s and early 1990s.
- ◆ These improvements have been largely attributed to changes in socially responsible individuals, who were drinking and driving less often and consuming less alcohol when they drove.
- ◆ Since the mid-1990s, however, declines in the problem have not been sustained. Progress halted altogether in the late 1990s. And, even more worrisome is the fact that alcohol-related crashes actually increased in 2000, remained at that level in 2001, and increased again in 2002 (Sweedler and Stewart 2003).

¹The abbreviation DWI (driving while impaired, or intoxicated) is used throughout this report as a convenient descriptive label, even though some states use other terms such as OUI (operating under the influence) and DUI (driving under the influence), and in some cases they refer to different levels of severity of the offense. We have used DWI not only to maintain consistency throughout the report but also because it is more descriptive of the offense usually associated with hard core drinking drivers.

²The term “probation officer” is used throughout this report for convenience to indicate both probation and parole officers where appropriate.



- ◆ A very significant portion of the problem is accounted for by a high-risk group of drinking drivers referred to variously as hard core drunk drivers, chronic drunk drivers, persistent drinking drivers, repeat offenders or drivers with high blood alcohol concentrations (BACs).
- ◆ This dangerous group of offenders has been declared a priority by virtually all major government and non-profit agencies in the U.S.
- ◆ In response to this concern, new programs and policies have been developed and implemented to deal with hard core drinking drivers -- e.g., many states have passed legislation imposing stiffer penalties on offenders with BACs in excess of .15; forty-one states have passed some form of vehicle incapacitation law.
- ◆ Great strides have been made on the legislative front and continued efforts are needed.
- ◆ At the same time, there is growing evidence that legislation is not enough, since hard core repeat offenders are “slipping through the cracks” -- in part, because their familiarity with the system allows them to circumvent it.
- ◆ Changes are needed that will improve the efficiency and effectiveness of the DWI system for dealing with hard core drinking drivers.

Legislation and regulation are necessary but not sufficient for success.

Objectives

- ◆ This project has as its primary goal focusing attention on the need for improvements in the criminal DWI system by identifying priority problems and recommending practical, cost-effective solutions.
- ◆ The study is examining the entire spectrum of policies, programs and practices that target hard core drunk drivers -- from initial apprehension and charging by the police, through prosecution and adjudication, to the application of sanctions, and follow-up monitoring by probation.

Goal: Identify priority problems and recommend practical, cost-effective solutions.



- ◆ The current report deals with the need for improvements in the monitoring phase of the DWI system, during which probation officers are responsible for supervising offender compliance with and completion of imposed penalties.

Approach

- ◆ The project involved a series of steps designed to illuminate where changes are needed in the criminal DWI system's response to hard core drinking drivers to improve its efficiency and effectiveness.
- ◆ A comprehensive literature review was used to generate problems identified by previous research. These problems were synthesized and condensed into a short-list of priority issues.
- ◆ This list formed the basis for discussion in a series of workshops involving 10 probation officers and treatment professionals representing seven states. All were experienced with the monitoring of DWI offenders and they represented nine different agencies. Workshop participants verified, expanded and prioritized the problem list and developed a set of solutions.
- ◆ To increase the generality of these findings and obtain further information about such things as the frequency with which various problems are encountered, a major national survey of probation and parole officers was conducted with the cooperation and assistance of the American Probation and Parole Association.
- ◆ A total of 890 probation and parole officers from 41 states responded to the survey, ensuring the findings are representative of the problems facing professionals across the country.

Findings and Recommendations

- ◆ Probation officers consistently acknowledge the need for improvements in the DWI system to enhance the monitoring of offenders.



- ◆ In addition, decreasing resources combined with an unprecedented growth in the number of DWI offenders under correctional control has significantly affected the ability of officers to provide adequate supervision, compromising the effectiveness of probation as a sentence. When defendants are ultimately convicted, there are currently no guarantees that the penalties and treatment imposed will actually be fulfilled despite the best efforts of probation officers.
- ◆ A linchpin to successfully improving the efficiency and effectiveness of the DWI system is to streamline and simplify the monitoring of repeat offenders.
- ◆ In addition to the need for better monitoring, probation officers identified a variety of other problems and needed changes to the monitoring system.
- ◆ Officers identified eight key problems that impede the effective monitoring of hard core drinking drivers, and recommended ways to overcome these problems. The problems, in order of priority, include: non-compliance with court orders, caseload, conflicting goals, sentencing disparity, program design, paperwork, net-widening, and records.

◆ **Non-Compliance with Court Orders**

- *The problem:* Probation officers are responsible for the day-to-day monitoring of offenders to ensure they comply with the terms and conditions of their sentence. The importance of this function cannot be emphasized enough -- if public safety is to be protected, and if offenders are to benefit from rehabilitation programs, it is imperative they comply with the imposed sentence. But probation officers estimate that almost half (44%) of offenders fail to comply, to some extent, with the terms and conditions of their sentence.

Nationally, officers estimate 44% of offenders fail to comply with the terms of their sentence.

Common problems that impede the efficiency and effectiveness of the monitoring process include a lack of information, authority to impose sanctions for non-compliance, and sufficient resources to monitor and assist offenders. The accurate and timely flow of information from service providers, such as treatment or interlock agencies, gives probation officers



critical data on compliance and other issues. However, officers report that this exchange of information is often inconsistent, or at times, non-existent.

Even when officers are made aware that offenders are non-compliant with the terms and conditions of their sentence, almost one-third of officers report that they lack the authority to impose additional meaningful sanctions for violations.

One-third of officers report they lack the authority to impose sanctions for non-compliance.

Finally, insufficient resources decrease the level and quality of supervision officers are able to provide, thereby compromising their ability to ensure that offenders are compliant.

- *The consequences:* Some offenders experienced with the criminal DWI system quickly learn that a conviction does not mean they will have to comply with some or all of the imposed conditions because of weaknesses inherent in the monitoring process. The ability of offenders to circumvent penalties compromises public safety and the effectiveness of penalties in changing problematic behaviors. As well, problems in enforcing compliance are frustrating for officers, impacting their motivation.

- *The solution:* A majority of officers agree that more efficient communication with both treatment and service providers would facilitate the exchange of information and improve their ability to monitor offenders. Two-thirds (67%) of officers also recommend expanding treatment facilities because they would provide an added layer of supervision as well as address the issues that result in offending in the first place.

Two-thirds of officers recommend expanding treatment to increase supervision and address addiction.

Almost half of officers (44%) believe they need the opportunity for more random contacts with probationers in the community to reinforce compliance, and more frequent random alcohol testing because the uncertainty this creates enhances compliance. Finally, officers support the expansion of cooperation and coordination with police agencies that often perform similar functions and who can provide both security and assistance when necessary.

44% of officers want more opportunities for random community contacts and alcohol testing.



◆ Caseload

- *The problem:* Probation populations have been increasing steadily for the past several years -- from 3.2 million in 1997 to 3.9 million in 2001 (DOJ 1998; 2001). The DWI population being monitored by probation officers has risen even more sharply -- in 1997, 14% of the adult probation population was serving sentences for DWI offenses; by 2001, this number had risen to 18%. Almost one in five offenders on probation had been sentenced for DWI (DOJ 1998; 2001).

In 2001, almost 1 in 5 offenders on probation had been sentenced for DWI.

This growth in offenders has resulted in substantial increases in the caseloads supervised by officers and, accordingly, their respective workloads. Statistics from various state agencies indicate that caseloads vary substantially, from less than 100 offenders to more than 3,000 (e.g., CA) in some isolated instances (Neito 1996). Officers responding to our survey report that their average caseload consists of 112 offenders, including 55 for DWI offenses.

Significant cutbacks and/or stagnant funding levels have resulted in staff deficiencies, exacerbating the caseload burden nationally. As well, offenders are now being assigned to probation supervision at a higher rate because of jail overcrowding. Moreover, there is evidence that probation sentences are being imposed for longer periods and at higher levels of supervision that include more complex and varied conditions, further adding to the workload of officers. As a result, the quality of probation supervision has deteriorated to the point that it is not taken seriously by either the offender or the general public.

- *The consequences:* With increases in caseload come corresponding decreases in the quantity and quality of supervision. Officers are unable to monitor offenders adequately or confirm information provided by offenders during scheduled appointments. Random contacts in the community to verify information are infrequent at best and officers have difficulty completing paperwork and maintaining current files.



Significant increases in caseload also result in a reduced emphasis on offender rehabilitation and reintegration into the community. Officers report they spend more time enforcing compliance and have less time to assist offenders. Probation without rehabilitation means that underlying issues contributing to offending are not addressed and offenders, particularly those who have previously offended, are far more likely to recidivate, leading to frustration on the part of officers.

- *The solution:* Over 80% of officers want to see reasonable limits placed on the size of caseloads to increase the quality of supervision they provide. Even if caseloads are not restricted, almost half (47%) of officers report that more probation officers are needed to cope with currently excessive demands for monitoring. This is especially important considering the rate at which offenders are increasingly being assigned to probation terms at higher levels of supervision. If probation is to serve as the primary sentence for DWI, sufficient resources must be allocated to ensure the effectiveness of monitoring.

A majority of officers support reasonable limits on caseloads to increase the quality of supervision.

47% of officers recommend hiring more officers to reduce caseloads.

Twenty percent of officers recommend the use of technological innovations, such as electronic monitoring (EM) with alcohol testing, to permit the effective supervision of larger caseloads. Twenty percent of officers also support the expansion of in-patient treatment to reduce time demands on officers and permit greater supervision, particularly of high-risk offenders. This can prevent further recidivism by these chronic offenders and thereby reduce the number returning to probation caseloads.

◆ **Conflicting Goals**

- *The problem:* Correctional initiatives in general have two separate and often conflicting goals: enforcement and rehabilitation. Probation officers often experience the conflict posed, on the one hand, by the need to monitor behavior and enforce compliance with the terms of probationary sentences, and on the other hand, by the need to assist in rehabilitative efforts and serve



as a resource for offenders being integrated into the community. Ideally, officers should be able to balance the demands created by enforcement and rehabilitation but fiscal constraints and a lack of understanding about addiction issues often preclude this possibility. As a consequence, officers often devote considerably greater energy to the enforcement of compliance leaving little time for rehabilitative efforts. In this context, 26% of officers identified enforcement as their greatest priority, whereas only 1% identified rehabilitation.

26% of officers identified enforcement as their greatest priority; only 1% said rehabilitation.

- *The consequences:* A priority emphasis on the enforcement of probation orders results in an increase in revocation rates and leads to officers spending more time completing paperwork and appearing at court hearings. Offenders also begin to view officers as “assisting them in failing” because of strict supervision, and officers themselves can become frustrated and begin to see themselves as part of the problem. Of greatest importance, officers believe that recidivism rates will continue to increase if they have little time to spend on rehabilitation and reintegration.
- *The solution:* A majority of officers report that more resources are needed to make rehabilitation a priority for probation agencies. Consistent with this theme, 67% want to see existing treatment programs expanded to accommodate more offenders, who in the absence of treatment, will continue to recidivate. Moreover, 63% of officers believe judges need education on the relationship between addiction and offending to ensure that appropriate sentences are imposed.

A majority of officers report that more resources are needed to make rehabilitation as a priority.

◆ Sentencing Disparity

- *The problem:* Sentencing disparity usually refers to the imposition of different (sometimes quite different) sentences on similar offenders who have committed similar offenses. It can also, but less commonly, refer to the imposition of

More than 50% of officers report considerable disparity exists in the sentencing of repeat DWI offenders.



inappropriate penalties for a particular offense. More than half (53%) of the officers surveyed report that similar offenders who have committed similar offenses often receive disparate sentences. More than half (54%) of the officers in our survey also reported that they do not believe the penalties imposed by judges reflect the severity of the offense.

Disparity in sentencing is not the result of capricious behavior by the judiciary. It occurs because of the vast number of judges involved in sentencing DWI offenders, judges may not be uniformly familiar with the benefits of different sentencing options, programs may not be uniformly available in all jurisdictions, and offenders have different capacities for paying program costs.

- *The consequences:* The causes of disparity in sentencing may be understandable but it makes monitoring more complicated because of the broad range of sentences that can be imposed despite a similarity in offender backgrounds and circumstances. Other offenders who are aware of the disparity may be less willing to comply with penalties if they are perceived to be unfair. Disparity can also detract from the deterrent effect of sentences and reduce the potential for behavior change.
- *The solution:* Officers recommend increased efforts to inform judges about the effectiveness of various penalties, potentially leading to greater consistency in sentencing -- this echoes a similar recommendation made by judges themselves (Robertson and Simpson 2002b). Two-thirds (63%) of officers also support more judicial education on the relationship between addiction and offending. In addition, 67% of officers recommend the expansion of treatment programs to ensure that judges are uniformly able to impose the appropriate level of treatment for DWI offenders.

Two-thirds of officers believe more judicial education will reduce disparity.

♦ Program Design

- *The problem:* Problems in the design, structure and/or administration of imposed penalties or programs (e.g., fines, ignition interlock, electronic



monitoring³ (EM), treatment) impact the effectiveness of monitoring. The success of some sentences is frequently compromised because mandated programs do not facilitate the entry of appropriate offenders nor do they encourage compliance. In addition, it can be difficult to verify that

Half of officers say that offenders are excluded from some programs because of their inability to pay fees.

offenders have completed the requisite programs. Officers report that poor program planning and design contribute to a variety of concerns including, the financial demands imposed (e.g., offenders are excluded from beneficial programs because they are unable to pay fees), legislative incompatibilities (e.g., hard core offenders who could benefit from interlocks are excluded because of long periods of “hard” license suspension), irregular administration and operation (e.g., a lack of uniformity in the quality of programs), inconsistent enforcement (arising for example because no single agency has responsibility for it), and the use of technologies that are not sufficiently advanced to prevent or detect circumvention.

- *The consequences:* Repeat offenders, in particular, quickly learn that the structure, organization and operation of some programs make compliance with them difficult to monitor and enforce. In some respects, the legislative preoccupation with punishment is both simplistic and, at times, misguided. Legislative incompatibilities affecting program eligibility can result in offenders being excluded from programs that would be effective in changing problem behavior -- e.g., the conflict between long, “hard” license suspension and early reinstatement as an incentive for participating in an interlock program.
- *The solution:* To ensure that offenders are not excluded from effective programs, a majority of officers strongly recommend the creation of indigent offender funds, particularly for ignition interlock and EM programs. To ensure that offenders are not being excluded from appropriate programs or placed in ineffective ones, officers support the careful evaluation of program entry

Officers ranked funds for indigent offenders as the single most effective solution to program issues.

³The term “electronic monitoring” (EM) is used throughout this report for convenience to refer to a variety of electronic technologies used to track and monitor offender movement, including electronic tracking, electronic reporting and house arrest.



requirements. In this context, other recommendations endorsed by officers include the development of certification processes and standards for treatment programs, efforts to match offenders to appropriate programs, and more incentives to increase enforcement.

Nearly all officers agree state governments should certify treatment providers to ensure the quality of treatment.

◆ Paperwork

- *The problem:* Similar to other criminal justice professionals (see Simpson and Robertson 2001), probation officers spend a considerable amount of time completing paperwork. They spend almost one-third (31%) of their time filling out forms, documenting contacts and writing reports. The amount of paperwork officers complete is a function of their caseload and the amount of supervision each offender requires -- i.e., officers with larger and/or intensive supervision caseloads do more paperwork.

Officers spend nearly a third of their time filling out forms, documenting contacts and writing reports.

- *The consequences:* Time spent completing paperwork reduces the amount of time officers have to supervise offenders directly. Offenders, particularly those on lower levels of supervision, have little concern about being detected for violations and can continue to engage in problem behavior without repercussions. Paperwork can also discourage officers from reporting all probation violations.

Time spent completing paperwork reduces the amount of time officers have to supervise offenders directly.

They admit that, in some circumstances, the time-consuming nature of paperwork associated with violations oblige them to exercise discretion in terms of action taken. Paperwork can also create frustration for officers who complete violation reports only to discover that no action was taken and offenders did not incur additional sanctions, even for significant violations.

- *The solution:* Officers support the creation of standard forms for various actions such as pre-sentence reports (PSRs) and status reports regarding offender violations. Officers also agree that more standardization is needed in the reports produced for probation officers by various service providers. This would facilitate the quick review of these reports. Improving

Officers recommend more extensive use of technology and greater automation.



automation and increasing the use of technology (e.g., notebooks, integrated information systems) in the reporting process is also recommended by officers so they can spend more time supervising offenders directly. Technology, particularly web-based applications, can reduce the duplication of information and simplify the sharing of pertinent information between officers, courts and service providers, saving time and reducing errors.

◆ Net-widening

- *The problem:* Net-widening refers to the expansion of correctional control. It frequently occurs when promising systemic changes -- i.e., new or “alternative” sentences and programs -- are implemented in an effort to reduce the number of individuals incarcerated in correctional institutions and/or reduce the likelihood of recidivism. In theory, the introduction of alternative sentences and programs should reduce the overall prison population by diverting offenders from prison into alternative programs; in practice, however, these programs become “add-ons” to the existing system instead of true alternatives because only low-risk, non-violent offenders are diverted -- offenders who, under normal circumstances, would not have been formally processed by the criminal justice system. As a result, the catchment process is widened to include those who were previously excluded and the number of offenders under correctional control increases.

Alternatives to incarceration became “add-ons” to the existing system instead of true alternatives.

As evidence of this, the number of DWI offenders under some form of correctional control has increased dramatically. For example, between 1986 and 1997, the number of DWI offenders under some form of correctional control increased from 270,000 to 513,000, despite the fact that during the same time period the number of DWI arrests actually declined. The proportion of DWI offenders under correctional control more than doubled from 151 offenders per 1,000 DWI arrests to 347 (Maruschak 1999).

Between 1986 and 1997 the proportion of offenders under some form of correctional control more than doubled.

Today, more arrested offenders are being formally processed and sentenced to probation terms that require greater supervision; moreover, the level of



supervision being required has also increased. This directly impacts the number of offenders being supervised by probation and reduces the ability of officers to adequately supervise repeat DWI offenders and ensure treatment is received.

- *The consequences:* The expansion of alternatives to incarceration, many of which have been proven to be effective, has significantly increased caseloads because of net-widening. Paradoxically, this has reduced the effectiveness of probation and alternatives to incarceration because the increased volume of offenders are difficult to supervise and the savvy repeat offenders know this means that non-compliance will often go undetected.

Moreover, officers have less time and fewer resources to devote to those offenders requiring more intensive supervision, such as hard core drinking drivers, because the expansion of alternatives frequently did not include an increase in funding. As well, offenders that are subjected to unnecessarily strict conditions of probation and close supervision are more likely to fail and remain part of the probation caseloads.

- *The solution:* Officers support a strategic review of sentencing policies pertaining to alternative penalties and programs to assess where and how net-widening is occurring and how its negative effects can be controlled and reduced. This review should be conducted with the intention of ensuring that only appropriate offenders (those with certain characteristics or sufficiently severe offense histories) are sentenced to alternative programs.

Additionally, offenders should not be assigned to higher levels of supervision than required. This will effectively reduce demands on officers and ensure that offenders are more likely to complete their probation terms successfully. Moreover, criminal justice practitioners should be encouraged to employ administrative discretion appropriately to ensure that more offenders do not unnecessarily become part of the correctional net.

Officers support a strategic review of alternative programs to assess where and how net-widening is occurring.



◆ Records

- *The problem:* Records necessary for the monitoring of offenders -- including criminal histories and driver records -- are maintained by different agencies for different time periods. Their contents may not be comparable and their accuracy or completeness may be inconsistent at best. Inefficient access to the needed information also impedes decision-making and the effective monitoring of offenders.

Current and accurate records are important for probation officers in the preparation of PSRs and the monitoring of offenders. But officers in our survey report that they are able to spend less than 5% of their time searching various record systems because of competing priorities, and 62% of officers rated the accuracy and accessibility of criminal history records as poor or average; 70% said the same about driver records. Accordingly, timely access to accurate and easy to interpret records is critical, but usually lacking.

62% of officers rated the accuracy and accessibility of criminal history records as poor or average.

- *The consequences:* If probation officers are unable to identify all prior convictions accumulated by an offender, they cannot be included in the PSR, so judges may sentence inappropriately or more leniently than is required by legislation or sentencing guidelines. The inability of officers to locate new charges, arrests or dispositions for offenders in their caseload can also result in inaccurate decisions on the part of probation officers to reduce supervision or revoke probation. Offenders that cannot be tracked following relocation can often avoid monitoring altogether as well as sanctions for non-compliance.

- *The solution:* Officers report that greater efforts to standardize the record systems would significantly improve their ability to locate in a timely manner important information that is both accurate and up-to-date.

They also support increased automation of record systems to facilitate record searches. Automatic reporting from criminal justice agencies would also reduce delays in entering important data and result in more current records. Almost all officers

95% of officers support the maintenance of diversion records for look-back periods.



(95%) support maintaining records of diversion for the legislated look-back period. These records prevent offenders from qualifying for diversion more than once, meaning they will be appropriately identified as a repeat offender when arrested subsequently.

Summary

It is evident that the monitoring of DWI offenders is complex, involving a broad range of sentences with varying levels of supervision that rely on considerable cooperation and coordination with a variety of criminal justice and other agencies. In addition, decreasing resources combined with an unprecedented growth in DWI offenders under correctional control has significantly affected the ability of probation officers to provide adequate supervision, compromising the effectiveness of probation as a sentence.

When defendants are ultimately convicted, there are currently no guarantees that the sentence imposed will actually be fulfilled despite the best efforts of probation officers. There is a need to streamline and simplify the monitoring of DWI offenders to improve the effectiveness and efficiency of the system. This is a primary concern for probation officers and a linchpin to successfully improving the DWI system. The importance of this cannot be emphasized enough if public safety is to be protected and if offenders are to benefit from rehabilitation programs.

In addition to this general recommendation, a variety of specific changes to the DWI system can improve the monitoring of repeat offenders. These improvements are organized below in terms of the general method by which this can be achieved.

♦ Training and Education

Probation officers identified several areas in which training and education can improve the monitoring of hard core drinking drivers. They recommend:

- ♦ providing more opportunities for judicial education on the effectiveness of various sentencing options to create consistency in sentencing and reduce recidivism.



This echoes a recommendation from judges themselves in our previous report on sanctioning (Robertson and Simpson 2002b) and was underscored very recently by Judge Steve Teske in his report on the work of APPA's Judicial Committee, "...it is not a lack of judicial desire to engage a 'best practices' approach to sentencing and supervision, but rather a lack of knowledge among many in the judiciary of the 'what works' literature" (Teske 2003, p.18). In this context, the conditions of probation must be achievable for offenders and the conditions must be relevant, realistic and research-supported;

- ◆ improving judicial education to include an emphasis on the relationship between addiction and DWI offending so that treatment is widely recognized as a necessary element in sentencing hard core DWI offenders; and
- ◆ increasing training opportunities for probation officers regarding the operation and the effectiveness of the various sentences and programs they are required to monitor.

◆ Communication and Cooperation

Officers believe that improved communication and cooperation with other professionals involved in the DWI system will facilitate the monitoring of offenders. They support:

- ◆ facilitating communication with treatment and service providers to improve the exchange of information and permit officers to have timely access to information on offender behavior and compliance; and
- ◆ encouraging greater cooperation and coordination between police and probation agencies to improve the supervision of offenders in the community, promote the sharing of information, reduce service duplication, and increase security.

◆ Record Linkages, Availability and Access

Records containing data and information pertinent to the preparation of PSRs and monitoring of DWI offenders are maintained by a diversity of agencies. Records vary in terms of how current the information is with regard to content (both in terms of the nature



of the information and its scope) as well as its accuracy and completeness. Officers require timely access to accurate, contemporary and comprehensive records to facilitate the monitoring of DWI offenders. The importance of this has been underscored by numerous agencies and remains a critical need. Officers support the following improvements to ensure the availability of needed information:

- ◆ increasing efforts to standardize and automate important local, state and national record systems to facilitate timely access to records that contain accurate, up-to-date information, consistent in content and structure; and
 - ◆ maintaining diversion records for legislated look-back periods to prevent offenders from qualifying for diversion more than once and to improve the identification of repeat offenders.
-
- ◆ Technology

Probation officers believe that greater use of technology can improve the efficiency and effectiveness with which they monitor hard core drinking drivers. They support:

- ◆ improving and expanding the use of technological innovations such as ignition interlocks and EM to increase the supervision of high-risk offenders;
 - ◆ increasing the use of technology and automation in the record systems to facilitate the location and acquisition of important information, simplify the sharing of information, and reduce errors; and
 - ◆ increasing the random testing of offenders in the community to ensure abstinence from alcohol and/or drugs which are the source of offending.
-
- ◆ Legislation and Regulation

Officers also identified a number of legislative and regulatory changes that would improve the monitoring of repeat DWI offenders. They recommend:



- ◆ imposing reasonable limits on caseloads to permit greater supervision and increase rehabilitative activities;
- ◆ certifying treatment programs and developing program standards at the state level to create consistency in program quality and improve effectiveness;
- ◆ facilitating efforts to match offenders to appropriate programs to reduce recidivism and use resources more effectively;
- ◆ developing reasonable incentives to promote and encourage the consistent enforcement of penalties and improve compliance; and
- ◆ strategically reviewing legislation and policy pertaining to the administration and implementation of alternative penalties and programs to assess where and how net-widening occurs, reduce and control its negative effects, and decrease the caseload burden on officers.

◆ Resources

Officers report that more resources are needed to improve the monitoring of offenders and increase the effectiveness of probation as a sentence. Without an infusion of new resources or the reallocation of existing monies, probation agencies will be unable to achieve their goals of promoting public safety and reducing recidivism. With adequate resources, probation supervision can be very effective in reducing recidivism.

At the same time, to make the best use of available resources, there is a need for more research on the effectiveness of various penalties and programs to guide the development of a “best practices” approach to supervision and intervention programs. They support:

- ◆ making rehabilitation a priority for probation agencies to reduce recidivism among hard core drinking drivers;
- ◆ ensuring treatment facilities, particularly those for women and minorities, are available to address addiction issues, change problem behavior and provide an added layer of supervision in the community;



- ◆ increasing the availability of in-patient treatment programs for offenders with severe addiction problems to reduce recidivism, reduce time demands on officers and permit greater supervision of all offenders;
- ◆ permitting more contact with offenders in the community to gather relevant information, increase compliance, and create the perception of constant supervision;
- ◆ hiring technical staff to perform collateral duties (e.g., random surveillance and testing, searching records) to permit officers more time to supervise offenders, reinforce compliance, and promote rehabilitation;
- ◆ hiring more probation officers to reduce caseloads and improve the quality of supervision of offenders; and
- ◆ creating more indigent offender funds to reduce class-bias in sentencing and increase access to alternative penalties, thereby promoting rehabilitation as an objective.



1.0 Background —●

Unprecedented declines in the drinking-driving problem occurred during the 1980s (NHTSA 1997; NTSB 2000; Simpson 1993; Sweedler 1994; U.S. Department of Health and Human Services 1988). Progress continued through the early 1990s, although the gains were far less impressive (NHTSA 1997; NTSB 2000), but it halted altogether in the late 1990s (NHTSA 2000). Even more worrisome is the fact that alcohol-related crashes actually increased in 2000 (NHTSA 2000), remained at that level in 2001 (U.S. DOT 2002), and increased again in 2002 (Sweedler and Stewart 2003).

Various explanations have been offered as to why the substantial gains in the 1980s were not replicated in the 1990s (Simpson et al. 1994; Stewart and Voas 1994). One widely accepted explanation is that the characteristics of the drinking-driving problem changed (Beirness et al. 1998; Mayhew et al. 2000) and that continued progress on a similar scale would be challenging because of this.

The profound improvements observed in the 1980s have been attributed primarily to changes in the practices of so-called socially responsible individuals -- they were drinking and driving less often and had lower blood alcohol concentrations (BACs) when they did drink and drive. The same could not be said for a group of individuals who frequently drive after drinking, usually with very high BACs, many of whom are alcohol-dependent. For example, a recent study (Baker et al. 2002) found that nearly 70% of fatally injured drivers who had BACs in excess of .15 were alcohol-dependent. As a spokesperson to the National Safety Council stated, "We've already deterred virtually all of the social drinkers. We're now down to the hard core of people who continue to drink and drive in spite of public scorn..." (Pickler 2001).

The importance of this high-risk group was extensively documented early in the 1990s in a report from our institute entitled, "The Hard Core Drinking Driver" (Simpson and Mayhew 1991), even though the legacy of concern about this group certainly pre-dates that report (e.g., Glad 1987; L'Hoste and Papoz 1985). By the end of the 1990s there was widespread recognition that addressing the problem of hard core drinking drivers



should be a national priority. Groups such as the National Transportation Safety Board, the National Highway Traffic Safety Administration, the Century Council, the American Legislative Exchange Council, Mothers Against Drunk Driving, and the National Commission Against Drunk Driving declared that the key to continued progress in the fight against drunk driving was dealing effectively with hard core repeat offenders.

As more and more agencies accepted the importance of dealing with hard core drinking drivers, a variety of descriptive labels for this group emerged -- e.g., "persistent drinking driver", "chronic drunk driver" and "high-BAC driver". Despite the variation in terms, all of them referred to individuals with a common set of characteristics -- they frequently drove after drinking; they usually had high BACs (often defined as a BAC in excess of .15); they had a history of arrests and/or convictions; and, many were alcohol dependent (Hedlund and Fell 1995; Simpson 1995; Simpson and Mayhew 1991).

Research shows that such individuals comprise a very small percentage of the population of nighttime drinking drivers -- less than 1% -- but they account for a very large percentage of the alcohol-related crashes occurring at that time -- in excess of 50% (Simpson and Mayhew 1991).

The magnitude of the problem created by the hard core and the apparent inability of the existing DWI¹ system to change their behavior led to a growing interest in identifying countermeasures that might be effective with this group. A number of proven and promising solutions were described in a second major report from our institute entitled, "Dealing with the Hard Core Drinking Driver" (Simpson et al. 1996).

Since that report was issued, many of the recommended measures have been implemented. Indeed, the 1990s proved to be a watershed for legislation targeting the hard core drinking driver. Twenty-seven states passed legislation that imposes stiffer penalties on offenders with BACs in excess of .15 (the BAC level at which the aggravated charges are applied varies from .15 to .20 across the states; McCart 2002), explicitly recognizing the dangers posed by drivers with high BACs. Other states

¹The abbreviation DWI (driving while impaired, or intoxicated) is used throughout this report as a convenient descriptive label, even though some states use other terms such as OUI (operating under the influence) and DUI (driving under the influence), and in some cases they refer to different levels of severity of the



increased the charge from a misdemeanor to a felony, based on such things as prior convictions and aggravating factors.

And, this trend does not appear to have lessened. According to the Century Council, “in the 2000 legislative session, 42 states introduced nearly 300 pieces of legislation focusing...on the hard core drunk driver” (The National Hardcore Drunk Driver Project 2001). Forty-three states have now passed legislation for either the mandatory or discretionary use of alcohol ignition interlocks; 41 have passed some form of vehicle incapacitation law (i.e., license plate removal, vehicle impoundment, immobilization, or forfeiture).

It is evident that great strides have been made on the legislative front. However, there is still room for improvement in the legislative arena and continued efforts are required to promote the needed changes.

At the same time, legislation and regulation, although necessary for success, are not sufficient. This is poignantly illustrated by the case of ignition interlocks. An impressive body of literature (Beirness 2001) has demonstrated that interlocks significantly reduce DWI recidivism. As noted above, this has led to 43 states passing the requisite legislation to enable their use with offenders. To date, however, only about 40,000 units are in use in the United States -- this represents just 3% of eligible offenders. Even in jurisdictions where the law removes judicial discretion by making interlocks mandatory for repeat offenders, very few have been installed (Beirness 2001). Part of the reason for this is that the law is ignored for various reasons, such as a lack of adequate resources and the perceived cost (Tashima and Helander 1998). Whatever the reasons, the fact is that an effective penalty, although legislated, is not being applied consistently.

Legislation and regulation are necessary but not sufficient for success.

The case of the interlock is, unfortunately, not unique. It is illustrative of a wider range of problems in the criminal DWI system that reduce its effectiveness and efficiency in dealing with hard core drinking drivers.

Problems throughout the DWI system diminish its effectiveness.

Indeed, there are problems throughout the system -- in enforcement, prosecution,

offense. We have used DWI not only to maintain consistency throughout the report but also because it is more descriptive of the offense usually associated with hard core drinking drivers.



sanctioning, and monitoring (Hedlund and McCartt 2001). Such problems affect efforts to keep hard core offenders off the road and/or to change their behavior.

Some of the problems are not new -- e.g., detecting hard core offenders who are alcohol tolerant and may not show obvious signs of impairment at the roadside. Some of the problems are not new but have been given a contemporary twist as a result of recent changes in the DWI system -- e.g., refusal to take a test for alcohol has increased in some jurisdictions because of the ever-escalating consequences of having a BAC over the statutory limit. And, some of the problems are new, arising from the increased complexity of drunk driving laws -- arguably the offense with the most extensive and complex criminal statutes.

Despite the failings within the system, it is important to keep in mind that it works relatively well -- there were approximately 1.4 million arrests for alcohol-related driving offenses in 2001 (FBI 2001); fewer people are drinking and driving (Balmforth 2000); and, significant declines in the problem occurred, at least during the 1980s and early 1990s (NHTSA 1997).

At the same time, it is evident that much more needs to be done. As described in our recent reports (Simpson and Robertson 2001; Robertson and Simpson 2002a; Robertson and Simpson 2002b), many drunk drivers go undetected; some who are detected avoid arrest; some who are arrested avoid prosecution and conviction. And, as the current report shows, some of those who are convicted avoid having to complete their sentence. The poor quality of evidence impedes effective prosecution; overloaded courts engender plea agreements, which compromise the level of penalties applied to offenders; and, savvy repeat offenders simply ignore the imposed sentences. These problems illustrate the need for improvements in the criminal DWI system, which is the primary goal of this project.



2.0 Objectives —●

The primary goal of this project is to underscore the need for improving the effectiveness and efficiency of the criminal DWI system for dealing with hard core drinking drivers by determining where they “slip through the cracks”, and how these gaps can be filled. The project is:

Project goal:
underscore the
need for improving
the DWI system.

- providing comprehensive documentation of precisely where the system is failing, and why; and,
- offering practical solutions to these problems.

The need for change arises in part because of the disconnect between policy and action -- many of the laws and regulations are in place but, for various reasons, they are not being applied or implemented in a meaningful fashion. As a consequence, the efficiency and effectiveness of the DWI system is being compromised at many levels. This ultimately reduces the general and specific deterrent effects of the system -- i.e., it sends a message that the chances of getting caught are slight; that if caught, the chances of being convicted are marginal; and, even if convicted, there is a reasonable chance that the penalties will not be enforced.

There are a multitude of problems associated with the system's response to hard core drinking drivers. However, some problems have more far-reaching consequences than others, so this project has as an objective the identification of *priority issues*. Moreover, not all problems are amenable to change in the short-term (e.g., the sympathetic attitude of jurors who do not consider drunk drivers to be “criminals”), or they are difficult to change because they are rooted in constitutional issues. As a consequence, this project has the additional objective of identifying *practical, cost-effective solutions*.

**Objectives: Identify
priority problems
and recommend
practical, cost-
effective solutions.**

The project is examining the entire spectrum of policies, programs, and practices that target hard core drinking drivers -- from initial apprehension and charging with a DWI offense (Simpson and Robertson 2001), through prosecution (Robertson and Simpson



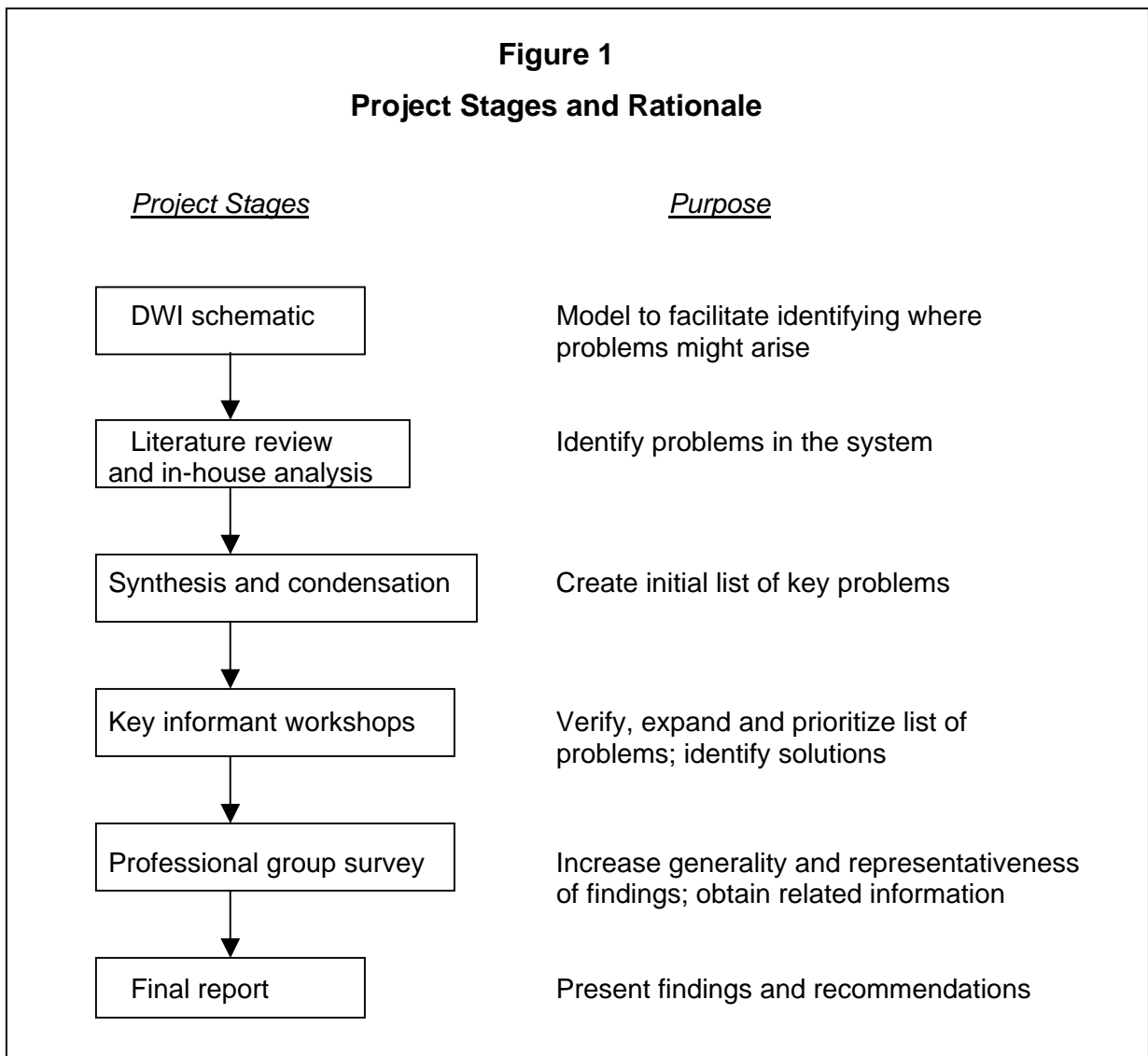
2002a), to adjudication and the final application of penalties (Robertson and Simpson 2002b), and follow-up monitoring. This is critical because it has been clearly demonstrated that hard core offenders can “slip through the cracks” at many stages in the process. This comprehensive analysis of the system will provide timely and practical insights into how the criminal justice system is failing and, more importantly, how it can be improved.

This report highlights the need for improvements in the monitoring phase of the DWI system. It documents problems and solutions associated with the enforcement of the multiple penalties applied to repeat DWI offenders. Earlier reports (Simpson and Robertson 2001; Robertson and Simpson 2002a; Robertson and Simpson 2002b) focused on the detection and apprehension of hard core drinking drivers, the prosecution of DWI offenders and the adjudication of DWI cases and sanctioning of offenders. Copies of those reports are available at www.trafficinjuryresearch.com.



3.0 Approach —●

The overall approach to the project involves a series of steps designed to produce an increasingly refined, valid and representative list of ways to improve the efficiency and effectiveness of the DWI system's response to hard core drinking drivers. The project stages are outlined in Figure 1. This approach has been used to study all four phases of the DWI system -- enforcement, prosecution, adjudication and sanctioning, and monitoring.



The first task was the development of a flow-chart, that represents schematically and generically how a DWI case proceeds through the system. The purpose of the schematic was to provide a model that would facilitate identifying where problems might arise. This representation of the system was reviewed and revised based on comments from a number of experts familiar with the DWI system.

Next, a comprehensive literature review was undertaken to determine what problems had already been identified by previous research. This set of problems was expanded by our own experience and knowledge of the system.

The expanded list of problems was synthesized and condensed to produce a short-list of key problems in each phase of the DWI system (i.e., enforcement, prosecution, etc.).

This final list of problems was then presented to a variety of representatives from the appropriate professional group in a series of workshops in several states -- participants were asked to verify, expand, and prioritize the list of problems as well as to identify solutions. The judgments of these professionals were collated to produce a rank-ordered list of priority problems as well as a set of associated solutions.

To increase the generality and representativeness of these findings and to obtain further information and insights into these issues, a larger and more representative group of professionals was surveyed. They were asked to rank-order the list of problems, to provide other relevant information, such as how frequently they encounter these problems, and to elaborate on the best ways to solve them.

The details of the process and its results are described in the series of reports cited earlier -- this is the fourth in that series and it deals with monitoring.



4.0 The DWI System —●

To assist in identifying what type of problems might arise in the DWI system and where they are most likely to occur, a flow-chart was developed, which represented how a typical DWI case proceeds from detection through monitoring. Development of the schematic was greatly assisted by similar previous efforts (e.g., Jones et al. 1998). The schematic was intended to be generic and not meant to incorporate the variations and nuances of individual states' systems.

The schematic was presented to a number of professionals working within the DWI system to verify its accuracy and then modified as needed. It appears in Appendix C.

Even a cursory review of the schematic makes it evident that the DWI system is anything but simple. It is also evident that the processing of cases in the DWI system involves several phases that are relatively distinct and sequential but highly interrelated -- enforcement, prosecution, adjudication/sanctioning, and monitoring. Each of these phases is the primary responsibility of a different group of professionals -- enforcement is the responsibility of the police, prosecution the responsibility of district attorneys (or their equivalent), adjudication and criminal sanctioning the responsibility of the judiciary, and monitoring of criminal dispositions is the responsibility of probation and parole officers².

This convenient division of the system was used to structure the approach to the project, which has been completed in four segments to make the task manageable. The first three segments on enforcement, prosecution and sanctioning were covered in earlier reports (Simpson and Robertson 2001; Robertson and Simpson 2002a; Robertson and Simpson 2002b). This final report deals with the monitoring of DWI offenders.

Although this segmentation of the system is convenient, it is both arbitrary and somewhat misleading because the responsibility of each professional group extends well

²The term "probation officer" is used throughout this report for convenience to indicate both probation and parole officers.



beyond the segment in which they have been placed (Hedlund and McCartt 2001). For example, probation officers are not just involved in the monitoring of drinking drivers -- the evidence and recommendations contained in pre-sentence reports (PSRs) prepared by designated officers for judges are often an integral part of the sanctioning of the offender.

Moreover, the problems identified in one segment are not necessarily limited to it but can have reverberations throughout the system. We acknowledge these complexities explicitly and are sensitive to the erroneous impressions that can be created by simplifying a truly complex and dynamic system. We have attempted to avoid misleading simplification wherever possible.

4.1 The Monitoring Process

The actual monitoring of a DWI offender typically elicits an image of an offender meeting regularly with a probation or parole officer. However, this monitoring is in fact a very complex, detailed and time-consuming process of which meetings between offender and officer are only one element.

Probation refers to a judicial or a suspended sentence or order that places convicted offenders under supervision in the community -- accordingly, probation may also be referred to as "community supervision". The level of supervision imposed varies according to the severity of the offense and the risk of recidivism posed by the offender. Low-risk offenders are often subject to reduced supervision, sometimes referred to as "banked" or "paper" probation, meaning the offender has little or no contact with a probation officer. The use of this kind of supervision varies across the country. For example, in California, these types of caseloads are common and officers may be responsible for more than a thousand offenders at any given time; however, reduced supervision caseloads of that size are rare in, for example, New Jersey.

Medium-risk offenders may be subject to regular or routine supervision and usually meet with their probation officer on a monthly basis to provide a status report on their activities. They may also be subject to random contacts in the community as resources



permit. High-risk offenders often participate in close or intensive supervision probation (ISP) programs in which offenders meet with their probation officer frequently. These offenders are also subject to random and/or scheduled contacts in the community, possibly several times each week, in addition to regular meetings in the office.

Probation sentences can be imposed for both felony and misdemeanor crimes and may be combined with a brief period of incarceration, usually ranging from 30-90 days, depending on the state and the nature of the offense. Many state statutes permit a maximum of one year incarceration but these sentences are rarely imposed. Probation orders typically include a variety of general and specific conditions that offenders must adhere to while on probation. These conditions are discussed in greater detail in Section 4.1.2 on sentencing. Regardless of the specific conditions imposed, the overall goals of probation are consistent across the country. According to the American Correctional Association, “an effective probation program should ensure the protection of society, rehabilitate the offender and help him adjust to a lawful life in the community” (Neito 1996, p.6).

Probation is monitored by probation officers, sometimes designated as “peace officers” in criminal statutes. In this context, many probation officers have powers similar to police in intervening with criminal incidents, conducting investigations, and protecting the public. In many states, the powers of arrest and search and seizure granted to probation officers are enhanced, meaning they are often able to search probationers without obtaining a warrant or establishing the requisite “probable cause”. In some states (e.g., AL, AR, AZ, LA, NV, NH, OH, UT) probation officers are also permitted to carry a firearm while performing their duties, a reflection of the often harsh environments and dangerous situations in which officers frequently find themselves when monitoring high-risk offenders. In some states, officers have the option of carrying a firearm (e.g., AZ, FL, MI, MS, NC, TX) and in a few states officers may not designated peace officers and are not permitted to carry a firearm (e.g., CO, CT, MA, NE, NJ, TN) (Fuller 2002).

The typical time frame in which monitoring occurs can vary substantially from six months to a maximum of lifetime, depending on the sentence imposed by the presiding judge and the length of probation orders permitted in criminal statutes. However, extremely long probation sentences are infrequent for DWI offenders. The direct monitoring of the



probationer begins immediately after sentencing or following a brief period of incarceration, although the probation officer's involvement in a particular case often begins with the preparation of a PSR even before sentence is ever imposed (see Section 4.1.1). Officers may also become involved immediately following the arrest, particularly if the agency is responsible for pre-trial evaluation and supervision. Some jurisdictions have a bifurcated system that divides the responsibilities of officers into pre-sentence functions and supervision functions, each handled by different probation officers. Others consolidate these into one assignment and a single officer completes both.

DWI offenders may also be granted parole (post-release supervision) after serving a longer period of incarceration for DWI offenses and are monitored by parole officers, depending on the nature of the sentence imposed. However, parole, unlike probation, is not a judicial sentence imposed by the court. Parole is one of several forms of post-incarceration release available to offenders meeting certain criteria. DWI offenders that have been sentenced to longer periods of incarceration (more than one year) in a state correctional facility can be granted early release prior to the completion of their sentence at the discretion of a state parole board. Parole boards are made up of individual citizens, who in most states are appointed by the governor. Most parole boards have the authority to release prisoners into the community on parole, set conditions of release and revoke parole when the parolee fails to comply with the conditions or commits a new crime.

While many of the functions performed by parole officers are very similar to those of probation officers, there are a few key differences. Parole officers may work closely with incarcerated offenders who are nearing eligibility for release into the community and assist with the development of a release plan. This may include helping offenders locate housing, secure employment, and determine which community programs are appropriate to their needs. For example, offenders may require programs emphasizing job skills, education or substance abuse treatment. Parole officers can direct offenders towards available resources in the community that will assist them in being successfully re-integrated into community life. This release planning is essential because offenders must demonstrate to the parole board that they do not pose an undue risk to the community and explain how they will function as a law-abiding citizen in the community.



Once granted parole, offenders are then released into the community under the supervision of a parole officer. Similar to probation, these offenders may be subject to reduced, regular or close supervision depending on the level of risk they present, and many similar conditions are associated with parole release. Offenders are required to abide by the conditions or restrictions imposed and attend any mandated programs. Their movements and behavior are monitored by officers, using many of the same procedures including scheduled appointments, random contacts in the community, and alcohol/drug testing (see section 4.1.5.).

Other distinctions between probation and parole include the length of time that offenders are monitored while on parole, and the ability of parole officers to administer sanctions for non-compliance. Historically, offenders released on parole were often monitored for substantially longer periods of time than those on probation. These offenders were often on parole for several years, depending on the length of sentence imposed and the amount of time served prior to release. However, as a result of “truth in sentencing” laws, paroled offenders more often serve more time in prison and less time on parole. In fact, as a consequence of these laws, offenders may be more likely to serve their entire prison sentence in order to avoid parole and are often released with no supervision.

Similar to probation, parole officers can also impose a variety of administrative sanctions for non-compliance, independent of the parole board and can immediately arrest and detain offenders who commit violations. However, only the parole board can revoke the parole and re-incarcerate the parolee, after a revocation hearing.

As a result of the similarities between probation and parole with regard to the monitoring of DWI offenders, much of the information and data contained in this report has direct relevance to both forms of supervision. However, for purposes of simplicity, the term “probation” will be used throughout the report; moreover, considerably more DWI offenders are supervised through probation orders, and many of the professionals involved in this report were affiliated with probation agencies. Where appropriate, distinctions between the two professions will be highlighted.

Before outlining in detail the duties and functions routinely performed by probation officers during the course of monitoring DWI offenders, it is important to appreciate fully



some of the inherent complexities of existing probation systems that occur as a function of their organization, the services they provide, and the sheer volume of offenders who are managed on a day-to-day basis.

According to the American Probation and Parole Association (APPA), the variation that exists among probation departments can make the development of a comprehensive model of policy and practice and the implementation of coordinated services challenging.

“...probation and parole is a pluralistic, highly decentralized enterprise engaged in by hundreds of departments at the federal, provincial, state, county and municipal levels across North America.” (APPA 2002a).

With that being said, almost all probation departments are typically managed through one of two entities: corrections or courts. In approximately 30 states (e.g., AL, DE, FL, GA, MO, OK, TN), probation departments are managed under the executive branch of government, usually corrections or parole agencies. In most other states (e.g., AZ, CO, NE, NJ, SD, WV), probation services are administered through court agencies at the state or county levels (Fuller 2002). There are also a few exceptions to this, such as a few jurisdictions in California and Minnesota as well as the state of NY, where services are managed by an executive department affiliated with neither courts nor corrections.

There has been considerable debate regarding the advantages and disadvantages associated with each of these systems, and structures are often dependent on local choice. In some respects, probation services administered through state correctional agencies can result in better coordination and planning throughout correctional agencies, making it possible to manage budgeting, allocation of resources and manpower more cost-effectively, and reduce the duplication of services. Conversely, some proponents believe that court-administered probation services are better able to respond to judicial guidelines and inform judges about available local resources, providing greater discretion and flexibility. Despite these differences in structure and administration, officers believe that probation supervision is effective in both types of systems.

Probation services in Massachusetts clearly illustrate some of the inherent complexities that can be associated with court-administered systems and, as a consequence, some



administrators have proposed revising probation so it can be administered by existing parole services.

“The probation system is fragmented, run by 70 district courts, 14 superior courts, and an expanding juvenile court system, each with its own set of practices set by the presiding judge and chief probation officer. This leads to wide variations in quality and slows the pace of change. A state-level bureaucracy adds to the confusion, as it has several different offices responsible for probation services -- the Office of the commissioner of Probation, which answers to the Administrative Office of the Courts, and the Office of Community Corrections, a separate Trial Court department.” (Gerwin 1998, p.2).

Additionally, probation services across the country can be organized into one or more of six administrative categories: juvenile probation; municipal probation administered by lower courts; county probation; state probation in which one central agency manages probation services throughout the state; state combined, meaning that probation and parole services are combined and administered by one agency throughout the state; and federal probation. About half of the states (e.g., CO, FL, MS, TN) currently administer adult probation services at the state level, representing more than half of the 2,000+ agencies across the country (Petersilia 1997). In other states (e.g., CA, IL, IN, OR, TX), probation services are administered at the county or municipal level. There are also a few exceptions. For example, in Pennsylvania services are delivered at both the state and county levels (Fuller 2002), and in Virginia a separate system known as the Virginia Alcohol Safety Action Program (VASAP) monitors DWI offenders.

In 2001, these agencies were responsible for monitoring 3,839,532 adult offenders nationwide who were serving a probation sentence, of which some 700,000 (18%) were sentenced for DWI offenses (Department of Justice 2001). And, this remarkably large probation population continues to grow. Four years prior, there were 3,261,888 adults serving a probation sentence, of which some 460,000 (14%) were for DWI (Department of Justice 1998). The noteworthy increase of almost 600,000 probationers and an increase of approximately 240,000 DWI probationers in less than five years is in direct contrast to the number of adults being arrested for DWI, which has been generally decreasing in the past decade (FBI 2000).



This apparent inconsistency is likely a consequence of a shift in criminal justice policy to reflect a “get tough” atmosphere. However, this has occurred during a period of fiscal restraint and stagnant funding, so there has been an increase in probation caseloads because jails are overcrowded, and a reduction in services (Petersilia 1997). Despite the lack of resources available to adequately fund probation services, agencies have done surprisingly well, with three out of five probationers successfully completing their probation (DOJ 2001).

Generally, probation officers in supervision assignments fulfill two primary goals in the course of their duties. First, they are responsible for enforcing compliance with sentences by directly monitoring offenders’ behavior in the community. Officers meet regularly with offenders and also conduct scheduled and random contacts or “spot checks” to confirm compliance with the assigned conditions. Depending on the level of supervision, officers may have frequent contact with offenders. In addition, officers also coordinate activities with several agencies and service providers to verify imposed penalties are completed. Secondly, officers provide assistance to offenders with rehabilitation and re-integration into the community. Officers serve as a resource that probationers can call upon for information about community resources, available treatment programs, housing, job skill programs, employment opportunities and support groups. Officers can also provide direct services, such as intervention and counseling, and in some cases, actual treatment services, such as cognitive skills programs.

Obviously, the goal of compliance with imposed penalties (punishment) may conflict with the goal of rehabilitation and this can require officers to use their own discretion in certain instances, giving one goal greater priority than the other. Although most officers (73%) report that these goals are given equal priority, more than one-quarter (26%) of probation officers in our survey report that enforcing compliance is their main priority; only 1% report treatment and re-integration is their priority. In the interest of public safety, in most instances the goal of rehabilitation will almost always be sacrificed to ensure compliance.

The priorities and actions taken, in some instances, may be reflective of the officer’s caseload (the actual number of offenders they supervise) as well as workload (more work is required to supervise higher-risk offenders). It is also reflective of the amount of



time and resources available to supervise offenders. Depending on the jurisdiction, the caseload managed by probation officers can vary substantially. Reduced supervision caseloads can range from 300 to as many as 3,000 offenders per officer. For example, the average reduced supervision caseload in California is 629 offenders (Neito 1996). Many officers report the average regular supervision caseload often ranges between 100 and 175 offenders (monitoring survey data; Gerwin 1998) and reports indicate that this has been rising steadily for the past several years (Office of Probation Services 2000; Petersilia 1997; NIJ 1995). The American Correctional Association reports that ideal caseloads should be 1 officer to 60 offenders. While there are no legal standards for the maximum caseload an officer can manage (Neito 1996), some states (e.g., AZ) have imposed statutory caps on caseloads that automatically provide additional funding when caseloads go over a set limit. Intensive supervision caseloads are considerably smaller and ISP is used less frequently due to a lack of the necessary court resources. Officers may provide close supervision for as few as 30 or as many as 70 offenders depending on the jurisdiction and the resources available. Obviously these smaller caseloads afford much greater supervision but they require much more work on the part of officers.

With these considerations in mind, we turn to a more detailed examination of the monitoring process itself. The explanation of the actual procedures used to monitor offenders and responsibilities of probation officers provided below is meant to give the reader a general idea of the available programs and the procedures used to confirm compliance with imposed penalties and conditions. It is not intended to elaborate the detailed and complex actions associated with specific DWI monitoring procedures in individual states. It is meant to provide a contextual basis for the report and assist the reader in locating the identified problems within the monitoring process in a chronological manner.

The detailed information found in this section benefited substantially from the technical advice of William Burrell, formally the Chief of Supervision Services for the Probation Division of the Administrative Office of the Courts in New Jersey, and currently an associate professor for the Department of Criminal Justice at Temple University in Philadelphia, PA, and Zachary Dal Pra, Deputy Chief, Assessment and Program Development, Maricopa County Adult Probation, Arizona.



There are seven distinct but interrelated stages associated with sentencing and monitoring of a convicted DWI offender. These stages are identified in the Schematic on page 19 – pre-sentence report or investigation (4.1 in the schematic); sentence imposed (4.2); probation initiated (4.3); court orders supervised by probation (4.4); supervision, compliance and reintegration (4.5); violations and revocation proceedings (4.6); and successful termination of probation (4.7). At each stage the probation officer's role is to ensure that all terms and conditions of probation are successfully met by the probationer. Additionally, decisions made at each stage have great significance for the stages that follow. The monitoring process is illustrated in the schematic on page 19 and described in the following sections.

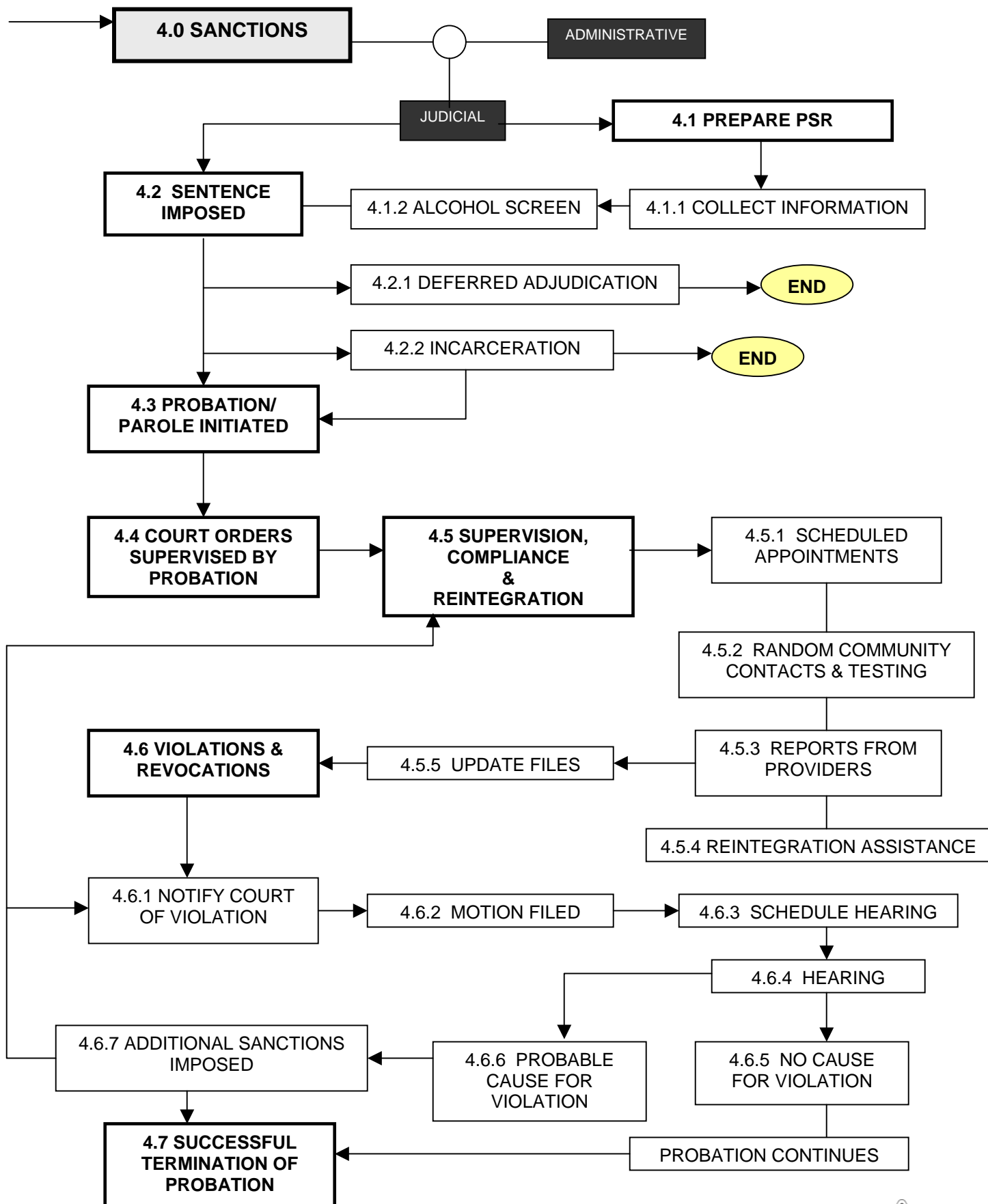
4.1.1 Pre-sentence Report

Once offenders have been convicted by the court (or a jury, depending on the trial election of the offender), judges must determine what sentence is most appropriate to the facts and circumstances of each case. In order to reach a suitable decision, they frequently order a PSR, when possible, to be prepared by a probation officer. Sentencing is deferred until the report is complete.

Depending on the size and organization of the probation department, cases may be assigned to probation officers in a random or a specific fashion. In smaller court-administered systems, probation officers may be assigned to a particular judge -- how cases are assigned to the judge determines which probation officer will complete the PSR, although PSRs may not be common in smaller courts. In larger jurisdiction court-administered systems, cases are usually assigned on a rotating basis irrespective of the assigned judge. Probation officers may complete as few as 8 or as many as 20 PSRs a month. In larger departments, probation officers may also be assigned to a specialized caseload, meaning that a majority of DWI cases could be managed by designated officers.

PSRs are more common in felony cases; they are prepared less frequently in misdemeanor cases. Lower or municipal courts often do not have a probation department to carry out this task. For example, only eight of 84 justice courts in Arizona





have probation services that are able to fulfill this function. Some states (e.g., CO, GA, MO, NM, ND, TN, UT) contract for private probation services for some types of offenses and the cost of providing these services is borne by the offender in the form of fees for services (Fuller 2002).

A PSR provides the judge with detailed information about the offender, the offense, and the range of dispositions available. These reports can be lengthy, depending on the nature of the offense and the history of the offender, and it is not unusual to take four to six weeks to prepare depending on the depth of detail required. The PSR may be prepared much more quickly if a defendant is being held in custody prior to sentencing or may take a few months to complete if the offender is free on either bail or their own recognizance. The speed with which these reports are prepared is also a function of the officer's access to information.

PSRs typically include the circumstances of the offense, a detailed history of the offender's criminal and driving record, work history, mental health and other medical conditions, drug and alcohol information, history of treatment, family history and information about available programs and resources that are appropriate for a disposition, and a recommendation regarding sentencing. Risk classification, which is determined by scoring the offender on a number of factors to determine the risk of recidivism based on offenders with similar characteristics, may also be included in a PSR in some instances, although this more frequently occurs post-sentencing.

In the course of preparing a PSR, probation officers may contact the arresting officer and any witnesses to the criminal incident, the prosecutor assigned to the case, family members, employers, treatment agencies, any victims involved, and any other agencies having contact with the offender, such as social service agencies. The probation officer will also search criminal history records at the state and possibly the federal level (depending on the severity of the offense), employment records, driving records, records of substance abuse treatment, and perhaps relevant school records depending on the age of the offender.

Also at this time, any alcohol or drug screening of the offender that has been ordered by the court will occur and this information is also typically included in the PSR. The length



of time it takes for the alcohol screening is a function of the resources available, the instruments employed, and their method of application. Although more than 90% of convicted DWI offenders are ordered to undergo an alcohol screening of some sort to determine the extent of their problem with alcohol and risk of recidivism, the practices associated with alcohol screening vary considerably from state-to-state. Overall, most instruments utilized are much better suited to identifying disorders as opposed to predicting recidivism (Chang et al. 2002).

Many of the screening instruments involve self-reporting by the offender, and in several jurisdictions, face-to-face interviews with a probation officer or treatment professional. Unfortunately, self-report methods are inherently unreliable. Most offenders fail to respond truthfully and tend to minimize their history of prior convictions as well as their involvement with alcohol or substance abuse (Chang et al. 2002; Owens 2001; Fallis and Shaver 2000). Although a few instruments can measure and compensate for under-reporting, many of them cannot. Consequently, it is very important for officers or agencies conducting screening to make collateral contacts with criminal justice professionals to confirm information provided by the offender.

Research demonstrates that the MacAndrew scale of the Minnesota Multiphasic Personality Inventory (MMPI) and the Alcohol Use Inventory (AUI) are the most reliable predictors of DWI recidivism. The MacAndrew scale also measures alcohol use disorders. Other common screening instruments such as the Driver Risk Inventory (DRI) and the Substance Abuse Life Circumstances Evaluation (SALCE) or NEEDS (an expanded version of SALCE) have not been sufficiently validated in a clinical setting.

The Mortimer Filkins and the Michigan Alcoholism Screening Test (MAST) combined with the DRI are the instruments most commonly used in court systems. However, there is little published evidence indicating how useful these instruments are with DWI populations (Chang et al, 2002). More detailed and complete screening information can be found in a November 2002 report entitled "Review of Screening Instruments and Procedures for Evaluating DWI Offenders" prepared for the AAA Foundation for Traffic Safety. This report is available at their website www.aaafoundation.org.



Finally, PSRs almost always provide officers with an opportunity to make a recommendation to the judge regarding an appropriate sentence for the offender. This recommendation is based on the information provided in the report as well as the officer's own expertise in the effectiveness of various sentences as well as the supervision of offenders.

4.1.2 Sentence Imposed

When formulating an appropriate sentence, judges review all the available information pertaining to the offender and the case at hand including, details of the offense, criminal history, aggravating and mitigating circumstances, PSR including the alcohol screening report, any sentencing guidelines, and recommendations made by the prosecution and defense counsels (which may or may not be part of a plea agreement) and the probation officer assigned to the case. Based on this information, the judge will decide what goals are to be achieved by the sentence as well as what specific penalties will be imposed.

Sentencing Goals. The courts attempt to achieve three main goals by sentencing offenders to a combination of penalties and conditions: punishment, rehabilitation, and incapacitation. Punishment is most frequently achieved using fines or jail and these penalties are assumed to have both general and specific deterrent effects. Rehabilitation is aimed at changing problem behavior and achieved through different interventions and treatment that are most appropriate to the circumstances of the offender. Incapacitation aims to protect the public and prevent the reoccurrence of the undesirable behavior, at least for a specified period – e.g., incarceration, EM, ignition interlocks, license suspensions and other penalties (see section 4.4) serve to incapacitate the offender by restricting their movements or separating them from their vehicle (Voas, 2002).

Probation is one of the most commonly imposed sentences for all criminal offenses, particularly DWI. Judges often select probation because it offers the opportunity to punish, rehabilitate and, to a limited degree, incapacitate the offender. Using a probation order, judges can restrict and supervise the behavior of offenders while permitting them to maintain employment and reside at home, thereby avoiding the excessive costs of incarceration and permitting the offender to still provide for the family



and fulfill other obligations. Probation as a sentence imposed by the court is also intended to deter future offenses by sending the message that the behavior is unacceptable. It can also mandate treatment and rehabilitation, allowing offenders to access a broader base of treatment opportunities in the community and the opportunity to be successfully reintegrated into community life.

Judges vary considerably in their approach to implementing probation as part of a sentence. Some judges actively solicit input from police, prosecutors and probation officers. Other judges merely rely on the contents of the case file to reach a decision. Factors such as jurisdiction, judicial priorities and available resources also play a role when issuing a probation order. For example, in urban areas where court calendars and jail facilities are more likely to be crowded, plea agreements frequently result in probation sentences. In addition, probation orders are common because treatment programs and service providers are more readily available. Conversely, judges in rural areas may be more likely to be constrained in ordering probation due to limited resources and monitoring capabilities.

When imposing a probation order and determining the appropriate conditions, judges often use the following questions for guidance. First, are the contents of the order related to the protection of society to some degree? Second, are the requirements imposed clearly stated so that the offender understands how to comply with the order? Third, are the conditions imposed reasonable in light of offender characteristics and offense history? Lastly, are the conditions imposed reasonably consistent with the constitutional protections afforded all citizens (Crowe et al., 2002)?

Conditions of Probation. While on probation, offenders are frequently required to comply with various terms and conditions which vary according to the offense committed and the sentence imposed. These conditions are imposed on the offender by the court and can be compared to obligations (things that offenders must do) and restrictions (things they cannot do). Standard conditions of probation typically include, reporting to a probation officer on a regular basis (frequency determined by either the court or the officer), being gainfully employed or attending school, refraining from illegal activities, being cooperative with any reasonable inquiries from authorities and obtaining permission to leave the jurisdiction.



Other conditions of probation are specific to the offender depending on the nature of the offense and are known as special conditions. DWI offenders are often required to abstain from using alcohol or other drugs or frequenting establishments whose primary source of income is derived from the sale of alcohol, attending a victim impact panel (VIP), participating in treatment, complying with alcohol-testing, paying restitution or performing community service, having an ignition interlock installed on their vehicle and participating in some form of EM program. These conditions may also vary depending on the selected goals of sentencing, the resources available in a jurisdiction, the philosophy of the presiding judge, and the financial means of the offender.

It is important to note that, in some instances, the conditions imposed on offenders may not be realistic or achievable because of limited resources. This can occur when a lack of available programs impedes offenders from completing their conditions. For example, many DWI offenders are required to complete some sort of treatment program. Yet offenders frequently wait several months to be admitted into a program, and probation terms can often expire before treatment can be completed. During this time, probation officers may revoke the offender's probation for non-compliance, particularly if officers do not have sufficient time to investigate why treatment has not been completed. Consequently, in some instances offenders may be non-compliant with conditions due to external factors beyond their control, rather than willful disobedience.

Deferred Adjudication. Deferred adjudication is a special form of probation available in many states that can be imposed by judges either at the discretion of the court or on the recommendation of the prosecutor. These sentences may also be referred to as "probation before judgment" (PBJ) and are most often applicable in cases involving first-offenders. In these instances, a judge will order probation in response to a guilty plea entered by the defendant. However, the conviction is deferred on the offender's record and will be dismissed or expunged if the term of probation is successfully completed without violations. The defendant is often required to appear before the court at the end of the probation period to demonstrate that all the conditions of probation have been successfully completed. If the offender is found to have violated any of the conditions while on probation, the judge can re-enter the original conviction on the offender's record and impose an appropriate sentence.



Incarceration. Judges frequently impose a brief period of incarceration before the offender begins the probation period. This sentence can be as little as a few days and range up to one year. This is sometimes referred to as a “split sentence” or “shock probation” and these periods of incarceration are relatively brief. Their purpose is to act as a “wake-up call” to offenders about the reality of being incarcerated and force them to acknowledge the consequences of their behavior. Offenders may be able to serve these terms of incarceration on weekends or, in larger jurisdictions, may be eligible for work release to avoid interfering with employment. Extended periods of incarceration often result in job loss, causing additional difficulties associated with re-integration and creating additional hardship for the offender’s family. Furthermore, long periods of incarceration are relatively expensive to society which often bears the cost of this sentence. Unfortunately, because it is applied for a such a short period and does not remove the offender from the road for any significant length of time, these jail terms have not been proven effective in reducing recidivism (Voas 2002).

4.1.3 Probation Initiated

Following sentencing and any period of incarceration, offenders are required to meet with their assigned probation officer. As mentioned previously, this may or may not be the same officer who prepared the PSR, depending on the size of the organization and the method of case assignment. Typically, when offenders have previously served a probation sentence they will often be assigned to the same probation officer as resources permit. In larger, urban and state-level agencies, cases are frequently assigned based on geography. Officers are assigned to offenders that reside within their particular jurisdiction. As long as offenders still reside in the same location, the same probation officer will often be assigned the case. Although this method can have the advantage of promoting consistency in managing offenders, the high rate of turnover among front-line officers makes this less so.

At the initial meeting with a probationer, officers explain all the terms and conditions of probation to ensure they are understood by the probationer. The frequency of probationer reporting is explained as is the fact that the officer may make field contacts, depending on the agency’s standards and the officer’s caseload. Explanations are provided regarding how the probationer will complete the various penalties imposed



(e.g., ignition interlock, EM, treatment). A payment schedule for any fines or program fees may also be structured at this point if necessary, depending on the financial means of the offender. In many instances, offenders are charged fees for participation in various programs that are part of their sentence, although some programs do have an indigent offender fund to offset some of these costs for those who meet the financial requirements. Officers also explain the consequences of failing to comply with these conditions and for the commission of any new offenses.

At this time the officer is usually able to answer any questions the probationer may have as well as provide information about programs and resources available in the community. Officers are frequently an excellent resource for probationers because their involvement with various community organizations allows them to cultivate contacts, permitting probationers to be admitted into programs with greater ease.

Depending on what services are provided by probation agencies, probationers may be required to contact different service providers within a specified time frame to comply with the conditions of probation. For example, ignition interlocks may be contracted through a private service provider, whereas EM may be managed by the probation department. This means that, in some instances, probation officers will provide the offender with contact information on various service providers, making the offender responsible for setting up their own appointment and becoming enrolled in programs that have been imposed by the court. In other instances, the probation officer may facilitate the offender's participation in a program through the probation department where the program is housed. In many contract situations, the onus is on the offender to contact the service provider and enroll in a particular program in a specified period. The agency should then report back to the probation officer when this has been completed.

It is frequently at this point that a breakdown in communication can occur between probation and other agencies if clear procedures outlining consistent information-sharing and the requisite follow-up are not in place. In some instances the contracted agency is not aware of which probationers should be reporting to their particular program, meaning they will not contact the officer to inform them that the offender has not reported.

Conversely, with large caseloads and limited resources it can be extremely difficult for



officers to determine quickly if offenders are completing penalties by making all of the necessary follow-up contacts with each contracted agency and/or service provider.

4.1.4 Court Orders Supervised by Probation

Probation officers are responsible for monitoring an offender's participation in and successful completion of a variety of conditions and penalties while on probation. Programs (e.g., interlocks, EM, treatment) imposed by the court vary considerably from state-to-state due to variations in state laws as well as judicial practices. Furthermore, there is often considerable dissimilarity in how they are administered in each jurisdiction.

Probation officers generally monitor a variety of penalties imposed by the court: 55% of the officers in our survey said they monitor license actions, 89% monitor payment of fines (including the fees associated with various programs), 84% monitor community service orders, 37% monitor ignition interlock participants, 55% monitor EM participants and almost all officers (98%) monitor participation in treatment. The following sections are intended to provide a general explanation of how these penalties are administered; they are not meant to reflect the particular details and characteristics associated with individual programs.

License suspension and revocation. A driver's license may be suspended or revoked using one of two methods. The more common method is administrative and a majority of states have an administrative license suspension (ALS) or administrative license revocation (ALR) law. A suspension is temporary and usually does not require the offender to undergo the standard process of re-applying for a new license. A revocation is more permanent in nature as the driver license is "cancelled" for an extended period of time, forcing the offender to re-apply for a new license once the revocation period has expired. A suspension or revocation means the offender is not permitted to drive any vehicle under any circumstances. The length of the licensing action can vary from a few months to several years depending on the number of prior convictions. For example, for a first-offense a suspension may be 90 days, for a second offense it may be a year, and for several multiple offenses the license may be revoked for 5 years or more.



License actions are usually imposed by the state agency responsible for driver licensing, most often the Department of Motor Vehicles (DMV), and are not the responsibility of probation officers to enforce. However, judges may order a license suspension or revocation as a criminal penalty depending on the severity of the offense. A criminal license suspension is the responsibility of probation officers.

License suspension is particularly difficult to monitor because officers usually do not have the time or resources to ensure offenders are not driving while suspended (DWS) or driving while revoked (DWR). Research suggests that currently up to 75% of offenders continue to drive without a license, although these drivers often do so less frequently and more cautiously (Nichols and Ross 1989). Some “sting” operations have uncovered that many offenders routinely drive even to their court or probation appointments despite not having a license (McLaughlin 1999). It is likely that this penalty is losing its effectiveness because heavy caseloads prohibit close monitoring by probation and the police are unable to enforce DWS and DWR laws adequately due to competing priorities (Voas 2001).

License suspension as a criminal penalty can also be avoided because a majority of state motor vehicle statutes include a clause permitting the granting of a “hardship” license. This clause allows an offender to retain their license if they can demonstrate that its loss would constitute a hardship for them or their family. These special licenses are frequently granted, particularly in rural areas where alternative modes of transportation are unavailable, to permit probationers to maintain employment as well as attend various treatment programs and scheduled appointments with their probation officer or service provider.

Fines and Fees. A fine is a monetary penalty imposed by a judge that orders the offender to pay a certain amount of money to the court. The fine is one of the most frequently imposed criminal penalties used by the courts and the amount of the fine is often reflective of the severity of the offense and, occasionally, the financial means of the offender. Fines are often greater for repeat offenses and the judge usually imposes an amount that is consistent with the range specified in relevant sentencing guidelines. Fines are routinely imposed in misdemeanor cases, but less often in serious felony cases. Fees are costs assessed to the offender as part of being on probation or part of



their participation in specialized programs such as ignition interlock, EM or treatment. For some programs, these fees may total several hundred dollars annually. There is also a growing trend towards the use of these and other legislated fees to support special projects or funds. Offenders may now be required to pay several different fees as part of their sentence.

Probation officers report that many offenders have marginal incomes and have difficulty meeting financial obligations. In this context, judges occasionally may request a “means” assessment of the offender before setting the amount of the fine or imposing fees. This assessment informs the judge what financial means are available to the offender and assists in the determination of an appropriate financial penalty. This helps to ensure the offender will be able to pay the imposed costs. Some jurisdictions may also have a fine-option program in place that permits offenders to discharge fines by providing community service in lieu of cash payments.

Once the fine is imposed, it may be the responsibility of the probation officer, depending on the administrative structure in place, to ensure the fine is paid. Usually this money is paid to the Clerk of the Courts but the probation officer works with the offender to develop an appropriate payment schedule and reminds the offender to make scheduled payments. Many probation agencies collect the money directly and it is common practice for officers to collect money from offenders at each meeting.

Non-payment of fines and fees occurs frequently unless there is consistent follow-up in the collection process. Probation officers in our survey estimate that 42% of DWI probationers fail to pay fines and fees. A 1989 national survey of trial court judges noted that “62% of limited-jurisdiction judges and 47% of general-jurisdiction judges reported that their courts had a moderate to major problem collecting fines” (Cole 1992, p.143). Courts with strong fine-collection programs report considerably greater success. Maricopa County Adult Probation has employed collection specialists whose responsibility is to collect court-ordered fines, fees and restitution with significant improvements in their collection rates.

Officers estimate that 42% of probationers fail to pay fines and fees.

A major problem with the collection of fines appears to be the confusion regarding notice and responsibilities, as underscored by the following two quotes.



“The largest obstacle to the development of an efficient system of fining: the widespread lack of responsibility for the collection of fines leading to extensive defaults. In many jurisdictions there is no agency whose primary responsibility is the collection of fines; there is no clear accountability for non-collection. The judge leaves it to others; court administrators leave it to probation officers; probation officers do not consider fine collection a high-priority aspect of their work -- no one is accountable.” (Morris and Tonry 1990, p.135).

“In some jurisdictions there is confusion as to who is actually responsible for compliance. Is it the judge who imposed the sentence, the clerk who has a duty to receive monies owed the court, the probation officer who supervised the offender, the police who implemented arrest warrants for non-payment, or the prosecuting attorney whose role it is to prosecute those not paying? This dispersion of responsibility is such that no one is really in charge, with the result that compliance efforts are fragmented and given a very low priority.” (Cole 1992, p.147).

Anecdotal evidence from innovative programs indicates that the collection of fines and fees is more vigorously enforced when the collecting agency can keep a portion of the fines to fund other programs. For example, almost half of the operating budget of the Adult Probation Department in Harris County, TX comes from probation supervision fees. Officers there recognize that the collection of fees is essential to their ability to maintain supervision as well as their jobs. As a result, approximately 80% of fees imposed are successfully collected (Cole 1992).

Community service orders. Community service orders require offenders to perform a specified number of hours of unpaid work in the community. It is not uncommon for this penalty to be imposed in lieu of a period of incarceration or a fine. For example, a well-established program in Minnesota permits offenders to perform community service to reduce the amount of time they spend in jail. Community service orders are used less frequently by the courts, which is often a consequence of the lack of guidelines and procedures associated with these programs. The types of community service that are permitted may be limited or not specified and there may be no guidelines indicating the appropriate number of hours to be served for different offenses. This often results in inconsistent use of these orders as well as sentencing disparity.

Common examples of community service work include supervised work crews (e.g., highway and park clean-ups, graffiti removal) and individual placements with not-for-



profit agencies (e.g., assisting with food drives, painting facilities). Other forms of community service can be specifically related to the offender's skills or abilities. For example, a doctor may be required to perform service in a community health clinic or a contractor may be required to landscape a community center or repair plumbing. One of the most common criticisms is that the community service performed is often completely unrelated to the nature of the offense. For example, it has been suggested that DWI offenders should have to volunteer in a hospital emergency room or a city morgue so they can witness first-hand the consequences of drunk driving. However, it is the experience of some officers that emergency rooms find it difficult to accommodate offenders who are "waiting for a DWI crash", wanting even emergency medical technicians out of the way as soon as possible.

The enforcement of community service orders is usually the responsibility of probation officers. However, as a result of heavy caseloads and a lack of administrative arrangements, the enforcement of these orders may be intermittent, depending on the jurisdiction and the officer involved. One option is to leave the supervision of these offenders to the agency receiving the service. However, this is inappropriate since it is likely that offenders would receive inconsistent supervision at best (Morris and Tonry 1990).

Ignition interlocks. An ignition interlock is an electronic device that is installed on the ignition of the vehicle of convicted impaired drivers. It requires a breath sample that is relatively alcohol-free before the vehicle will start. If the breath sample provided registers a BAC in excess of a pre-set amount (usually .02%), the vehicle will not start. Offenders must be trained how to provide a useable breath sample. Some devices may have a breath-pulse recognition feature that ensures the breath sample is specific to the offender. This feature makes it difficult for offenders to use a breath sample provided by another sober individual to start their vehicle.

These devices typically have a "rolling-retest" feature that requires offenders to provide continuous alcohol-free breath samples at random intervals while the vehicle is being operated. This prevents offenders from drinking alcohol once the vehicle has been started as well as from leaving their vehicle running while they are drinking at a residence or a licensed establishment. Furthermore, many devices have a "time-lapse"



function that results in either the horn sounding or the lights flashing if a breath sample is not provided in a reasonable time period. This feature ensures offender compliance by drawing considerable attention from both other drivers and the police if breath samples are not provided. Once the device has been activated in this fashion, offenders must report immediately to the service provider to have the device re-set.

When these devices were first developed, there were a number of problems associated with “false-positives” in which offenders would provide a breath sample that would be incorrectly identified as containing ethyl alcohol -- e.g., mouth wash, cigarette smoke or solvents in close proximity to the device. However, technological advances have largely eliminated this problem and false-positives are no longer a concern.

The interlock device also has a “data recorder” that retains a considerable amount of information including, the results of all vehicle starts, the results of all the breath samples provided, rolling re-test results, the hours of operation, the number of failed attempts to start the vehicle and any attempts to tamper with the device. Such information can be downloaded by the service provider during periodic servicing and used for counseling or other purposes. In this context, many researchers believe that the period in which the device is on the vehicle provides a “window of opportunity” for learning. For example, repeated unsuccessful attempts to start a vehicle at 8 a.m. on a weekday morning are an indication that an offender has a serious alcohol disorder. Officers can use this information for instructional purposes to force offenders to acknowledge the extent of their drinking and the impact it has on their ability to fulfill commitments and meet responsibilities. It can also be used as justification for attendance at treatment programs.

In the past decade, a considerable amount of research has demonstrated the efficacy of these devices (Vezina 2002; Beirness 2001; Beck et al. 1999; Voas et al. 1999). Reductions in recidivism are in excess of 50% while these devices are on the vehicle (Voas et al., 1999). Currently 43 states have developed some form of ignition interlock program but standards and practices vary considerably across the country and, to date, only about 10% of eligible offenders have an interlock installed because of a variety of program problems (Voas et al., 2002).



In this context, our institute is currently conducting a major international study examining the key features of interlock programs across the U.S. and in several other countries including Australia, Belgium, Canada, Denmark and Sweden to identify which program features are most effective and thereby also encourage greater consistency in program structure and administration. Additionally, an international symposium is hosted annually by our institute involving leading researchers and practitioners from around the world to identify ways to improve the effectiveness and efficiency of interlock programs. More information on the symposia as well as a recent report entitled “Best Practices for Ignition Interlocks” (Beirness 2001), are available at www.trafficinjuryresearch.com.

Interlock programs may be implemented as either an administrative or criminal penalty. They also vary in duration as well as eligibility requirements. The large majority of programs are administrative in nature and are managed through state licensing agencies. Administrative programs have the distinct advantage of being an immediate action. The disadvantage of these programs is that the offender's only incentive or motivation to comply is they permit the offender to drive legally. This is often not sufficient to create compliance among a population that learns quickly they can continue to drive without apprehension.

In a few states (e.g., WA) the interlock is a criminal penalty ordered by the court, but not as a condition of probation. In these instances probation officers technically do not have the authority to enforce compliance but they are often expected to verify offenders are in compliance with the order.

Other states (e.g., CA, NY, OH, PA, TX) have criminal programs in which the interlock is ordered by the court and administered through probation departments with the assistance of various service providers. In these programs, the role of probation officers is to provide probationers with the relevant contact information regarding available service providers. The onus is on the probationer to have the interlock installed on their vehicle. Once installed, the service provider will usually inform the probation officer that the device is on the probationer's vehicle. Again, it is often at this point that a breakdown in communication occurs. The service provider is often unaware of which offenders should have the device installed (as many larger jurisdictions have multiple providers) and probation officers lack the resources to follow-up in each case.



Once the interlock has been installed, the service provider will forward data recorder reports to the officer but there is considerable disparity among programs in the reporting process. The service provider may forward some or all of the information downloaded from the data recorder to the appropriate probation officer for review. In some instances only failures or tamper attempts will be reported; in others the officer will receive a complete report. To further complicate matters, some officers receive a copy of the actual printout of the data recorder whereas others receive a synopsis. Officers may not know how to decipher the report or locate the relevant information, depending on the amount of training received. This can make the review of the report difficult at best, yet officers require this information to determine if offenders are complying with the restrictions imposed by the interlock.

Electronic monitoring. EM programs, which include electronic reporting and electronic tracking programs, use technology to monitor offenders while at home and/or track their movement to and from several locations throughout the day (the technology is described below). EM programs are available in many states (e.g., CA, CO, FL, NJ) but the populations monitored and the devices used vary considerably. Currently, of those offenders enrolled in EM programs, almost half are on some form of probation (Crowe et al., 2002). As well as being a condition or penalty imposed by the court using a probation order or an alternative to incarceration, EM programs may be used as a sanction for repeated probation violations, such as positive alcohol tests or curfew violations (Crowe et al, 2002).

Offenders must meet certain requirements to qualify for some home EM programs. They must reside in what is considered a “stable” home environment that has consistent electrical service. They may require access to a phone without a call-forwarding feature or an answering machine. The phone line can also not be used by other household residents for extended periods as is common with lengthy phone calls or internet service (Conway 2001).

EM programs are often used for DWI populations because these offenders are considered lower-risk and they often do not blend well with the typical population of offenders found in many correctional institutions. Some of these offenders are educated, employed, have a stable home life and no other history of criminal offenses.



Consequently, life in a correctional facility may be seen as doing more harm than good. Furthermore, there are often more treatment opportunities available in the community setting compared to the correctional setting (Crowe et al., 2002).

There is evidence that EM technology is effective in reducing DWI incidents and the devices also permit offenders to work during the day but keep them at home at night when DWI offenses are most likely to occur (Voas 1986).

Most EM devices operate on one of three forms of technology: radio frequency, telephone technology or, more recently, global positioning systems.

Radio Frequency. Radio frequency EM systems involve continuous home monitoring to verify the offender is complying with imposed restrictions. The system includes a receiver that is installed in the probationer's home and a small transmitter that is secured to the offender's ankle or wrist using a special tamper-resistant strap. Because the technology used to detect tampering is not perfected, it is also necessary for probation officers to inspect devices periodically to ensure they are in good working order.

Offenders must wear the transmitter 24 hours a day. It sends a continuous signal to the receiver unless the transmitter (offender) moves outside a limited area (usually the home). When the offender leaves the immediate premises, the receiver transmits this information to the central monitoring agency where it is logged as an "event". Any loss of the signal is reported and compared to the offender's curfew schedule to determine if a violation has occurred. If a violation has occurred the monitoring agency will notify the appropriate probation department after a specified amount of time so the officer can then take action (Conway 2001).

Telephone technology. There are a variety of programs that use telephone technology to monitor offenders, which involve random and programmed contact at home and/or multiple locations. The goal of these programs is to confirm offenders' compliance with a pre-authorized schedule by verifying their location at certain times throughout the day. The timing of the contacts may be either pre-arranged using a schedule or they may be random. Offenders wear a tamper-resistant device similar to a



pager which will notify the offender when contact is required. Scheduled contacts require offenders to “check-in” with the central monitoring agency while at various locations such as treatment facilities, community service locations, or at home. The timing and number of contacts can vary depending on the risk posed by the offender and their level of compliance. These systems can either initiate the phone call to ensure offenders are at a pre-determined location, or can require offenders to call in -- the number/location where the call originated can be confirmed (Conway 2001).

Some of these programs use voice verification technology to confirm the identity of offenders. Offenders pre-record samples of their voice using certain phrases when enrolling in the program. Samples are then compared to the voice provided during the contacts to confirm the identity of the individual on the phone.

Global positioning tracking systems. These programs permit the continuous tracking of offenders’ movements within the community. Locations can be identified within as little as 3 feet, depending on the strength of device (Johnson 2002). Although GPS programs are in use in several states (e.g., IL, KS, MN, NC, ND and TX), they rarely involve DWI offenders at present. As part of these programs, offenders are required to wear a transmitter as well as carry a rechargeable portable receiver or tracking unit. The receiver gets signals from the transmitter signifying the offender is close by. These signals also contain data that allow the location of the unit to be determined using global positioning satellites. In addition, these advanced systems contain cellular communications technology so they can verify offenders’ compliance with any curfew restrictions and notify authorities when they are in an unauthorized location (Conway 2001). Some devices are so sophisticated that they notify offenders when they have entered a restricted area and first provides them with an opportunity to leave the location before notifying authorities (Johnson 2002). Similar to other EM programs, violations are reported to a central monitoring agency which then forwards this information to the appropriate authority so action can be taken.

Alcohol monitoring. Some EM programs have been successfully combined with random/scheduled alcohol testing to confirm the sobriety of offenders as well as their location. This is important because many DWI offenders are required to maintain sobriety as a condition of probation. Some equipment can detect the BAC of offenders,



whereas others will only indicate whether they have ingested alcohol without registering the amount. Often the needed samples for determining the presence of alcohol can be provided over a phone line with a special hand-set unit and may or may not include video technology or voice verification to confirm the identity of the offender (Conway 2001).

Program limitations. When probationers are enrolled in a program using any form of EM technology, officers must keep in mind that none of these programs are “fool-proof”. Many systems permit offenders to leave their home for brief periods of time without registering a violation, technology is vulnerable to interference, location coverage may be inconsistent, and transmissions may be unreliable in certain instances. As a consequence, the notification of violations by the central monitoring agency may be delayed in order to confirm and validate any “violations”.

To address some of these problems, officers must be aware of the limitations of the technology and understand the meaning of violation reports in order to verify a probationer's compliance and take appropriate action. Furthermore, these programs can require extensive time and resource commitments on the part of probation agencies as officers must be able to reasonably respond to all reported violations. However, past experience demonstrates that, because of ever-increasing caseloads, many agencies have trouble just providing routine supervision contacts and responses to obvious violations (Crowe et al., 2002). For more contemporary information and the latest research on EM programs, consult the Journal of Offender Monitoring at www.civicrosearchinstitute.com.

Treatment programs. Treatment programs are frequently ordered for DWI offenders as a condition of probation. Treatment programs are available in most jurisdictions across the U.S., although the types of programs, their effectiveness and their size may differ substantially. Probation officers in our survey report that almost 90% of probationers are required to participate in some type of treatment program and, in many instances, waiting lists for entry are long. If communication with treatment agencies and/or probationers is ineffective, not entering treatment because of a lack of space for offenders can be perceived by some officers as non-compliance and result in the

Officers report almost 90% of probationers participate in some type of treatment. .



subsequent revocation of probation. It is even not uncommon for probation terms to expire before offenders can be admitted into treatment.

Programs vary in their availability, structure, duration, and intensity of treatment depending on the results of any alcohol screening. For those with lesser addiction issues, treatment may involve regular participation in a self-help support group for alcohol addiction. Offenders with moderate alcohol issues may be required to participate in an outpatient treatment program, whereas those with severe addiction or dependency may be sentenced to residential treatment facilities where available. The cost of these programs can be considerable depending on the length of treatment and offenders are frequently required to bear these costs unless they qualify as an indigent offender.

When treatment is ordered as a condition of probation, officers will provide probationers with the necessary contact information and the onus is on them to enroll in the program. Once the offender is enrolled, the treatment provider is to contact the officer and confirm the offender's compliance with the program. Similar to other programs involving a service provider, when communication is inconsistent or clear procedures are not in place, the monitoring of participation can be problematic. Due to the existence of multiple providers and heavy caseloads, it can be difficult for probation officers to confirm a probationer's regular attendance and compliance with treatment orders during the probation period.

Furthermore, additional problems may develop due to confidentiality issues. For example, it is not uncommon for treatment providers not to report continued substance abuse by the probationer, so officers are often unaware of violations. Court approved treatment programs may also have different entrance requirements, treatment protocols and objectives creating inconsistency and disparity in the type and quality of treatment received. As a result, DWI offenders can be placed in a treatment program with other dissimilar offenders who may be addicted to hard drugs and possess extensive criminal histories, which can impact the effectiveness of treatment.



4.1.5 Supervision, Compliance and Reintegration

The variety of penalties outlined in the previous section make it evident that the monitoring of DWI offenders is both complex and highly dependent on coordination with other agencies and service providers. As a result, a variety of different strategies must be applied to the supervision of offenders depending on the sentence imposed. The methods used to monitor compliance are explained in this section.

Officers are required to monitor offenders' activities, behavior, and level of compliance with all of the terms and conditions imposed by the court. Monitoring can involve both scheduled meetings in the office and random contacts in the community. The frequency and duration of contact is largely determined by the level of supervision required and caseload demands. In many departments officers must divide their time between the office and community in order to complete these contacts.

In the recent past, when not in court, probation officers spent a majority of their time in the office meeting with probationers and completing necessary paperwork. Today, officers attempt to divide their time more equally between the office and community, although monitoring offenders in community settings is more frequently associated with smaller caseloads. However, a majority of probationer meetings still occur in the office; officers in our survey said reporting they spend 32% of their time meeting with probationers at the office.

During routine meetings with probationers at the office, inquiries are made regarding the recent activities of each offender including such things as attendance at mandated programs, use of alcohol, employment status, living situation and individuals associated with. Officers frequently require payments at scheduled meetings for any fines or program fees and will update files at this time. Most officers quickly become a good judge of character and can often determine when offenders are being untruthful. Officers must be skilled in reading body language and obtaining the needed information as it is not uncommon for offenders to be dishonest and intentionally mislead officers about their compliance with probation orders.



Officers must also be vigilant regarding personal safety during these meetings. Many departments have standard procedures for meeting offenders such as securing firearms, ensuring other officers are nearby, installing panic buttons and maintaining a safe distance from offenders if they become agitated unexpectedly. Yet greater efforts are required in this area. Not only does the configuration of offices require careful planning, but meeting areas should have windows to alert other staff to confrontations and officers should always have clear access to the door to permit exit if necessary.

At these meetings, probationers are also given an opportunity to raise any concerns they have and officers attempt to address them either by providing requested information and/or directing them to appropriate community resources.

These meetings, as well as supervision overall, can be a challenge to manage due to the conflicting goals of enforcing compliance and facilitating community integration. Officers need to build trusting relationships with probationers to the extent possible so that officers can foresee problems arising and make efforts to intervene before they escalate. For example, if an offender has been unable to abstain from alcohol, officers can encourage more frequent attendance at self-help meetings, facilitate involvement in additional activities or treatment to occupy the offender, or employ more random contacts to prevent further opportunities for substance abuse. However, offenders are unlikely to confide in their probation officer and seek assistance if they believe they are likely to have monitoring increased and be subject to closer supervision. Consequently, the monitoring style of individual officers can vary considerably. Some officers are very focused on mandates, supervision and compliance, whereas others provide greater guidance, assistance, encouragement and flexibility. This relationship is also a function of the level of rapport officers are able to develop with each probationer. And, regardless of the style employed, officers are ultimately responsible for ensuring offenders complete the terms and conditions of probation, or returning them to court.

Officers also engage in both scheduled and random contacts in community settings. In this context, J. Richard Faulkner, a correctional program specialist for the National Institute of Corrections believes that officers should spend a majority of their time (75-80%) in the community using a mixture of days, evenings and weekends. However, even the most progressive probation departments fail to meet this standard (Gerwin



1998). Indeed, officers participating in our survey reported they spend only about 11% of their time with probationers in the community. In a few jurisdictions, the introduction of technological advances (e.g., wireless communication, notebooks and Personal Digital Assistants (PDAs)) allow officers to spend more time in the community, and the expanded use of these kinds of technology should encourage this practice in the future.

Officers can arrange to meet with probationers at work, at home or some other location to verify compliance with a probation order. The goal of these contacts is to ensure offenders are where they are supposed to be at various times -- residing at the correct location, attending mandated treatment programs and maintaining employment. During these visits, officers may also request offenders to submit to a breathalyzer or urine testing to confirm they are abstaining from alcohol, and can request payment of fines and fees. These contacts also permit officers to observe offenders in a community setting and determine how they are adjusting to the conditions of their sentence. Officers can also identify other potential concerns, such as the close proximity of licensed establishments and the availability of alcohol or presence of intoxicated individuals in the home. Officers are also able to determine if offenders are deteriorating by gauging the level of disorder in the home and their overall appearance. The contacts in the community are also an opportunity for officers to reinforce compliance by recognizing good behavior and further encouraging offenders in this direction.

During these community contacts, officers may also have the option of executing a warrant-less search of a probationer if they suspect criminal activity, the use of illegal substances or that an offender is being untruthful or non-cooperative. Case law permits probation officers (*Griffin v. Wisconsin*, 87, 483, U.S. 868) and police officers (*U.S. v. Knights* 534 U.S. 112 (2001)) to conduct unannounced warrant-less searches of a probationer's residence or person when they are on probation (Neito 1996).

Similar to meetings at the probation office, personal safety is a concern for most probation officers when in the field. Often officers do not know the level of hostility offenders may exhibit, whether other individuals at the home present a threat, or whether or not offenders are sober. Again, many officers take steps to ensure their safety by working in teams, refraining from making contacts in the late evening, informing co-workers where they are going and when they expect to return, and either refraining from



entering a residence that they judge to be questionable or determining various exit routes prior to entering. Many officers never encounter such difficulty when monitoring DWI offenders, but owing to the potential of intoxication from alcohol or other substances, it is important for officers to remain vigilant.

As a response to some of these concerns as well as other issues, it is becoming more common for officers to work in teams or to work closely with police officers when making contacts in the community. Probation officers frequently participate in “ride-alongs” with police during evening and weekend shifts and are able to make random contacts with probationers as time permits. These programs have been in existence for a number of years in several states (e.g., CA, MA, MN) and anecdotal evidence supports their expansion.

The information gathered during these various contacts is routinely documented in the case file for future court actions (e.g., violation of probation) and occasionally prepared in a status report and forwarded to the judge in the case. These reports may be either in narrative or check box form depending on the jurisdiction and their length varies depending on the available information. Some courts may also transcribe these status reports in a standard form prepared for the court. Similar to the situation experienced by police, prosecutors and judges (see our previous reports), paperwork is significant for probation officers who report they spend about 31% of their time on this task.

Officers report they spend 31% of their time completing paperwork.

When prepared, status reports contain information regarding the level of compliance demonstrated by the offender with the various penalties, programs, and conditions of probation. Any instances of non-compliance are also included along with the officer’s opinion regarding the significance of the violations, concerns for further violations, perceptions of risk and a recommendation for action if needed. The frequency with which these reports are prepared is often a function of the level of supervision required, the caseload of the officer, and the level of compliance exhibited.

In order to update case files and prepare these reports, probation officers find it necessary to contact various service providers involved in the case and get updates, which can be a time-consuming process; officers spend about 15% of their time gathering information from other agencies.

Officers spend 15% of their time gathering information from other agencies.



Furthermore, some service providers (particularly treatment providers) may report directly and independently to the court, meaning probation officers may have no idea of whether or not offenders are participating in mandated programs. This practice also complicates matters for the court because the judge will have to review multiple reports regarding a single offender, none of which contains complete information.

4.1.6 Violations and Revocation Proceedings

Probation violations occur when offenders commit new criminal offenses or fail to comply with one or more of the terms and conditions of the probation order (“technical” violations). Technical violations include, but are not limited to, positive breath alcohol tests, breaking curfew, driving unlicensed or driving a vehicle that does not have an ignition interlock, failing to maintain employment or complete community service, failing to attend treatment or failing to pay fines and fees.

In this context, it is important to recognize that offenders, in some instances, can be set up to fail because conditions imposed as part of their probation cannot be completed due to other factors. For example, fines and fees can be imposed that offenders are unable to pay. Most commonly, offenders can be ordered to participate in treatment, however, no treatment programs may be immediately available. As a consequence, the offender can have their probation revoked for non-compliance, particularly when officers do not have time to find out why conditions have not been met or to assist the offender in locating other programs.

The type and extent of violations determine what action probation officers will take. Less serious or isolated technical violations such as breaking curfew may result in a verbal warning. More significant or multiple technical violations can result in additional sanctions or more restrictive conditions of probation depending on the statutory authority granted to probation officers. These may include placing additional restrictions on an offender’s curfew, increasing the level of supervision or contacts, a referral for treatment, the implementation of electronic monitoring or incarceration. Very serious, repeated violations or the commission of new offenses can result in the offender being immediately returned to custody by their probation officer. In addition, the offender may be returned to court for violation of probation (VOP) proceedings. Upon finding probable



cause to violate the offender, courts may revoke probation and sentence the offender to jail, or may continue probation with additional conditions.

The way in which violations are handled is also reflective of the case management strategy used by each officer as well as jurisdictional philosophy. Some officers will take formal action on all violations, regardless of their nature. Other officers are more flexible and provide offenders with opportunities to comply before taking formal action. Officers may also consider the nature of their relationship with each offender when making decisions regarding violations. It is important for officers to demonstrate a willingness to be flexible regarding minor violations in order to build a relationship of trust with offenders. As mentioned previously, offenders must feel they are able to confide in an officer when they encounter difficulties adhering to probation conditions and programs. Such information allows officers to fulfill their role of assisting with community integration and rehabilitation.

Although many agencies have standard procedures regarding the reporting of violations, officers are often required to use their best judgment and discretion when determining what action is necessary. More than one-third of the officers in our survey (36%) report they would like more structure and guidance regarding the reporting of probation violations. Furthermore, it is not always feasible for officers to initiate timely revocations in light of court backlogs and jail overcrowding issues.

36% of officers would like more structure and guidance regarding the reporting of violations.

Depending on local practice or procedure, after making the decision to initiate a VOP for a violation(s) or new offense(s), officers must either initiate a revocation themselves or contact either the judge assigned to the case or the prosecuting attorney in order to have a “motion to revoke” filed in court. The VOP has to be filed with the court and be placed on the court docket or calendar. It is a common misconception among the general public as well as probationers that officers can unilaterally revoke probation. At most, officers can arrest and detain a probationer for up to 72 hours. Obviously, officers must have strong grounds to support the VOP because some prosecutors may be hesitant to proceed unless the revocation is likely to be successful.



Once the VOP is filed with the court, the probationer is served with a formal written notice indicating that revocation proceedings have been initiated. In this context, officers in our survey report that 44% of probationers are returned to court for non-compliance with various terms and conditions of probation. A revocation proceeding is a “summary hearing”, meaning it is not a full criminal trial. It has streamlined procedures and a lower standard of proof. Both the prosecution and the defense are represented at the hearing which is presided over by a judge. The timing of the hearing can vary substantially depending on the caseload assigned to the judge and the extent of court backlogs. Consequently, delays in these hearings are not uncommon.

At the hearing, the prosecution presents their case to support the revocation of probation. The probation officer can be called as a witness for the prosecution and give testimony in support of the VOP and provide evidence substantiating the violations committed. The probationer is typically represented by counsel at this hearing and is provided an opportunity to defend him/herself against the charges and cross-examine any witnesses, including the officer.

A key difference between a revocation and other court proceedings is that a lower standard of proof must be met. At a criminal trial, a prosecutor must prove their case “beyond a reasonable doubt”, whereas for the purposes of revocation a prosecutor must only prove guilt on a “preponderance of the evidence”. This means it is only necessary to prove it is more than 51% likely that the offender either had the intent to or committed the violation(s) or new offense(s).

Obviously, it is more likely that offenders will be found to have committed the violation or admit to the allegations at these proceedings, which is why a majority of offenders plead guilty. For this reason, it is not uncommon for prosecutors to proceed with revocation proceedings instead of a trial for any new offenses. At revocation proceedings offenders will plead guilty to technical violations in exchange for having charges for new offenses dismissed. This has become common practice, especially in light of the overwhelming volume of cases facing criminal justice professionals. The offender avoids a criminal conviction and the prosecutor succeeds in having probation revoked.



Once the court finds probable cause that the violation was committed, judges have a variety of options regarding the sanctions to be administered. Offenders are not necessarily sent to jail. In many instances, probation is continued with additional conditions or restrictions. For example, the length of the probation order may be extended, an additional fine or community service may be imposed, a higher level of supervision can be ordered, or probationers may be placed on some form of electronic monitoring. There is some disparity among judges in the handling of violations. In some jurisdictions, only in extreme circumstances or following multiple, persistent violations will an offender be returned to jail, whereas in other jurisdictions a single violation can result in incarceration.

It is also not uncommon for some offenders to abscond or essentially “disappear” and fail to comply with conditions of probation entirely. These offenders usually leave the jurisdiction without authorization and authorities often do not have the time or resources to locate them. Officers themselves can issue “pick-up” orders, requesting the offender be “picked-up” by probation officers or law enforcement as soon as they are located and some departments have absconder units to locate these offenders. Probation officers can also request that a motion to revoke be filed in court so a judge can issue an arrest warrant for the probationer. However, similar to warrants for failure to appear (see Simpson and Robertson 2001; Robertson and Simpson 2002a), these are not a priority for law enforcement in light of competing demands. This often means that there may be few consequences for those offenders who fail to report to their probation officer and leave the jurisdiction.

Many probation departments post information about “absconders” on their respective websites and request that those with information contact them directly. Clackamas County, Oregon took this one step further in August 2000 and created a cable TV show modeled after “America’s Most Wanted” which featured information about county probation and parole violators (www.co.clackamas.or.us/corrections). At the time, it was estimated that of the 2,500 offenders on probation and parole (for various offenses, not just DWI) in the county, over 1/3 (875) had absconded.



4.1.7 Successful Termination of Probation

When offenders successfully complete the terms and conditions of their probation order for either the entire term or a majority of their probation sentence, they can be released from probation supervision. This may happen without any violations. However, offenders may commit multiple violations during the course of their probation sentence that require action on the part of officers. Persistent violations most often result in a summary hearing and either a term of incarceration is served or new conditions are added to the existing probation order. In this context, data from the Department of Justice indicates that only two out of five offenders exiting probation do not meet the conditions of probation successfully without having their probation revoked (Dept. of Justice 2001).



5.0 Identifying Problems and Solutions —●

As described previously, this report -- the fourth in the series -- deals with the monitoring segment of the criminal DWI system. It identifies problems that impact the efficient and effective monitoring of hard core drinking drivers by probation and parole officers, and recommends solutions to these problems.

5.1 Literature Review

A comprehensive review of the related literature was undertaken (see bibliography), specifically to identify problems in the monitoring of hard core drinking drivers – i.e., problems that probation officers encounter when they try to ensure that offenders comply with the terms and conditions of their sentence. Although there is a wealth of information regarding the effectiveness of the various penalties applied to offenders (Byrne et al., 1992; Morris and Tonry 1990), there is a limited research and information on the ability of probation officers to effectively monitor offenders assigned to these programs. The information that does exist is fragmented between the criminal justice and traffic safety literature and most articles deal with only one or two specific penalties. As a result, the relative and contemporary importance of many of the problems is difficult to gauge. Nevertheless, our review of the literature did uncover a reasonably wide range of issues.

The problems identified in the literature were collated and expanded, based on our own knowledge of the system. This initial list was then synthesized and condensed to reduce redundancy and overlap. This process yielded a list of key problems that affect the monitoring of DWI offenders -- problems such as sentence monitoring, caseload, and sentencing disparity.

Because the list of problems was generated from the research literature, some of which was neither contemporary nor national in scope, it was imperative to perform a “reality



check” on the problem list. The first step in this process involved a series of workshops/focus groups with front-line probation officers.

5.2 Probation and Parole Workshops

The purpose of the workshops was to validate, expand and prioritize the list of problems generated from the existing research literature. Details on when, with whom, and how these workshops were held are provided below.

5.2.1 Site Selection

To achieve some degree of representativeness in the information obtained from the workshops, as well as address time constraints, it was decided to hold workshops in conjunction with the Annual Training Institute of APPA involving participants from a variety of states. The Executive Board of APPA was contacted with a written request to assist with the organization of two workshops as part of their Annual Training Institute. A formal request for workshop participants was posted at the APPA website and an insert advertising the workshop was included in all registration packages sent out in advance of the conference.

The selection of participants was determined by several factors, not the least of which was convenience. As well, we felt it would be useful to include some states that demonstrated a more progressive approach to dealing with hard core drinking drivers and some states that had made less progress in this area. States were rated using an informal composite based on their legislative record, drunk driving statistics and evaluations conducted by other groups, such as MADD’s “Rating the States” (MADD 1999).

From the list of states created by this process, we selected participants representing various regions of the country and, where possible, selected different jurisdictions within each state. Follow-up discussions with individuals who completed the APPA insert clarified the purpose of the workshop and what was expected from participants. We



emphasized the need for participants with considerable contemporary experience in monitoring repeat DWI offenders.

Workshops were organized and held during the Annual Training Institute of APPA in St. Paul, Minnesota in August 2001. Participants from the following locations were included:

- California (San Diego)
- District of Columbia (Washington)
- Minnesota (St. Cloud, St. Louis Park)
- Nebraska (Gering)
- New York (White Plains)
- Oregon (Oregon City, Portland)
- Washington (Vancouver)

A total of 10 participants representing 9 agencies in 7 states participated in two workshops (their names and affiliations appear in Appendix B). These participants were experienced, knowledgeable, dedicated and committed to making a difference in the problem of drunk driving.

5.2.2 Workshop Format

All workshops were conducted and facilitated by the authors of this report. Each workshop lasted approximately three hours and followed the same format:

- ◆ an introductory presentation provided background information about our organization and the purpose of the project;
- ◆ the problem list was distributed (see Appendix D) and participants were asked to independently rank order these problems in terms of their impact on the efficient and effective monitoring of hard core drinking drivers;
- ◆ discussion and clarification ensued as needed;
- ◆ the rank-ordered lists were collected and collated by the workshop facilitators -- during this process, participants were asked to independently identify important problems that were not on the list;
- ◆ each participant was, in turn, asked to describe a problem they felt should be added to the list -- open discussion sought to clarify the nature of the problem, to determine if it was considered an issue by the other probation officers and, if so, to determine where it ranked in relation to those on the primary list; and



- ♦ finally, beginning with the problem that was ranked as the most serious, participants were asked, in round-table discussion format, to identify cost-effective, practical solutions to the problems.

Discussion in the workshops was lively and productive and consistently demonstrated the high level of commitment and passion the participants had for the monitoring of DWI offenders. Participants shared their concerns, views and opinions openly and freely. They had little difficulty understanding the problems contained on the list, or in rank-ordering them. Of some interest, many other problems were elicited during the open discussion but virtually all of them were variations of those on the primary list or were more specific instances of problems that were subtended by those on the primary list. This speaks to the validity and generality of the problems identified in the literature review.

Despite the differences in the states represented in the workshops and differences in jurisdiction and status of the participating professionals, there was considerable consistency in the rankings as well as in the solutions suggested for overcoming or minimizing the effect of these problems. The results from the workshops are not discussed here but have been combined with the results from the survey (Section 5.3) and reported in a single, integrated section (6.0), that describes the overall findings and recommendations.

5.3 Survey of Probation and Parole Officers

The workshops yielded a list of priority problems in the monitoring of hard core drinking drivers as well as suggested solutions to these problems. Despite the overall consistency of findings across the two workshops, it was deemed useful to enhance the generality or representativeness of these findings through a broader survey of probation and parole officers. Moreover, such a survey provided the opportunity to obtain other relevant information, such as the frequency with which various problems are encountered.



5.3.1 The Survey Instrument

Given the volume of information we wanted to obtain, two separate surveys were constructed -- one focusing on issues related to problems; the other focusing on issues related to solutions. However, both surveys included a section that asked officers to rank order the problem list that had been generated from the workshops. Copies of the surveys appear in Appendix E.

To facilitate a broad survey of officers, we requested and obtained assistance from the Board of Directors of APPA.

5.3.2 Survey Distribution and Response

A package of surveys was sent to each member of the APPA Board of Directors as well as the head of each agency represented by APPA. Depending on the size of the agency, the survey package included as few as four or as many as 20 surveys. Almost all states received surveys. In addition to the surveys, each package included the requisite number of stamped, self-addressed return envelopes and an explanation of the project. Administrators were encouraged to use their own discretion when selecting survey recipients based on their knowledge and experience with officers in their jurisdiction. In a few jurisdictions where more surveys were required, administrators copied the needed number of surveys.

Eight hundred and ninety surveys were completed and returned. To our knowledge this is the largest and most comprehensive survey of probation and parole officers' views on drunk driving issues. Table 1 shows the number of surveys completed, by state. Of the 890 completed surveys, representing officers in 41 states, 473 dealt with problems in the monitoring of hard core offenders, and 417 with solutions.

5.3.3 The Survey Respondents

Officers participating in the survey varied considerably in their years of experience, ranging from 1 to 37 years. The average number of years of experience as an officer



was 9.08. Experience in monitoring DWI offenders was also extensive, with officers reporting an average of 7.14 years – 35% had 1-3 years experience, 35% had 4-8 years experience, and 30% had over 8 years experience.

Respondents were asked how many offenders they routinely supervise as part of their average caseload as well as how many DWI offenders were part of that caseload. Officers reported an average caseload of 112 offenders, including an average of 55 DWI offenders. The distribution of DWI offenders monitored was as follows: 40% of the respondents normal caseload includes 1-9 DWI offenders; 20% have 10-20 DWI offenders; 20% have 21-65 offenders; and 20% have more than 66 DWI offenders (66-800).

Respondents were also asked whether they supervised DWI offenders as part of an Intensive Supervision Probation (ISP) program. A majority (61%) reported they were not part of an ISP program; the remainder (39%) reported they did monitor DWI offenders as part of an ISP program. Respondents were also asked to indicate what agency was responsible for providing probation services. More than half (58%) of the respondents said court agencies managed probation in their jurisdiction, 32% indicated correctional agencies, and 7% indicated an executive department (e.g., NY) where neither courts or corrections managed probation.



Table 1

Location of Survey Respondents			
<u>Number of Surveys Returned</u>			
STATE	Total	State	Total
Alabama	13	Missouri	19
Alaska	10	Montana	6
Arizona	50	New Jersey	2
California	7	Nevada	11
Colorado	26	New York	101
Connecticut	4	North Dakota	6
Florida	24	Ohio	74
Georgia	38	Oklahoma	4
Hawaii	4	Oregon	16
Iowa	18	Pennsylvania	8
Idaho	8	Rhode Island	3
Illinois	34	South Carolina	16
Indiana	31	Tennessee	22
Kansas	41	Texas	85
Kentucky	5	Utah	55
Louisiana	11	Virginia	17
Massachusetts	3	Washington	3
Maryland	22	Wisconsin	17
Michigan	19	West Virginia	2
Minnesota	44	Wyoming	4
Mississippi	6		
		Total	890



6.0 Findings and Recommendations —●

This section integrates the findings and recommendations arising from the literature, workshops and the survey of front-line probation and parole officers from across the country. It describes problems encountered when monitoring hard core drinking drivers and how these problems can be overcome.

Eight key problems that impede the efficient and effective monitoring of DWI offenders were identified. In order of priority, the problems are:

- non-compliance with court orders
- caseload
- conflicting goals
- sentencing disparity
- program design
- paperwork
- net-widening
- records

In the sections that follow, for each problem, we present:

- ◆ a description of the problem itself and quantitative information on its extent -- i.e., what it is, and how big a problem it is;
- ◆ the consequences of the problem -- i.e., the ways it can impact the effective and efficient monitoring of hard core repeat offenders; and
- ◆ recommended solutions for addressing the problem.

For convenience, this rather extensive information is summarized in an introductory paragraph at the beginning of each problem.



6.1 Non-Compliance with Court Orders

♦ **The problem.** Probation officers are responsible for the day-to-day monitoring of offenders to ensure they comply with the terms and conditions of their sentence. The importance of this function cannot be emphasized enough -- if public safety is to be protected, and if offenders are to benefit from rehabilitation programs, it is imperative they comply with the imposed sentence. But probation officers estimate that almost half (44%) of offenders fail to comply, to some extent, with the terms and conditions of their sentence.

Common problems that impede the efficiency and effectiveness of the monitoring process include a lack of information, authority to impose additional sanctions for non-compliance and sufficient resources to monitor and assist offenders. The accurate and timely flow of information from service providers, such as treatment interlock agencies, gives probation officers critical data on compliance and other issues. However, officers report that this exchange of information is often inconsistent, or at times, non-existent.

Even when officers are made aware that offenders are non-compliant with the terms and conditions of their sentence, almost one-third of officers report that they lack the authority to impose additional meaningful sanctions for violations. Finally, insufficient resources decrease the level and quality of supervision officers are able to provide, thereby compromising their ability to ensure that offenders are compliant.

♦ **The consequences.** Some offenders experienced with the criminal DWI system quickly learn that a conviction does not mean they will have to comply with some or all of the imposed conditions because of weaknesses inherent in the monitoring process. The ability of offenders to circumvent penalties compromises public safety and the effectiveness of penalties in changing problematic behaviors. As well, problems in enforcing compliance are frustrating for officers, impacting their motivation.

♦ **The solution.** A majority of officers agree that more efficient communication with both treatment and service providers would facilitate the exchange of information and improve their ability to monitor offenders. Two-thirds (67%) of officers also



recommend expanding treatment facilities because they would provide an added layer of supervision as well as address the issues that result in offending in the first place.

Almost half of officers (44%) believe they need the opportunity for more random contacts with probationers in the community to reinforce compliance, and more frequent random alcohol testing because the uncertainty this creates enhances compliance. Finally, officers support the expansion of cooperation and coordination with police agencies that often perform similar functions and who can provide both security and assistance when necessary.

6.1.1 Problem Description and Scope

Once a DWI offender has been convicted by a judge or jury, it is the responsibility of the judge to impose sentence. Each sentence may include a variety of penalties and associated conditions, such as serving time in jail and/or on probation, payment of fines and fees, attending treatment programs, installing an ignition interlock or EM, and abstaining from the use of alcohol or other drugs. Although judges are ultimately responsible for determining whether offenders are complying with the terms of the sentence and taking action if they decide that violations have occurred, they rely upon reports from probation officers, who carry out the day-to-day physical monitoring of offenders on probation in the community.

Probation officers collect information on offender compliance and may periodically (depending on the jurisdiction) submit it to the appropriate judge in formal status reports and/or violation reports that usually contain a recommendation for action. As described in more detail below, this is a complex and demanding task because many offenders have multiple problems (e.g., unemployment, polydrug use, mental disorders) to be addressed. It can be even more challenging with repeat offenders, not only because they often have multiple penalties and conditions as part of their sentence -- reflecting both the gravity of the offense and the efforts needed to change their behavior -- but also because their familiarity with the system may make them skilled at avoiding detection, and/or indifferent to the consequences of non-compliance.



Although it is commonly assumed that offenders comply with the terms and conditions specified in the sentence, offenders frequently fail to do so, either in whole or in part. Indeed, in our previous report on sanctioning (Robertson and Simpson 2002b), judges estimated that 28% of offenders were returned to court for non-compliance. Not surprisingly, probation officers report substantially higher rates of non-compliance, estimating nationally that almost half (44%) of offenders fail to comply with all the terms and conditions of their sentence. This figure is consistent with data reported by the U.S. Department of Justice, which indicates that 2 out of 5 probationers do not successfully meet the conditions of their supervision (DOJ 2001).

Nationally, officers estimate that 44% of offenders fail to comply with the terms of their sentence.

Based on their experience, officers in our survey also identified the extent to which offenders are likely to be non-compliant with specific penalties. Thirty-six percent of officers report that offenders are least likely to comply with licensing restrictions; 28% report that offenders are least likely to comply with treatment orders; 19% said payment of fines and program fees; 9% said community service orders; 6% identified ignition interlocks; and, only 2% of officers said EM. Each of these sentences presents their own challenges but officers have identified a number of common problems that impede the efficiency and effectiveness of monitoring compliance -- a lack of information, authority to impose sanctions for non-compliance, and sufficient resources to monitor and assist offenders.

Officers report that offenders are least likely to comply with licensing restrictions and treatment orders.

Information. To monitor compliance with penalties, officers depend heavily on information provided to them by offenders themselves and other agencies that have a direct relationship with offenders --e.g., an ignition interlock service provider, a treatment agency. The quantity, quality and timeliness of the information provided by these agencies are critical to the monitoring process but officers report that the flow of needed information is often inconsistent, or at times, non-existent.

To illustrate, if an offender has been ordered to install an ignition interlock as a condition of probation, officers should receive verification from the service provider that the device has been properly installed on the vehicle and subsequently receive copies of any information routinely downloaded from the data recorder. Although some officers



indicate a positive relationship and frequent communication with service providers, many report that the information forwarded from the service provider can be inconsistent; officers in a few states (e.g., NE, WA) even said that they have little or no contact with service providers.

Furthermore, the quality of information officers receive varies considerably, from the actual printout from the data recorder to a report indicating only tamper attempts and fails. Officers frequently report difficulties deciphering the report and may have limited understanding of its contents, making it considerably more difficult for them to determine whether offenders are complying and to be able to take advantage of opportunities for intervention. For example, repeated failed attempts to start a vehicle at 7 a.m. on a weekday morning can indicate that the offender was drinking heavily the previous evening. This information confirms the offender was not complying with the condition of abstinence from alcohol and also provides the officer with a window of opportunity to intervene by forcing offenders to confront the fact that their drinking interferes with their ability to function, illustrating the need for treatment and behavior change.

Communication problems are further compounded in larger jurisdictions where there may be multiple service or treatment providers. Probation officers must monitor offenders who are being served by different providers, all of whom may have different practices and procedures, making the information-gathering process more time-consuming and complicated. This can often result in inconsistent follow-up with providers, so that non-compliance by offenders may be overlooked. Additionally, because some officers have a limited number of DWI offenders as part of their caseload they are not given the opportunity to work with providers on a regular basis, making the forging of strong, cooperative relationships more difficult.

Similarly, officers encounter difficulties monitoring compliance with treatment orders and conditions of abstinence. Due to the need for a confidential relationship between offenders and treatment providers, officers may frequently be unaware of important information, such as the frequency with which offenders appear for scheduled appointments and their progress in treatment. Although officers understand the need for confidentiality within the treatment process, it is essential for them to be informed of continued substance abuse by offenders. In many instances, treatment providers do



not tell probation officers when offenders continue to engage in substance abuse. Without this knowledge, officers may overlook subtle signs of deterioration in behavior, be unaware of offenders' failure to abstain from alcohol or drugs, and are, therefore, unable to assess the risk posed to the community.

Authority. Almost one-third of officers report that they lack the authority to enforce compliance with sentences because they are unable to impose additional meaningful sanctions for probation violations. A recent survey of APPA Board members reported that only 46% of field officers have the authority to alter conditions of supervision, although almost 70% believed that officers “informally” change conditions in response to probation violations (APPA 2002b).

One-third of officers report they lack the authority to impose sanctions for non-compliance.

In some states (e.g., MN, OR, SC), if offenders fail to comply, officers are able to impose administrative sanctions for non-compliance -- e.g., sanctions such as short periods of incarceration, curfews, increasing the frequency of breath alcohol testing, increasing the level of supervision, and ordering additional treatment. Although incarceration can be effective, officers are limited in their ability to use it because of jail overcrowding. Other administrative sanctions have minimal deterrent effects and repeat offenders know the likelihood of detection for non-compliance is nominal. According to officers, their inability to take meaningful action in response to violations undermines their credibility with offenders, making compliance less likely. When officers are unable to hold offenders accountable for non-compliance, consequences are anything but swift and certain.

In this context, some officers have developed offender incentives or positive reinforcements for compliance and found they can also be successful in altering offender behavior. These incentives may be as simple as relaxing curfew restrictions when offenders demonstrate continued compliance or complete various conditions. Some officers firmly believe that encouraging and rewarding offenders for compliant behavior as well as punishing bad behavior can reduce non-compliance.

The most severe action officers can take is to file violation of probation charges or request that the prosecutor responsible for the case file a motion to revoke probation. However, repeat offenders are aware that this is difficult to achieve because court



dockets are backlogged, jails are overcrowded, and, unless the violation is significant, prosecutors are not likely to file the motion. Furthermore, once scheduled, a summary hearing may not take place for several weeks and offenders may remain free during this time. Even when motions are successful, it may be unlikely that offenders will be ordered to serve time in jail depending on the jurisdiction. "People suspected of violating probation, even when charged with a new crime, often wait months for a court hearing. Many found in violation go unpunished or just receive a mild sanction." (Gerwin 1998, p.2).

In many instances, judges revoke probation and then immediately re-instate it with additional conditions. When probationers do not fear the imposition of additional criminal sanctions by judges, probation officers have little hope of gaining compliance through the use of limited administrative sanctions. In this sense, judges may be acting unwittingly as enablers by permitting offenders to continually disregard imposed penalties without consequences. To illustrate, in California, 52% of probationers who violated their terms of probation did not receive a violation of probation hearing or additional sanctions (Neito 1996).

Resources. Officers report that insufficient resources are a significant impediment to enforcing and reinforcing compliance. For more than a decade, probation departments have suffered intense cutbacks or stagnant funding while the population of offenders under supervision has increased significantly (Cochran et al., 1992). The consequences are far-reaching.

Insufficient resources adversely affect the level of supervision officers can provide. For example, specialized caseloads are rare and officers are often required to monitor a mix of offenders who have committed different offenses and pose varying levels of risk. Officers with mixed caseloads report they spend a majority of their time and efforts supervising higher-risk offenders who require more work to monitor, which means less time is available to supervise other lower-risk offenders as caseloads expand. As a result, lower-risk offenders receive less supervision than they should (for their designated level of supervision) and they too quickly learn that non-compliance is more likely to go undetected. As a consequence, these offenders may be less likely to comply with the terms of their probation.



Officers also have less time to spend with offenders in community settings and, with few exceptions, random contacts are infrequent for all but high-risk offenders. The inability of officers to provide appropriate supervision in the community makes it difficult to verify whether offenders are actually complying with imposed conditions.

At the same time, officers are less likely to observe offenders who are compliant and miss opportunities to reinforce and encourage this behavior. The Executive Director of APPA reports, “it can be as important for officers to catch offenders doing things right as it is do catch them doing things wrong” (Wicklund 2003).

Many officers report that both compliance and non-compliance are much more likely to be detected by observing the offender in the community and they emphasize the need to spend more time in community settings. Officers are more likely to detect probation violations (e.g., frequenting liquor-licensed establishments, consuming alcohol, driving unlicensed or breaking curfew) in the community than they would in an office. However, officers report they currently spend only 11% of their time completing in-home visits and 9% of their time conducting random alcohol testing, meaning that a majority of any offenders’ time in the community is largely unsupervised.

Officers spend 11% of their time conducting in-home visits and 9% conducting random alcohol testing.

Indeed, more than 60% of an officer’s time is spent in the office meeting with probationers or completing paperwork. When meeting in an office setting, officers must rely primarily on information offenders choose to report. Limited resources hamper officers from confirming the veracity of statements made by offenders who are aware that their non-compliance is likely to be undetected.

Officers in rural jurisdictions report that limited availability of service providers and access to programs can also impede the effective management of cases and result in non-compliance. In some jurisdictions, penalties mandated by law cannot be carried out due to a lack of service providers. For example, despite ignition interlock legislation in Alaska permitting offenders to be sentenced to the device, there are no service providers to install them, so offenders cannot be forced to comply with this penalty.



Long waiting times for admission to treatment programs are not uncommon in many states. In addition, the lack of residential treatment facilities means that offenders with severe alcohol problems are monitored by over-burdened probation officers. This only serves to increase their workload and, consequently, officers are unable to provide the needed constant supervision and therapeutic intervention in these cases. Officers report that almost 90% of DWI probationers are required to participate in some kind of treatment and many offenders wait several months for admission to more intensive programs. Worse yet, it is not uncommon for probation periods to expire before offenders can be enrolled into programs. Almost half of officers (44%) nationwide report there are not enough treatment facilities to accommodate DWI offenders. As a consequence, offenders may be unable to comply with certain conditions, as opposed to being non-compliant.

44% of officers report there are not enough treatment facilities to accommodate DWI offenders.

This problem is especially acute for women and members of minorities who often have unique issues that are not addressed in traditional treatment programs. Half (50%) of all officers surveyed report that more treatment facilities are required specifically for women and members of minority groups. Many probation officers note that women are particularly difficult to supervise because their addiction frequently goes undiagnosed for longer periods, making the addiction more severe. It has long been recognized that women are more likely to be prescribed more and higher doses of medication, they become habituated more easily to these drugs, and frequently combine them with alcohol. Historically, women have also been granted considerably greater leniency by the justice system, meaning women have frequently had more chances to “fail” and non-compliance has had fewer consequences. This makes it more difficult for officers to communicate the seriousness of consequences for non-compliance with imposed penalties as well as ensure women complete their sentence.

6.1.2 Consequences of the Problem

Considerable strides have been made in the past several decades in identifying effective penalties and programs and incorporating them into the options judges have for sentencing offenders. However, such penalties cannot fulfill their intentions if offenders are not compliant -- i.e., if they fail to complete the terms of their sentence. The importance of monitoring by probation officers cannot be emphasized enough -- if



public safety is to be ensured, and if offenders are to benefit from rehabilitation programs, it is imperative they comply with imposed sentences.

Offenders experienced with the DWI system quickly learn that a conviction does not guarantee that they will have to complete the imposed sentence because of weaknesses inherent in the monitoring system. The ability of offenders to circumvent compliance with their probation compromises the effectiveness of the justice system. If sentences cannot be closely monitored, the needed behavior change will not occur.

Difficulties in enforcing compliance also affects the motivation of probation officers, and this can often be overlooked by administrators. Officers often have difficulty completing status reports and in many instances are unsure whether offenders are in complete compliance or not. Some officers believe there is no point in imposing administrative sanctions for non-compliance as these mechanisms will not increase conformity among offenders. Furthermore, these sanctions merely result in more paperwork for officers and even less time to supervise offenders and reinforce compliance. When action is not taken for probation violations, offenders engage in continued violations. This significantly reduces the utility and effectiveness of probation as a sentence.

Ineffective supervision also sends a message to the public that these crimes are not taken seriously, and society can lose confidence in the justice system's ability to deal with these offenders effectively.

6.1.3 Recommended Solutions

Probation officers recommended a number of solutions that can improve the efficiency and effectiveness of sentence monitoring and reduce non-compliance.

♦ **Better communication with treatment and service providers.** A majority of officers (88%) agree that more contact and communication, including better exchange of information with treatment and service providers would greatly improve the supervision of offenders. Officers need consistent and timely access to important information regarding offenders' compliance in

88% of officers agree better communication with treatment and service providers would improve monitoring.



order to complete necessary status reports and violation of probation reports for the judiciary. Instances of non-compliance and other relevant information should be consistently reported to probation officers so that they are aware of all the details of a case and better able to gauge the significance of other behaviors observed in the community.

Service providers also have an essential role in the monitoring of repeat offenders as they can provide access to some of the information needed by officers. When probation departments enter into contracts with service providers, explicit procedures should be included for the exchange of information. Information should be presented in a structured and meaningful manner so that officers can understand the importance of relevant material. For example, officers believe that better communication and stronger working relationships with interlock providers, greater assistance with data recorder printouts, and technical assistance regarding the device itself would significantly improve their ability to monitor offenders on interlock devices. In this context, officers also support increasing training opportunities for probation officers regarding the operation and the effectiveness of the various sentences and programs they are required to monitor.

◆ **More treatment facilities.** More than two-thirds (67%) of officers surveyed agree that more treatment facilities in their jurisdiction would improve the monitoring of DWI offenders; half would like more treatment facilities dedicated to women and members of minorities. Treatment facilities can provide an added layer of supervision by accounting for some of the time offenders are in the community. Officers know that offenders are supposed to be at treatment during certain times and officers can more easily contact providers to determine compliance. Treatment providers are also aware of important information that will assist with monitoring, such as whether offenders are continuing to abuse alcohol or other substances. In this context, virtually all officers (99%) believe that treatment professionals should be obligated to inform officers when probationers engage in continued substance abuse.

99% of officers believe treatment professionals should be obligated to inform them of continued substance abuse by offenders.

Officers strongly believe that treatment is necessary to address issues of addiction and dependency that result in impaired driving offenses. They also believe that treatment is



effective with offenders in one-third (33%) of the cases they monitor. Without treatment, fundamental problems are never addressed, meaning offenders will most likely continue to recidivate and officers can expect to see the same offenders returning as part of their caseload.

Officers report that addiction treatment is effective with offenders in 33% of the cases they monitor.

The results of a program in Dakota County, Minnesota, clearly demonstrate the effectiveness of treatment combined with probation supervision. The Safe Streets Program successfully combines treatment and surveillance. This program is 6 to 12 months in length and consists of 4 phases based on “best practices” research. It is designed to serve repeat DWI offenders who have three or more prior convictions.

The first phase of the program involves complete surveillance and treatment. Offenders participate in home detention with electronic alcohol monitoring and are assessed to determine the appropriate level of treatment. The second phase is highly structured and abstinence based, and offenders participate in treatment and cognitive skills sessions. During this phase there is a gradual reduction of surveillance and programming requirements. The third phase consists of weekly treatment and day reporting while the last phase involves maintenance and aftercare. The results of the program are impressive. After one year almost 80% of participants had no violations, after 3 years 88%, and after 5 years 75% had no violations. More information on this program can be obtained by contacting Anita Kennedy at (651) 554-0685.

♦ **More contact with offenders and random testing.** Almost half (44%) of the officers surveyed recommend more contacts with probationers in the community to reinforce compliance and more frequent random alcohol testing. Random contacts and testing result in greater compliance because offenders are unaware of when or where their probation officer will contact them. Random contacts create the perception of constant supervision and are likely to impact the choices made by offenders in the community. For example, offenders will abstain from alcohol prior to a scheduled meeting with their probation officer but are more likely to drink when they believe the probation officer will not contact them. Random contacts ensure greater levels of compliance by making probationers unsure of when contacts will occur.



♦ **Cooperation with police.** Probation officers recommend greater cooperation and coordination with police agencies to supervise offenders. Probation and police often fulfill many of the same functions and police are just as likely to come into contact with probationers, so a team effort can frequently reduce service duplication as well as paperwork. Cooperative programs have been organized in several states including California, Massachusetts and Washington. In California, Merced County has developed a program, Supervising Offenders by Enforcement Response (SOBER), in which a deputy probation officer is partnered with a Highway Patrol officer to supervise all felony DUI probationers. Prior to the development of this program, DWI offenders were placed on unsupervised probation or assigned to officers monitoring diverse caseloads. After three months, the SOBER program reported a 10% return on custody violations, executed 3% of outstanding warrants, and enforced treatment orders (NTSB 2000).

In Massachusetts, Operation Nightlight, which pairs probation and police officers, has been in operation since 1992 and currently about 70% of probation departments do some type of field supervision either with police or on their own. Participants in this program supervise a broad range of offenders and it is strictly voluntary, so participation rates vary considerably throughout the state. However, anecdotal reports from probation officers indicate they are very satisfied with the results of these programs and more probation departments should be encouraged to share information and work cooperatively with police agencies.

6.2 Caseload

♦ **The problem.** Probation populations have been increasing steadily for the past several years -- from 3.2 million in 1997 to 3.9 million in 2001 (DOJ 1998; 2001). The DWI population being monitored by probation officers has risen even more sharply -- in 1997, 14% of the adult probation population was serving sentences for DWI offenses; by 2001, this number had risen to 18%. Almost one in five offenders on probation had been sentenced for DWI (DOJ 1998; 2001).



This growth in offenders has resulted in substantial increases in the caseloads supervised by officers and, accordingly, their respective workloads. Statistics from various state agencies indicate that caseloads vary substantially, from less than 100 offenders to more than 3,000 (e.g., CA) in some isolated instances (Neito 1996). Officers responding to our survey report that their average caseload consists of 112 offenders, including 55 for DWI offenses.

Significant cutbacks and/or stagnant funding levels have resulted in staff deficiencies, exacerbating the caseload burden nationally. As well, offenders are now being assigned to probation supervision at a higher rate because of jail overcrowding. Moreover, there is evidence that probation sentences are being imposed for longer periods and at higher levels of supervision that include more complex and varied conditions, further adding to the workload of officers. As a result, the quality of probation supervision has deteriorated to the point that it is not taken seriously by either the offender or the general public.

♦ **The consequences.** With increases in caseload come corresponding decreases in the quantity and quality of supervision. Officers are unable to monitor offenders adequately or confirm information provided by offenders during scheduled appointments. Random contacts in the community to verify information are infrequent at best and officers have difficulty completing paperwork and maintaining current files.

Significant increases in caseload also result in a reduced emphasis on offender rehabilitation and reintegration into the community. Officers report they spend more time enforcing compliance and have less time to assist offenders. Probation without rehabilitation means that underlying issues contributing to offending are not addressed and offenders, particularly those who have previously offended, are far more likely to recidivate, leading to frustration on the part of officers.

♦ **The solution.** Over 80% of officers want to see reasonable limits placed on the size of caseloads to increase the quality of supervision they provide. Even if caseloads are not restricted, almost half (47%) of officers report that more probation officers are needed to cope with currently excessive demands for monitoring. This is especially important considering the rate at which offenders are increasingly being



assigned to probation terms at higher levels of supervision. If probation is to serve as the primary sentence for DWI, sufficient resources must be allocated to ensure the effectiveness of monitoring.

Twenty percent of officers recommend the use of technological innovations, such as EM with alcohol testing, to permit the effective supervision of larger caseloads. Twenty percent of officers also support the expansion of in-patient treatment to reduce time demands on officers and permit greater supervision, particularly of high-risk offenders. This can prevent further recidivism by these chronic offenders and thereby reduce the number returning to probation caseloads.

6.2.1 Problem Description and Scope

Probation populations have been increasing steadily for the past several years -- from 3.2 million in 1997 to 3.9 million in 2001 (DOJ 1998; 2001). The DWI population being monitored by probation officers has risen even more sharply -- in 1997, 14% of the adult probation population was serving sentences for DWI offenses; by 2001, this number had risen to 18%.

In 2001, 18% of all offenders on probation were serving sentences for DWI.

Almost one in five offenders on probation had been sentenced for DWI (DOJ 1998; 2001). This growth in offenders has resulted in substantial increases in the caseloads supervised by officers and, accordingly, their respective workloads.

Statistics from various state agencies indicate that the caseloads of probation officers vary substantially from less than 100 offenders to more than 3,000 (e.g., CA) in some isolated instances, depending on the level of supervision required and the availability of resources (Neito 1996; Division of Community Corrections 2000; Gerwin 1998; McCubbin 2001; Office of Probation Services 2000). Officers responding to our survey report that their average caseload consists of 112 offenders. This includes an average of 55 DWI offenders. It is also important to note that some officers in our survey reported caseloads of up to 1,300 offenders.

Officers report average caseloads of 112 offenders, including 55 DWI offenders – twice the recommended standard.

In recent years, the caseload problem has been exacerbated by a number of factors. Available funding sources have stagnated, so growth in the number of offenders



requiring supervision has vastly outstripped the hiring of new officers. In Colorado, for example, staff levels have increased 56%, whereas the adult probation population has increased 79% in the past decade (Office of Probation Services 2000). Furthermore, offenders are now being sentenced to probation supervision at a higher rate because of jail overcrowding, which has become a chronic problem nationwide.

Not only has there been an increase in the number of offenders being supervised (caseload) but also the level of supervision these offenders require has escalated (workload). Offenders on probation are being supervised for longer periods. For example, in Colorado, the average length of probation supervision has increased steadily from 1.1 years in 1989 to 1.88 years in 2000 (Office of Probation Services 2000).

Officers are being asked to accomplish more with fewer resources and, as a result, the quality of supervision has deteriorated to the point that probation as a sentence is not taken seriously by either the offender or the general public. "Ordinary probation.....has degenerated into ineffectiveness under the pressure of excessive caseloads and inadequate resources" (Morris and Tonry 1990, p.6).

Probationers are also being assigned to higher levels of supervision, directly impacting the workload of officers. These increased levels of supervision require more effort, time and resources on the part of officers for each case. So, even though in some jurisdictions, actual caseloads may not have increased substantially, the level of effort required or workload of officers has.

In light of this development, it has become more difficult to identify reasonable caseload standards. Although there are no legal standards nationally regarding acceptable offender-officer ratios, the American Correctional Association has previously reported that 60 offenders per officer is an acceptable standard (Office of Probation Services 2000). Organizations have been unable to reach a consensus on this issue largely because individual agencies have different policies regarding the basis for classification of supervision, the type and frequency of contacts, and collateral duties. These factors impact the amount of work that is needed to supervise offenders and, consequently, the number of offenders each officer is able to supervise (APPA 2002a). In addition,



agencies collect caseload statistics using a variety of methods, making them almost impossible to compare, even within a single jurisdiction.

As a consequence it is more common today to refer to workload rather than caseload as a measurement of responsibilities, particularly because the conditions that officers must supervise are more complex and varied (e.g., drug testing, the collection of special fees, the involvement of several service providers). Essentially, more work is necessary to effectively supervise these offenders and ensure that all conditions are met. The trend towards measuring responsibilities in terms of workload has also resulted from the development of new procedures for case management and levels of supervision dependent on risk (APPA 2002a).

In this context, intensive supervision offenders require considerably more time and effort, or “work”, on the part of probation officers than regular and reduced supervision offenders. This difference in workload must certainly be considered in discussions of caseload because most officers are responsible for monitoring offenders at varying levels of supervision. APPA has suggested that intensive supervision cases require a minimum of 4 hours face-to-face contact monthly, regular cases require 2 hours and reduced supervision cases require only 1 hour.

For example, officers responsible for ISP programs generally have much smaller caseloads (ranging from 30 to 70 offenders), although their workload is comparable to those officers supervising more offenders at lower levels of supervision because the direct monitoring is significantly more frequent. However, such nominal ISP caseloads are rare. Although definitions of “intensive” vary considerably across the country, typically these programs permit officers to make three or more contacts with each offender on a monthly basis and opportunities for random contacts in a community setting are far more numerous.

6.2.2 Consequences of the Problem

Excessive caseloads and untenable workloads are incompatible with the meaningful supervision of offenders both in terms of the quantity and quality of monitoring. Some officers may have no way of verifying whether offenders are actually complying with the



conditions of their probation and it is unlikely that any violations, except those for new offenses, will be detected. Officers may be unable to verify information provided by offenders during scheduled appointments and forced to rely primarily on this information or information obtained from various service agencies. Random contacts in the community to verify information are infrequent at best. Officers also find it more difficult to complete the required paperwork associated with each case and maintain updated files, resulting in inconsistent and even sporadic status and violation reports to judges.

Significant increases in caseload or workload also result in a reduced emphasis on offender rehabilitation and reintegration into the community and the inability of officers to provide positive reinforcement for good behavior. As caseloads expand, officers report they spend more time enforcing compliance and have less time to assist offenders in problem-solving and accessing essential resources in the community. Ideally, officers would like to give each of these directives equal priority but the reality is that a majority of time is spent enforcing compliance. This has direct relevance for hard core DWI offenders, most of whom are diagnosed as alcohol addicted or dependent (Nochajski et al. 1994; Baker et al. 2002) but officers may not have time to address these issues during the probation period. Probation without rehabilitation means that underlying issues contributing to the alcohol problem are not addressed and offenders are far more likely to recidivate.

The consequences of heavy caseloads or workloads was captured over a decade ago in the following quote, which is still relevant, if not even more relevant, today:

“Caseloads have reached unmanageable proportions and consist of more complex, more serious and less hopeful offenders. Officers feel that the agency is asking them to do more and more with less and less. They sense that their efforts to rehabilitate are less valued and that they are expected to mainly enforce court orders, monitor cases, collect monies owed and ‘push the paperwork’.” (Cochran et al. 1992, p.30).

Also as a consequence of expanding caseloads, agencies in a many states (e.g., CA, CO, IL, MN, WA) are now resorting to “case banking” in which low-risk offenders complete a form and send it to their probation officer instead of meeting them face-to-face. Offenders may be eligible for this type of supervision once they have completed a specified portion of their probation term or demonstrated a certain level of compliance.



The situation can be so extreme that it is not uncommon for offenders to send postcards to their probation officer to inform them of any changes in their status (e.g., new residence). When asked how effective officers can be with such extensive caseloads, a participant in one of our workshops who had a caseload of 1,000 DWI offenders replied “I tell all of my new probationers, ‘heaven help you if I learn your name’.”

6.2.3 Recommended Solutions

Probation officers were asked to identify the best method for addressing the problem of caseloads or workloads to improve the monitoring of DWI offenders. They were also asked initially what their perceptions were of acceptable caseloads.

♦ **Acceptable size of caseloads.** Officers report considerable consensus when surveyed about their opinions on maximum limits for the size of regular and intensive supervision caseloads. Recognizing that different levels of supervision result in different workloads, over 80% of officers agree that regular supervision caseloads should have a maximum limit of 100 offenders, while 70% support intensive supervision caseloads of up to 30 offenders per officer. To put these recommendations in context, some officers in our survey reported caseloads of up to 1,300 offenders. The average caseload (a mixture of supervision levels) was 112 probationers, of which 55 were DWI offenders.

Over 80% of officers agree regular supervision caseloads should not exceed 100 offenders; 70% agree ISP caseloads should not exceed 30 offenders.

Reductions in caseloads can be achieved through a variety of methods – officers identified four principal options.

♦ **More probation officers.** Logically, even if caseloads are restricted and the volume of offenders remains unchanged, or, worse yet continues to grow, more officers will be needed to manage the burden of existing cases as well as new cases. If caseloads are not restricted, more officers are desperately needed to cope with what is currently an overwhelming situation. Almost half of officers (47%) surveyed report that the best way to address caseload problems is to hire more probation officers.

47% of officers support hiring more probation officers to reduce caseloads.



This is especially important considering the rate at which offenders are increasingly being assigned to probation terms at higher levels of supervision. Recidivism rates in excess of 60% prove that incarceration is no longer a viable solution, except for the most hardened criminals. Furthermore, the immense costs associated with correctional enterprises cannot be sustained during periods of fiscal restraint, especially when the overcrowding of jails has become a chronic problem nationwide. If probation is to serve as the main alternative for sentencing DWI offenders, sufficient resources must be allocated to ensure the effectiveness of monitoring them while they are on probation. “When one finds caseloads of 200 or more per probation officer in some of our cities, it is clear both that probation is often merely a token penalty providing scant community protection...” (Morris and Tonry 1990, p. 14).

♦ **Technological innovations.** More than 20% of officers believe that the best method to address caseload concerns is through greater use of technological innovations, such as automated case-management systems. Other monitoring technology would permit officers to manage larger caseloads effectively. For example, programs involving EM and home alcohol testing can provide effective supervision of offenders by monitoring their movements on a daily basis and verifying they are complying with at least some of the conditions of probation. This helps the officer accommodate larger caseloads by reducing the demands to provide direct supervision while still enforcing compliance. As evidence of this, only 2% of officers identified EM as a penalty with which offenders are least likely to be compliant.

More than 20% of officers believe technological innovations would permit effective supervision of larger caseloads.

♦ **Expand in-patient treatment programs.** Almost 20% of officers report that the best method to reduce caseload is to substantially reduce the number of high-risk offenders currently monitored by probation. This can be achieved by having more in-patient treatment programs. This would reduce time demands on officers and permit greater supervision of all offenders.

Moreover, officers believe that the expansion of available treatment programs reduces caseloads by preventing recidivism by these chronic offenders. In this context, the American Society of Addiction Medicine (ASAM) is essentially the “gatekeeper” of treatment. They publish Patient Placement Criteria recommending the level and type of



treatment addicted persons should receive. Many programs adhere to these criteria to guide treatment decisions. Some officers believe that these criteria should be re-evaluated because greater efforts are needed to expand the availability of treatment to include more offenders. Few resources are currently allocated for misdemeanor offenders; the majority of intensive treatment programs are accommodating felony offenders. However, without adequate treatment opportunities, the misdemeanor offenders of today can become the felony offenders of tomorrow.

♦ **Support staff.** Fifteen percent of officers surveyed recommend the expanded use of support staff (e.g., correctional technicians) as the best way to reduce the burden created by excessive caseloads. Support staff typically perform random testing, conduct surveillance and search criminal history records for new convictions -- tasks which would normally be completed by probation officers. A single support staff member can accomplish these routine tasks for multiple officers, increasing cost-effectiveness. This also increases the quality of supervision by allowing officers more free time to work directly with offenders instead of performing administrative or collateral duties.

6.3 Conflicting Goals

♦ **The problem.** Correctional initiatives in general have two separate and often conflicting goals: enforcement and rehabilitation. Probation officers often experience the conflict posed, on the one hand, by the need to monitor behavior and enforce compliance with the terms of probationary sentences, and on the other hand, by the need to assist in rehabilitative efforts and serve as a resource for offenders being integrated into the community. Ideally, officers should be able to balance the demands created by enforcement and rehabilitation but fiscal constraints and a lack of understanding about addiction issues often preclude this possibility. As a consequence, officers often devote considerably greater energy to the enforcement of compliance leaving little time for rehabilitative efforts. In this context, 26% of officers identified enforcement as their greatest priority, whereas only 1% identified rehabilitation.



♦ **The consequences.** A priority emphasis on the enforcement of probation orders results in an increase in revocation rates and leads to officers spending more time completing paperwork and appearing at court hearings. Offenders also begin to view officers as “assisting them in failing” because of strict supervision, and officers themselves can become frustrated and begin to see themselves as part of the problem. Of greatest importance, officers believe that recidivism rates will continue to increase if they have little time to spend on rehabilitation and reintegration.

♦ **The solution.** A majority of officers report that more resources are needed to make rehabilitation a priority for probation agencies. Consistent with this theme, 67% want to see existing treatment programs expanded to accommodate more offenders, who in the absence of treatment, will continue to recidivate. Moreover, 63% of officers believe judges need education on the relationship between addiction and re-offending, to ensure that appropriate sentences are imposed.

6.3.1 Problem Description and Scope

The conflicting and inherently incompatible nature of the goals of enforcement and rehabilitation has long been recognized by researchers and practicing professionals and is often referred to as the “correctional dilemma”. For example, enforcement requires an atmosphere of discipline, a strict, structured regime in which offenders are treated equally, choices are not permitted, and sanctions are dispensed for inappropriate behavior. Conversely, successful rehabilitation demands individuality, flexibility, freedom of choice and expression, and a willingness to share emotions and work with others.

Characteristically, the correctional dilemma has been resolved, often legislatively, in favor of enforcement -- an overriding concern for public safety results in rehabilitative efforts almost always being sacrificed to ensure compliance is enforced. Probation officers often experience this dilemma since their goals are not only to monitor behavior and enforce compliance with the terms of probationary sentences but also to assist in rehabilitative efforts and serve as a resource for offenders being integrated into a community setting. Officers must be strict in enforcing compliance with probation orders but must also establish a supportive and trusting relationship with offenders so that they will be open about their activities and substance abuse. This will allow officers to



determine how best to assist these individuals, hopefully leading to reductions in recidivism.

Ideally, officers should be able to balance the demands created by enforcement and rehabilitation but fiscal cutbacks, political pressure and a lack of resources often preclude this possibility. As a consequence, officers often devote considerably greater energy to the enforcement of compliance, leaving little time for rehabilitative efforts. As evidence of this problem, officers reported that conflicting goals is the third largest problem they face in monitoring DWI offenders.

Of some interest, the majority of officers indicated that they endeavor to give enforcement and rehabilitation equal weighting. But more than one-quarter identified the enforcement of compliance as their greatest priority; by contrast, only 1% identified rehabilitation and reintegration. Similar findings were reported in a survey of California county probation departments in the mid-1990s in which 75% of the agencies acknowledged enforcement was their top priority and only 8% said rehabilitation and reintegration (Neito 1996).

26% of officers identified enforcement as their greatest priority; only 1% gave greater priority to rehabilitation.

“The trend over the last 15 years is for control and surveillance to increasingly become the primary objective of probation supervision. Rehabilitation is becoming less important as probation officers are given more responsibility for ensuring that court-ordered punishments are fully applied.” (Neito 1996, p.7).

Two factors have contributed to an increased emphasis on enforcement. As mentioned previously, stagnant funding and fiscal cutbacks over the past two decades have had a significant impact on the ability of officers to manage expanding caseloads effectively. As a consequence, officers have less time to establish working relationships with offenders, reinforce compliance by recognizing good behavior, and provide support and direction to those seeking assistance. Instead, officers must spend a majority of their time on enforcement of probation orders and filing reports on non-compliance.

In addition, political pressure and growing public demand for harsher penalties has intensified this shift towards enforcement; rehabilitation efforts have become peripheral. In this context, officers also believe that a lack of understanding about addiction issues



contributes to the emphasis on enforcement. Policy makers, the judiciary and the public need to recognize that a majority of hard core drinking drivers have addiction problems that are the source of their offending. Sentences that do not include and support treatment will only lead to recidivism.

6.3.2 Consequences of the Problem

A priority emphasis on the enforcement of probation orders can result in an increase in revocation rates and lead to officers spending more time completing paperwork and appearing at court hearings. Officers primarily engaged in monitoring offenders for compliance may take action on smaller violations that would have previously been dealt with informally. For example, a missed appointment or curfew, which may have resulted in a verbal reprimand, may now lead to additional sanctions and be noted in written reports as officers become more reactive on the enforcement of conditions.

Furthermore, officers believe it is important to engage in stricter enforcement with larger caseloads because a reputation for being “soft” can lead to increases in violations.

Offenders also begin to view officers as “assisting them in failing” because of strict supervision and reporting of every minor violation, as opposed to helping them successfully rehabilitate or find solutions to problems. Officers that do not have time to engage in rehabilitative activities or establish relationships with offenders may not take opportunities to investigate why offenders are non-compliant (e.g., whether the offender was intentionally non-compliant with treatment or was unable to participate because no space was available) before taking action. Officers report that offenders are becoming less cooperative; some even report that more offenders are opting to serve their sentence in jail as opposed to being released on parole, a trend that is inconsistent with the objective of reducing correctional populations.

Of greatest importance, officers believe that recidivism rates will continue to increase if they have little time to spend on rehabilitation efforts, reinforcing compliance and ensuring offenders receive the guidance and assistance necessary for successful reintegration. Probation officers believe that much more needs to be done in terms of prevention and working with offenders at risk of recidivating. More time is required to get to know offenders and assist them in problem-solving, developing contacts and



accessing resources in the community so they can develop the support systems needed to change problem behavior.

Finally, feelings of frustration and apathy are becoming evident among some probation officers. The increased emphasis on enforcement has resulted in some officers seeing themselves as part of the problem instead of part of the solution. Even officers who actively engage in “social work” activities have become frustrated because programs and resources are not made available to rehabilitate offenders. Other officers have resigned themselves to completing the necessary paperwork, searching records and conducting scheduled meetings with offenders.

6.3.3 Recommended Solutions

Officers recommend three principal ways to create a more balanced approach to enforcing compliance and rehabilitating offenders.

◆ **Resources.** A majority of officers report that more resources are needed to make rehabilitation a priority for probation agencies. At present, current funding levels in some jurisdictions barely permit officers to enforce compliance, much less reinforce good behavior or assist offenders with rehabilitation and reintegration. Although it may be difficult to achieve, efforts should be made to allocate new monies or reallocate existing resources to expand probation departments. More officers are required to reduce caseloads, giving them more time to devote to rehabilitation and related activities.

More resources are needed to allow officers more time for rehabilitation activities.

◆ **Expand treatment programs.** Two-thirds (67%) of officers believe that more treatment programs, and more intensive treatment, should be available for DWI offenders to address addiction issues and change problem behavior. Existing programs should be expanded to accommodate more and diverse offenders, who in the absence of adequate treatment, will continue to recidivate, as evidenced by past experience. Research demonstrates that treatment programs are associated with lower rates of recidivism (Wells-Parker et al. 1995; Wells-Parker and Williams 2002).



“In a major study of the effects of the sanctioning approach versus a treatment approach in reducing recidivism, Andrews and his colleagues (1990) found that, across 80 different studies, criminal sanctioning, without the provision of rehabilitative services did not work, and only programs incorporating principles of rehabilitation reduced recidivism significantly”. (Corbett and Marx 1992, p.92).

Officers in our survey report that, in their experience, addiction treatment is effective with offenders in one-third of their cases. Moreover, almost two-thirds (64%) of officers believe that voluntary treatment is more likely to be successful than mandated treatment.

♦ **Judicial education on impact of addiction.** Almost two-thirds (63%) of officers believe that the judiciary could benefit from more education on the impact of addiction, particularly in DWI offenses. Judges need to understand that many DWI offenders, especially repeat offenders, are alcohol dependent. To sentence such offenders without addressing their alcohol problems is tantamount to ensuring that they will return to court for future DWI offenses. In this context, it has been the experience in some states (e.g., NJ) that the development and use of drug courts have demonstrated considerable value in educating judges on the impact of addiction.

63% of officers believe judges need education on the relationship between addiction and offending.

6.4 Sentencing Disparity

♦ **The problem.** Sentencing disparity usually refers to the imposition of different (sometimes quite different) sentences on similar offenders who have committed similar offenses. It can also, but less commonly, refer to the imposition of inappropriate penalties for a particular offense. More than half (53%) of the officers surveyed report that similar offenders who have committed similar offenses often receive disparate sentences. More than half (54%) of the officers in our survey also reported that they do not believe the penalties imposed by judges reflect the severity of the offense.

Disparity in sentencing is not the result of capricious behavior by the judiciary. It occurs because of the vast number of judges involved in sentencing DWI offenders, judges may not be uniformly familiar with the benefits of different sentencing options, programs may



not be uniformly available in all jurisdictions, and offenders have different capacities for paying program costs.

♦ **The consequences.** The causes of disparity in sentencing may be understandable but it makes monitoring more complicated because of the broad range of sentences that can be imposed despite a similarity in offender backgrounds and circumstances. Other offenders who are aware of the disparity may be less willing to comply with penalties if they are perceived to be unfair. Disparity can also detract from the deterrent effect of sentences and reduce the potential for behavior change.

♦ **The solution.** Officers recommend increased efforts to inform judges about the effectiveness of various sentences, potentially leading to greater consistency in sentencing -- this echoes a similar recommendation made by judges themselves (Robertson and Simpson 2002b). Two-thirds (63%) of officers also support more judicial education on the relationship between addiction and DWI offending. In addition, 67% of officers recommend the expansion of treatment programs to ensure that judges are uniformly able to impose the appropriate level of treatment for DWI offenders.

6.4.1 Problem Description and Scope

Sentencing disparity usually refers to the imposition of different (sometimes quite different) sentences on similar offenders who have committed similar offenses. Sentencing disparity also, but less commonly, refers to the imposition of inappropriate penalties for a particular offense.

More than half (53%) of the officers surveyed report that considerable disparity exists in the sentencing of DWI offenders they monitor. In some instances, this disparity in sentencing actually leads to disparity in monitoring. For example, an offender sentenced to treatment and community service may be managed with greater flexibility in the reporting of violations, whereas offenders sentenced to incarceration and EM may be monitored with stricter adherence to conditions, despite the fact that both individuals are very similar and committed highly similar offenses. Moreover, officers may deal with entirely

53% of officers report considerable disparity exists in the sentencing of repeat DWI offenders.



different service providers with different practices when monitoring these sentences, and possibly provide different levels of supervision, depending on the sentence imposed.

Disparity can also exist when the sentences imposed do not appear to reflect the severity of the offense. More than half (54%) of the officers in our survey do not believe the penalties imposed by judges reflect the severity of the offense. Officers report that mandatory minimum penalties, required by law, are not imposed in 27% of the cases. For example, it is not uncommon for repeat offenders to receive sentences that are similar to those typically imposed for a first offense. Officers believe this leniency can result in more difficulties managing offenders; repeat offenders that receive lighter sentences are less likely to comply and are less cooperative. Furthermore, offenders that are sentenced to inappropriate penalties may be less cooperative or compliant because the sentence is not suited to their needs or characteristics, or they feel unjustly treated.

54% of officers report imposed penalties do not reflect the severity of the offense; mandatory minimums are not imposed in 27% of cases.

Disparity occurs for a variety of reasons. Sentencing decisions take into consideration such things as the seriousness of the offense, aggravating and mitigating factors, prior convictions, probation recommendations, alcohol evaluations, social stability and family issues (Gottfredson 1999). Judges have considerable flexibility (discretion) in sentencing to ensure that imposed penalties are appropriate to the individual circumstances of offenders. As described in our previous report (Robertson and Simpson 2002b) some judges may ignore mandatory minimum sentencing requirements to provide them with the needed discretion and flexibility. This explains, in part, why there is variability in the sentences imposed.

Part of the disparity in sentencing can also be explained by the enormous number of judges across the country who deal with tens of thousands of DWI cases each year, as noted in our previous report on adjudication and sanctioning (Robertson and Simpson 2002b). Uniformity or consistency is difficult to achieve in such a diffuse system. Disparity is also attributable to judges' familiarity with and confidence in the variety of sentencing options available and their perceived effectiveness. Some judges favor treatment-oriented sentences due to their understanding of addiction as the source of offending. Other judges favor punitive sentences involving incarceration, believing that



harsher sentences will ultimately result in behavior change. As a consequence, judges might emphasize certain penalties (e.g., ignition interlocks and home arrest) and minimize the use of others (e.g., jail and fines) based on their experience with them. Sentencing disparity also arises simply because the sentencing alternatives available in each jurisdiction are often constrained by court resource allocations and the availability of programs and services in a given area. Programs are limited in the number of offenders that can be accommodated at a given time, meaning offenders may be sentenced based on program availability rather than program appropriateness. It is also increasingly common for offenders to be assessed for the costs of various penalties imposed, such as interlocks, EM, and treatment and some judges will not order these penalties because of the cost, particularly if the programs are not able to provide for indigent offenders. This means that offenders may be sentenced based on their financial capacity, leading to class-bias in sentencing.

Some disparities also arise because offenders quickly learn that they can actually manipulate sentencing by enrolling in a treatment program prior to sentencing. Some offenders will pay for an alcohol evaluation, identify an ideal treatment program and then go to court and persuade the judge to sentence them to the program of their choice. In many cases, judges will agree to the treatment, even though the program might not be appropriate to the offender or may be a more lenient sentence than they would have imposed (Fallis and Shaver 2000).

6.4.2 Consequences of the Problem

As described above, there are many reasons why disparities in sentencing exist. Nonetheless, disparity in sentencing makes monitoring more complicated because of the broad variety of sentences that can be imposed despite a similarity in offender backgrounds and circumstances. Offenders who are aware of the disparity in sentencing may be less willing to comply with penalties if they are perceived to be unfair. This makes it more difficult for officers to supervise these offenders and more intensive supervision may be required to enforce compliance.

Disparity can result in inappropriate sentences for repeat offenders and detract from the deterrent effect of sentencing. Penalties that lack sufficient deterrent effect can reduce



the potential for behavior change and increase the likelihood of recidivism. Inappropriate sentences can also serve to further encourage continued offending because lighter penalties send the message that these offenses are not considered serious.

In this context, officers also become frustrated when the sentencing recommendations included in PSRs do not appear to be considered by judges. Probation officers have considerable expertise in the effectiveness of penalties and often are more knowledgeable regarding available sentencing options. Officers are also more frequently aware of the circumstances surrounding the offense and circumstances of the offender and more knowledgeable about addiction and the effectiveness of treatment. Yet it appears to some officers that recommendations made by the prosecution and the defense carry greater weight with judges.

6.4.3 Recommended Solutions

Officers identified two possible solutions to the problem of sentencing disparity.

♦ **Judicial education.** Probation officers recommend increased efforts to inform judges about the effectiveness of various sentences with different types of offenders, particularly first-time compared to repeat DWI offenders. This echoes a recommendation from judges themselves in our previous report on sanctioning (Robertson and Simpson 2002b). Almost 80% of judges reported that summaries of scientific research on the effectiveness of criminal penalties would greatly benefit sentencing decisions and lead to greater consistency and lower recidivism rates. This was underscored very recently by Judge Steve Teske in his report on the work of APPA's Judicial Committee, "...it is not a lack of judicial desire to engage a 'best practices' approach to sentencing and supervision, but rather a lack of knowledge among many in the judiciary of the 'what works' literature" (Teske 2003, p.18).

63% of officers believe more judicial education will reduce disparity.

As well, almost two-thirds (63%) of officers believe that more judicial education on the seriousness of DWI offending as well as the relationship between addiction and offending will reduce disparity.



♦ **Expand treatment programs.** Two-thirds (67%) of officers support the expansion of treatment programs. Many officers report that there are not enough facilities in their jurisdictions to accommodate DWI offenders. Due to limited availability of resources, judges may not be able to impose the appropriate level of treatment as a sentence, leading to disparity. And, without treatment, offenders will not change their behavior and will continue to recidivate.

6.5 Program Design

♦ **The problem.** Problems in the design, structure and/or administration of imposed penalties or programs (e.g., fines, ignition interlock, EM, treatment) impact the effectiveness of monitoring. The success of some sentences is frequently compromised because mandated programs do not facilitate the entry of appropriate offenders nor do they encourage compliance. In addition, it can be difficult to verify that offenders have completed the requisite programs. Officers report that poor program planning and design contribute to a variety of concerns including, the financial demands imposed (e.g., offenders are excluded from beneficial programs because they are unable to pay fees), legislative incompatibilities (e.g., hard core offenders who could benefit from interlocks are excluded because of long periods of “hard” license suspension), irregular administration and operation (e.g., a lack of uniformity in the quality of programs), inconsistent enforcement (arising for example because no single agency has responsibility for it), and the use of technologies that are not sufficiently advanced to prevent or detect circumvention.

♦ **The consequences.** Repeat offenders, in particular, quickly learn that the structure, organization and operation of some programs make compliance with them difficult to monitor and enforce. In some respects, the legislative preoccupation with punishment is both simplistic and, at times, misguided. Legislative incompatibilities affecting program eligibility can result in offenders being excluded from programs that would be effective in changing problem behavior -- e.g., the conflict between long, hard license suspension and early reinstatement as an incentive for participating in an interlock program.



♦ **The solution.** To ensure that offenders are not excluded from effective programs, a majority of officers strongly recommend the creation of indigent offender funds, particularly for ignition interlock and EM programs. To ensure that offenders are not being excluded from appropriate programs or placed in ineffective ones, officers support the careful evaluation of program entry requirements. In this context, other recommendations endorsed by officers include the development of certification processes and standards for treatment programs, efforts to match offenders to appropriate programs, and more incentives to increase enforcement.

6.5.1 Problem Description and Scope

Problems in the design, structure and/or administration of imposed penalties or programs (e.g., fines, ignition interlock, EM, treatment) impact the effectiveness of monitoring. The success of some sentences is frequently compromised because mandated programs do not facilitate the entry of appropriate offenders nor do they encourage compliance. In addition, it can be difficult to verify that offenders have completed the requisite programs. Officers report that poor program planning and design contribute to a variety of program concerns including, the financial demands imposed (e.g., offenders are excluded from beneficial programs because they are unable to pay fees), legislative incompatibilities (e.g., hard core offenders who could benefit from interlocks are excluded because of long periods of “hard” license suspension), irregular administration and operation (e.g., a lack of uniformity in the quality of programs), inconsistent enforcement (arising for example because no single agency has responsibility for it), and the use of technologies that are not sufficiently advanced to prevent or detect circumvention.

Financial demands. The program issue posing the greatest concern for officers is the requirement that offenders pay associated program fees. Indeed, more than half (51%) of the officers in our survey report that offenders are excluded from certain programs occasionally or often because of their inability to pay program fees.

51% of officers say that offenders are excluded from programs because of their inability to pay fees.

In the past decade, it has become increasingly common to assess offenders for the cost of participation in programs. However, offenders should not be collectively considered



an “untapped resource”. Although it is reasonable to assess offenders the costs associated with various programs, it is unrealistic to expect that offenders can uniformly afford these additional costs. Two of the most commonly cited examples of user-pay programs are ignition interlock and EM. The cost of participating in these programs can exceed several hundred dollars in addition to monthly monitoring fees. These costs are in addition to other financial expenses such as legal representation, fines, license reinstatement, driver insurance, alcohol screening, and other ancillary mandated fees and fines. Some jurisdictions (e.g., TX) even assess offenders the cost of the videotape used to record the DWI arrest (Cole 1992). Some offenders are unable to pay the costs associated with programs and may, therefore, be subject to alternative, less effective penalties such as incarceration, instead of an ignition interlock or EM.

Legislative incompatibilities. Legislation often stipulates harsher penalties for repeat offenders with little consideration regarding how these penalties will be administered. This can have unintended negative consequences. Most often these consequences arise from the fact that legislation dictates that offenders must meet certain criteria to be eligible for admission into some programs -- if they do not meet these criteria they are excluded. Unfortunately, this can result in the exclusion of offenders who could derive the greatest benefit.

To illustrate, research has demonstrated that ignition interlocks are extremely effective in preventing recidivism when they are installed on an offender's vehicle (Vezina 2002; Beirness 2000). The device is particularly important for those offenders who have serious problems with alcohol. Yet, legislation often requires that repeat offenders complete a period of “hard” license suspension (a fixed period during which driving is not permitted under any circumstances) before being eligible for an interlock.

Paradoxically, long periods of hard suspension effectively prevent the offenders who most need the interlock from receiving it. And, legislation frequently mandates that the hard suspension is not “negotiable”, so a reduction in the length of suspension cannot be used as an incentive for installing an interlock. Moreover, the longer the period of suspension, the more likely the offender will drive anyway (and probably drive after drinking) and the less likely they will ever apply for an interlock or get their license reinstated. In addition, legislation frequently stipulates that offenders can be denied



eligibility for an interlock entirely if they incur additional DWI charges during the hard suspension period. Ironically, offenders with multiple DWI offenses, who likely have more severe alcohol problems and pose a greater risk to other drivers, are ineligible for an interlock and continue to drive unlicensed.

Officers in rural jurisdictions are particularly troubled by license suspension and revocation programs that effectively seize an offender's license and require them to refrain from driving a vehicle (for a period ranging from three months to several years depending on the number of prior convictions). When offenders are unable to drive, they are also frequently unable to get to work, get to appointments with their probation officer or service provider, and/or attend treatment. Rural jurisdictions often lack alternative modes of transportation that offenders can use, making the requirement of not driving impossible to meet in some circumstances. Almost half (47%) of probation officers in our survey report that licensing restrictions are unrealistic in light of alternative means of transportation, making non-compliance inevitable.

47% of officers say licensing sanctions are unrealistic in light of alternative transportation options.

Administration and operation. Programs are frequently administered inconsistently even within a jurisdiction, resulting in wide variations in their operation. Officers identified a lack of uniformity in standards and administration as the third most significant program issue they face. This lack of uniformity can result in offenders being subject to very different program conditions, making monitoring anything but routine. For example, ignition interlock programs may use a variety of service providers and different devices that undergo different certification processes and vary in accuracy. NHTSA has not mandated a protocol for certification of these devices and, in some states, the manufacturer can certify their own interlocks. Devices vary in sensor stability, meaning that some offenders may be required to report for servicing every 30 days whereas others may need servicing every 90 days (Longest 2000). There is also variability in the amount of information provided to probation officers. Although some receive a full record of the information downloaded from the data recorder, others may only receive reports of tampers and fails.

Treatment programs may use a variety of different screening mechanisms to determine the extent of alcohol problems. As discussed in Section 4.0, these screening devices



vary in reliability and validity but the results determine what level of treatment offenders should receive (e.g., self-help, out-patient or residential). Consequently, offenders with highly similar problems may qualify for different levels of intervention depending on the screening devices used. These programs may also have certain “unwritten” standards or requirements that unintentionally exclude offenders. For example, some treatment programs employ screening and evaluation procedures that are inconsistent with the language or educational capacity of some offenders. This can impact the validity of the evaluations in determining the extent of the offenders’ problems with alcohol and the level of treatment or intervention needed, and result in offenders being incorrectly evaluated and placed in programs that are not consistent with their needs.

In some states, the agency that conducts the evaluation will also deliver the treatment program, and in other states evaluations are conducted independently so that the screening agency has no stake in the outcome of the evaluation. Furthermore, many treatment programs vary in terms of their length and some offenders may be required to complete longer programs than others, depending on what criteria are measured during the evaluation.

Agencies also vary in their ability to verify the information provided to them by offenders during screening. Some agencies confirm prior convictions reported by offenders whereas others do not. More than 85% of officers report that offenders are able to successfully manipulate screening mechanisms, at least sometimes.

85% of officers say that offenders are able to successfully manipulate screening mechanisms at least sometimes.

CSOs vary both in the length and type of service imposed. The lack of standards associated with this penalty are the main reason these sentences are infrequently used. In many instances, the service imposed is not related to the offense committed and it is difficult to determine the number of hours actually served because of inadequate supervision.

Enforcement. Monitoring compliance with programs can be difficult because of problems inherent in program design or because existing factors or conditions external to programs have not been considered. More than two-thirds (67%) of officers in our survey report

67% of officers say that program design contributes to non-compliance occasionally or often.



that program planning and design contribute to non-compliance occasionally or often. For example, the non-payment of fines is a pressing concern in several jurisdictions. Offenders can avoid paying fines because no agency may be specifically designated with the responsibility of fine collection. Fine programs are often implemented by the courts but the method of collection may not be clearly delineated, thus no one is held accountable for ensuring payment. Although it is often expected that probation officers will ensure fines are collected, officers report they may not have the necessary authority to enforce compliance.

License suspensions are one of the most difficult penalties to enforce as it is virtually impossible to identify offenders in the multitude of licensed drivers. A majority of offenders are sentenced to a license suspension and officers are simply unable to provide the level of supervision required to ensure offenders are not driving. Reports of offenders driving to their probation appointment are common and, not surprisingly, almost 40% of officers report that offenders are least likely to comply with license actions. Furthermore, it is unlikely that police officers are able to identify unlicensed drivers due to competing priorities, making detection inconsistent at best. Although this penalty can be effective, in many respects it is essentially unenforceable. Not surprisingly, it has been estimated that 75% of suspended or revoked drivers continue to drive (Nichols and Ross 1989).

Other examples of enforcement problems involve jail sentences and EM. Overcrowding often prohibits offenders from serving their sentence. Some offenders may serve no time at all, while others may serve their sentence on weekends. Regardless, this penalty is inconsistently enforced. EM programs also pose similar enforcement issues as heavy caseloads make it difficult for officers to investigate all reported violations. Consequently, while this technology makes closer supervision possible, it is unlikely that officers can investigate each violation and take appropriate action. This issue is explored further in the next section.

Technology. In recent years, technological advances have significantly improved the monitoring of offenders. Ignition interlock and EM devices have made it possible to control offender behavior without constant direct supervision by probation officers. However, despite vast

New technologies are imperfect and should not be considered a panacea for monitoring.



improvements in monitoring capabilities, new technologies have yet to be perfected and officers do not consider them a panacea for the monitoring of repeat offenders. In many respects, circumvention still occurs, it is merely the method that has changed.

A majority of ignition interlock devices are now alcohol-specific and will not register positive results for food or cigarette smoke. However there are still a few states that have not restricted the use of older technology, meaning two devices known to register “false positives” are still in use (Longest 2000). And, despite the advances of interlock technology, they are only effective when they are used. It is still possible for the offender to circumvent the probation condition by driving a vehicle that is not equipped with an interlock.

EM systems also suffer from a variety of technological deficiencies. In addition to occasional problems resulting from inadequately trained staff or unclear procedures, wear on these devices, and an unreliable power supply, this technology is also susceptible to interference, the availability of phone service, and black out areas in which signals cannot be received. Despite new advances, offenders may still be able to leave specified locations for brief periods without detection.

“All electronic monitoring products are dependent on communications technology...These technologies vary in their coverage, ‘penetration’, vulnerability to interference, availability and reliability. This can impact the performance of these systems, particularly as it pertains to the continuity of information and response time in notifying agencies of violations.” (Conway 2001, p.10).

However, the technology of EM is advancing rapidly and developing new mechanisms to address these concerns. Today, “electronic monitoring products are designed to work around most of these limitations”. (Conway 2001, p.10).

6.5.2 Consequences of the Problem

The financial demands required by some programs have the potential to result in class-bias in sentencing. Offenders with greater financial resources or the ability to meet necessary requirements are more likely to benefit from alternative programs such as ignition interlock and EM. Offenders sentenced to these programs will be better able to



maintain employment and family arrangements. By contrast, those offenders lacking the resources may receive less appropriate sentences that negatively impact employment, family and community standing. Unless these program issues are addressed, sentencing disparity based on financial resources and other factors will continue.

In some respects, the legislative preoccupation with punishment is both simplistic and, at times, misguided. Legislative incompatibilities affecting program eligibility can also result in offenders being excluded from programs that would be effective in changing problem behavior. Without access to appropriate programs, offenders are likely to continue to recidivate adding to the caseloads of probation officers.

Variations in program administration have the potential to require officers to modify monitoring strategies depending on individual programming attributes. For example, two offenders on an ignition interlock device must be managed differently based on the sensor stability of each device, the frequency of servicing and the amount of information received from each service provider.

Offenders quickly learn that compliance with many imposed penalties cannot be enforced because of their structure and organization. In many instances, offenders are not concerned about detection for non-compliance, and the inability of officers to provide adequate supervision and confirm violations makes non-compliance inevitable. Finally, technological deficiencies are often quickly identified by some offenders and exploited, diminishing the deterrent effect of the penalty.

6.5.3 Recommended Solutions

Probation officers identified five ways in which program issues can be addressed to improve the effectiveness of penalties and reduce recidivism.

◆ **Indigent offender funds.** Officers in our survey strongly support the creation of indigent offender funds for programs, particularly ignition interlock and EM. Officers ranked the creation of these funds as the single most effective solution to address program design problems and

Officers ranked funds for indigent offenders as the single most effective solution to program issues.



improve the effectiveness of imposed penalties. These funds would permit more offenders to access alternative penalties and avoid the negative consequences associated with incarceration that can lead to recidivism.

♦ **Careful evaluation of program requirements.** Officers recommend that eligibility for alternative programs be carefully re-evaluated to ensure that offenders are not being excluded from appropriate programs or placed into ineffective ones. For example, multiple offenders should not necessarily be excluded from interlock programs because of continued offending, and greater consideration should also be given to alternatives to license suspension and revocations in areas where other modes of transportation are not consistently available. In addition, evaluation and screening procedures used by treatment providers should be appropriate to the skill and educational level of each offender.

In this context, officers also support more research on the effectiveness of various supervision and intervention programs. Officers agree that the results of this research should be used to develop and implement a set of “best practices” in order to improve the effectiveness of available programs and the ability of officers to monitor these offenders.

♦ **Certification and standards.** Officers support the certification and accreditation of treatment programs by state governments according to agreed-upon criteria in order to create consistency in the penalties imposed and monitoring of offenders. Certification standards would also improve the effectiveness of available programs. A majority (94%) of officers in our survey agree that state governments should certify treatment providers to ensure a minimum standard of treatment is received by all offenders. Furthermore, consistent criteria should be used to measure the level of success that offenders exhibit. Officers also agree that the length of programs (particularly treatment programs) should be extended, a recommendation that is supported by existing research (Wells-Parker 1995; Blakey 1999; Voas 2001). More than 70% of officers recommend creating uniform standards for the length of CSOs and relating service to offense-type to significantly improve the effectiveness of CSOs as a criminal penalty.

94% of officers agree state governments should certify treatment providers to ensure minimum standards of treatment.



♦ **Program matching.** Officers recommend greater efforts to match offenders to the most appropriate programs in order to reduce recidivism rates and use resources more effectively. Research has demonstrated that certain programs are more successful with offenders possessing certain characteristics. "It has long been recognized that the better a program matches the actual characteristics of the target population, the more success it will attain. A wrongly conceived program will have no effect and even be counterproductive." (Pisani 1985, p.96).

♦ **Incentives for enforcement.** Officers agree that more incentives should be provided to probation agencies to encourage enforcement of certain penalties, most notably the collection of fines and fees. Probation agencies need the requisite resources to monitor offenders effectively. Officers recommend that probation departments be allocated a certain portion of fines and/or fees collected which can then be used to improve enforcement and the administration of programs operated by probation agencies. For example, in Arizona, the Maricopa County Adult Probation Department has employed collection specialists whose responsibility is to collect court-ordered fines, fees and restitution with significant improvements in their collection rates (Dal Pra 2003). In Harris County, Texas, approximately half of the operating budget for Adult Probation is supported through the collection of probation supervision fees and, as a result, 80% of the fees imposed are successfully collected by officers (Cole 1992).

6.6 Paperwork

♦ **The problem.** Similar to other criminal justice professionals (see Simpson and Robertson 2001), probation officers spend a considerable amount of time completing paperwork. Officers report that they spend almost one-third (31%) of their time filling out forms, documenting contacts and writing reports. The amount of paperwork officers complete is a function of their caseload and the amount of supervision each offender requires -- i.e., officers with larger and/or intensive supervision caseloads do more paperwork.

♦ **The consequences.** Time spent completing paperwork reduces the amount of time officers have to supervise offenders directly. Offenders, particularly those on



lower levels of supervision, have little concern about being detected for violations and can continue to engage in problem behavior without repercussions. Paperwork can also discourage officers from reporting all probation violations. They admit that, in some circumstances, the time-consuming nature of paperwork associated with violations oblige them to exercise discretion in terms of action taken. Paperwork can also create frustration for officers who complete violation reports only to discover that no action was taken and offenders did not incur additional sanctions, even for significant violations.

♦ **The solution.** Officers support the creation of standard forms for various actions such as PSRs and status reports regarding offender violations. Officers also agree that more standardization is needed in the reports produced for probation officers by various service providers. This would facilitate the quick review of these reports. Improving automation and increasing the use of technology (e.g., notebooks, integrated information systems) in the reporting process is also recommended by officers so they can spend more time supervising offenders directly. Technology, particularly web-based applications, can reduce the duplication of information and simplify the sharing of pertinent information between officers, courts and service providers, saving time and reducing errors.

6.6.1 Problem Description and Scope

Similar to other criminal justice professionals (see Simpson and Robertson 2001), probation officers spend a considerable amount of time completing paperwork. Officers report that they spend almost one-third (31%) of their time filling out forms, documenting contacts and writing reports. The amount of paperwork officers complete is a function of their caseload and the amount of supervision each offender requires -- i.e., officers with larger and/or intensive supervision caseloads do more paperwork.

Officers spend nearly a third of their time filling out forms, documenting contacts and writing reports.

Officers are obligated to document contacts with each probationer, maintain current files regarding the activities of each offender, and record any referrals. In addition to information collected during direct contact with probationers, officers also review and record information forwarded by various service providers regarding program participation, such as data from interlock devices and violation reports from EM



agencies. In reality, a considerable amount of monitoring is based on the exchange of paperwork among associated agencies. When decisions are made regarding a case (e.g., to alter the level of supervision) officers record important information and details to justify actions taken and confirm that procedures were followed. This extensive documentation is necessary to a certain extent to permit greater accountability within the probation system.

Officers also spend considerable time reviewing and recording information gathered for PSRs. Relevant information is collected from official records and interviews with a variety of public officials and private citizens. This information is later organized in a comprehensive report. Similarly, once offenders have been sentenced, officers may be required to complete case assessments (most often for high-risk offenders) indicating the risk an offender poses to the community and identifying an appropriate level of supervision. To complete these assessments, officers must evaluate offender characteristics and behavior based on specific criteria.

Officers can also be required to complete periodic status reports for the judge, containing relevant information regarding offender compliance with imposed sentences. Finally, officers must also document and verify all reports of violations and prepare appropriate information to be forwarded to the prosecutor for use in court when necessary. In this regard, some officers routinely “overlook” minor violations because, in many instances, action is not taken for violations and completing the paperwork is considered a waste of time. This problem can be compounded in offices that lack automated information systems because repetitive information must be duplicated on separate forms that are forwarded to other agencies.

The problem of paperwork is not a new one as acknowledged a decade ago by probation administrators:

“For those agencies lacking at least minimal levels of automation, probation officers will be additionally frustrated by an overflow of paperwork. Ultimately this has further negative impact upon the attitude and behavior of probation officers towards their work. The excess paperwork eventually brings the probation officer to a point where they quit or resign themselves to superficial involvement, which keeps paper



moving but does nothing to protect the community or resolve the offender's problems." (Cochran et al. 1992, p.12).

Although the paperwork issue is certainly not new, as pointed out in our prior reports (Simpson and Robertson 2001; Robertson and Simpson 2002a, b), the problem has become more acute as the complexity of the DWI system has increased. Indeed, officers indicate that this problem has only worsened as caseloads expand and the diversity of penalties continues to grow.

6.6.2 Consequences of the Problem

Time spent completing paperwork reduces the amount of time officers have to supervise offenders directly. Offenders, particularly those on lower levels of supervision, have little concern of being detected for violations and can continue to engage in problem behavior with few repercussions. As mentioned previously, most officers spend relatively little time in the community engaging in direct supervision and must often rely on information that offenders choose to report regarding their activities and level of compliance. It is one reason that the public often views probation as a "soft" sentence that does nothing to change behavior or prevent recidivism.

Time spent completing paperwork reduces the amount of time officers have to supervise offenders directly.

Paperwork can discourage officers from reporting all probation violations. They admit that, in some circumstances, the time-consuming nature of the paperwork associated with violations oblige them to exercise discretion in terms of the action taken. Some officers report that colleagues may routinely disregard violations because of heavy caseloads and insufficient time to complete the necessary paperwork. Officers can be further discouraged from completing paperwork and reporting violations when they must waste considerable time in court waiting for violation hearings. Offenders quickly learn that action will not be taken and this can encourage additional and more serious violations. In this context, some officers have suggested that there is a need for sanctioning and policies of action for these violations. More than one-third (36%) of officers would like more structure and guidance on the reporting of violations.



Paperwork can also create frustration for officers who complete violation reports only to discover that no action was taken and offenders did not incur additional sanctions, even for significant violations. Even experienced officers eventually become frustrated, with a few reporting that time completing forms is wasted. This can discourage officers from reporting future violations and make them apathetic towards monitoring compliance.

6.6.3 Recommended Solutions

Officers identified two ways to address the problem of paperwork.

◆ **Standardize the paperwork.** Officers support the creation of standard forms for various actions such as PSRs and status reports to be forwarded to judges regarding offender violations. These forms can often vary in structure and content from department to department, making them difficult to complete as well as to read. Officers report that the standardization of forms can reduce the duplication of information and facilitate their completion thereby reducing the time devoted to paperwork. Officers also agree that more standardization in the reports produced by various service providers (e.g., data recorder printouts from interlock service providers) would make their review more efficient.

◆ **Increase the use of technology.** Officers recommend more extensive use of technology and greater automation in the reporting process (e.g., notebooks, laptop computers and personal digital assistants). Not only will this facilitate paperwork completion, but it also will permit officers to spend more time in the field. These technologies allow repetitive information to be carried forward to appropriate forms and facilitate the entering and sharing of information regarding offender contacts and referrals. Automation would also facilitate the completion of status reports regarding offender violations as appropriate information could be electronically copied and entered where necessary. Technology (e.g., web-based applications) can also simplify the sharing of pertinent information between officers, courts and service providers, saving time and reducing the potential for errors. Computerizing paperwork would also make it easier for officers to search for important information to be included in PSRs or reports on violations.

Officers recommend more extensive use of technology and greater automation.



6.7 Net-widening

♦ **The problem.** Net-widening refers to the expansion of correctional control. It frequently occurs when promising systemic changes -- i.e., new or “alternative” sentences and programs -- are implemented in an effort to reduce the number of individuals incarcerated in correctional institutions and/or reduce the likelihood of recidivism. In theory, the introduction of alternative sentences and programs should reduce the overall prison population by diverting offenders from prison into alternative programs; in practice, however, these programs become “add-ons” to the existing system instead of true alternatives because only low-risk, non-violent offenders are diverted -- offenders who, under normal circumstances, would not have been formally processed by the criminal justice system. As a consequence, the catchment process is widened to include those who were previously excluded and the number of offenders under correctional control increases.

As evidence of this, the number of DWI offenders under some form of correctional control has increased dramatically. For example, between 1986 and 1997, the number of DWI offenders under some form of correctional control increased from 270,000 to 513,000, despite the fact that during the same time period the number of DWI arrests actually declined. The proportion of DWI offenders under correctional control more than doubled from 151 offenders per 1,000 DWI arrests to 347 (Maruschak 1999). Today, more arrested offenders are being formally processed and sentenced to probation terms that require greater supervision; moreover, the level of supervision being required has also increased. This directly impacts the number of offenders being supervised by probation and reduces the ability of officers to adequately supervise repeat DWI offenders and ensure treatment is received.

♦ **The consequences.** The expansion of alternatives to incarceration, many of which have been proven to be effective, has significantly increased caseloads because of net-widening. Paradoxically, this has reduced the effectiveness of probation and alternatives to incarceration because the increased volume of offenders are difficult to supervise. Savvy repeat offenders know this means that non-compliance will often go undetected.



Moreover, officers have less time and fewer resources to devote to those offenders requiring more intensive supervision, such as hard core drinking drivers, because the expansion of alternatives frequently did not include an increase in funding. As well, offenders that are subjected to unnecessarily strict conditions of probation and close supervision are more likely to fail and remain part of the probation caseloads.

♦ **The solution.** Officers support a strategic review of sentencing policies pertaining to alternative penalties and programs to assess where and how net-widening is occurring and how its negative effects can be controlled and reduced. This review should be conducted with the intention of ensuring that only appropriate offenders (those with certain characteristics or sufficiently severe offense histories) are sentenced to alternative programs. Additionally, offenders should not be assigned to higher levels of supervision than required. This will effectively reduce demands on officers and ensure that offenders are more likely to complete their probation terms successfully. Moreover, criminal justice practitioners should be encouraged to employ administrative discretion appropriately to ensure that more offenders do not unnecessarily become part of the correctional net.

6.7.1 Problem Description and Scope

Net-widening refers to the expansion of correctional control. It frequently occurs when promising systemic changes -- i.e., new or “alternative” sentences and programs -- are implemented in an effort to reduce the number of individuals incarcerated in correctional institutions and/or reduce the likelihood of recidivism. The purpose of such alternatives is to effectively control as well as change the behavior of selected offenders, including hard core drinking drivers. These alternative programs frequently emphasize rehabilitation and reintegration, making them popular with politicians and the general public.

In theory, the introduction of alternative sentences and programs should reduce the overall prison population because they should be used in lieu of incarceration -- offenders should be diverted from prison to the alternative programs. Obviously, the impact of this on probation officers would be immediate and significant because offenders who would normally be incarcerated would now be in the “community” under their supervision.



In practice, however, the status quo in terms of the total number of offenders being incarcerated remained the same -- i.e., the promised reductions in prison populations did not follow. Offenders who previously would have received minimal supervision or avoided probation entirely were instead being sentenced to probation, often at higher levels of supervision, so that they could benefit from these new programs. This widened the correctional net and substantially increased the burden on officers. And, not only was the correctional net widened to include more offenders than before, but also officers were required to provide greater supervision to these offenders.

As evidence of this, in the years following the introduction of alternatives such as EM, ISP and specialized courts, the number of DWI offenders under some form of correctional control increased dramatically. For example, between 1986 and 1997, the number of DWI offenders under some form of correctional control increased from 270,000 to 513,000, despite the fact that during the same period of time, the number of DWI arrests actually declined. The proportion of DWI offenders under correctional control more than doubled from 151 offenders per 1,000 DWI arrests to 347 (Maruschak 1999).

Between 1986 and 1997 the proportion of offenders under some form of correctional control more than doubled.

Today, more arrested, non-violent, low-risk offenders are being formally processed and sentenced to probation terms involving various alternative programs. For example, EM programs were originally intended for higher-risk offenders, not first-time DWI offenders. This has resulted in growing probation caseloads and increased supervision, immediately impacting the ability of probation officers to actively supervise offenders. At the same time, the resources annually allocated to probation agencies have stagnated or been drastically reduced in the past decade, despite the influx of offenders. Consequently, officers are less able to effectively supervise hard core drinking drivers and other offenders in their caseload. Furthermore, limited time is available to assist offenders in accessing necessary community resources or treatment programs, meaning repeat offenders are less likely to receive the treatment and assistance they need.

The reasons for the expansion of correctional control can be traced to two explanations. First, alternatives to incarceration became “add-ons” to the existing system instead of true alternatives, since only low-risk, non-violent

Alternatives to incarceration became “add-ons” to the existing system instead of true alternatives.

offenders were diverted -- offenders who, under normal circumstances, would not have been incarcerated, would not have required supervision, or possibly would not even have been formally processed by the criminal justice system. As a consequence, the catchment process was widened to include those who were previously excluded, and the number of offenders under correctional control increased.

Alternative programs became add-ons because public safety concerns (real or perceived) limited their utility with offenders who would normally have been incarcerated. For example, although EM programs were intended to divert offenders from prison, this did not occur. Many of the studies on EM have reported that the main clientele for these programs are first-time DWI offenders or other low-risk offenders who have committed non-violent offenses and are eligible for reduced probation or a suspended sentence (Bonta et al. 1999). However, serious or repeat offenders are less likely to be assigned to these new programs because of public safety concerns, so the beneficial effects on the volume of people being incarcerated have not been realized. Additionally, this has effectively increased the load on the monitoring system because the availability of these sentencing alternatives has unintentionally expanded probation populations.

Other proposed benefits (e.g., cost-savings) of these alternative programs have also not been fully realized. Some evaluations of EM programs have concluded that these programs do not reduce the costs associated with supervision, nor do they reduce the number of people under correctional control. "Palumbo, Clifford and Snyder-Joy (1990) report that in the Arizona EM study concentrating on cost-effectiveness, the evidence suggests that EM did not reduce and might very well have increased overall correctional costs due to net-widening." (Corbett and Marx 1992, p.92). A Canadian study on EM also reported, "there is evidence suggesting that many EM programs widen the correctional net. That is, they target relatively low-risk offenders who would function well without the additional controls imposed by EM." (Bonta et al. 1999, p.1).

Furthermore, it has even been argued that alternative programs can exacerbate recidivism rates and result in offenders being supervised by officers for longer and repeated periods. This occurs because offenders are often subjected to more intensive supervision (Bonta et al. 1999; Corbett and Marx 1992) as part of these programs. Offenders participating in these alternatives are more often unsuccessful because the



close scrutiny results in the detection of more minor violations -- violations that would not have been detected with reduced probation. Furthermore, due to stagnant funding, offenders are being sentenced to conditions that cannot be completed because of the unavailability of programs (e.g., treatment). Consequently, offenders are more likely to remain part of probation caseloads for longer periods. It has been reported, "...the research also seems to indicate that, at best, electronic monitoring has no effect on recidivism and at worst, increases it..." (Latessa 2000, p. 6).

A second reason that net-widening occurs is because criminal justice professionals often embrace alternatives to incarceration because they view jail as ineffective and inappropriate for offenses such as DWI. They enthusiastically increase their enforcement and prosecution efforts on the assumption that those they apprehend or convict will benefit from participation in the new alternative programs. This can also increase the volume of offenders that must be monitored by probation officers.

The relatively recent development and expansion of specialized courts clearly illustrates how the enthusiasm of criminal justice professionals to utilize promising new programs can result in net-widening. Although there are relatively few dedicated DWI courts in the U.S. (Keith 2002), there are several hundred drug courts (Hoffman 2002), many of which also handle DWI cases. Some proponents of these courts have supported their expansion because the courts include a treatment component and are believed to be very successful with offenders suffering from addiction, despite a lack of supporting research. Because of their purported success, some criminal justice professionals have been eager to have even more defendants participate in these specialized courts -- defendants who may otherwise have avoided formal processing or been sentenced in a traditional court to reduced probation with minimal supervision. As one judge has indicated, rather than improving the effectiveness of the system, these specialized courts can actually result in more offenders being sentenced to increasing levels of supervision as well as prison.

"One of the most disturbing aspects of the Denver Drug Court is that, despite the crucial reformist promise that drug courts will assist in reducing the numbers of people incarcerated for drug offenses, in Denver more drug defendants are being sentenced to prison than ever before, by a factor of more than two." (Hoffman 2002, p.1510).



6.7.2 Consequences of the Problem

Many new programs and sentences have been introduced for DWI offenders as an alternative to incarceration not simply to reduce the load on the prison system but to decrease the likelihood that offenders will recidivate. However, these alternatives have had considerable consequences for probation officers. Primarily, these programs have significantly increased caseloads as well as workloads, thereby reducing the effectiveness of probation as a sentence. Repeat offenders may be aware of this and, as a consequence, are less likely to comply with the conditions of their probation. Paradoxically, when offenders cannot be effectively monitored, this mitigates the effectiveness of the programs that were introduced to alter their drinking and driving.

Officers may also spend considerable time and resources supervising offenders who do not require regular or intensive supervision, meaning less time and resources can be devoted to those offenders who really do need more supervision. Finally, offenders that are subjected to unnecessarily strict conditions of probation and close supervision are more likely to fail and remain part of the probation caseloads.

6.7.3 Recommended Solutions

Probation officers recommended one major solution to the problem of net-widening.

♦ **Strategic review of sentencing programs and practices.** Officers support a strategic review of sentencing policies pertaining to the administration and implementation of alternative penalties and programs to assess where and how net-widening is occurring and how the negative effects can be controlled and reduced. This review should be conducted with the intention of ensuring that only appropriate offenders (those possessing certain characteristics or sufficiently severe offense histories) are sentenced to alternative programs. Offenders should not be sentenced to programs that are more intensive than necessary, or that are not likely to be effective in changing behavior. Additionally, offenders should not be assigned to higher levels of supervision

Officers support a strategic review of alternative programs to assess where and how net-widening is occurring.



than required. This will reduce demands on officers and ensure that offenders are more likely to complete their probation terms successfully.

Moreover, other criminal justice practitioners should be encouraged to employ administrative discretion to ensure that more offenders do not unnecessarily become part of the correctional net. Discretionary decision-making allows practitioners to filter individuals out of the system, as was originally intended. This discretion should not now be reversed to filter in those individuals that should not be there and who will not benefit from involvement in the system.

6.8 Records

♦ **The problem.** Records necessary for the monitoring of offenders -- including criminal histories and driver records -- are maintained by different agencies for different time periods. Their contents may not be comparable and their accuracy or completeness may be inconsistent at best. Inefficient access to the needed information also impedes decision-making and the effective monitoring of offenders.

Current and accurate records are important for probation officers in the preparation of PSRs and the monitoring of offenders. But officers in our survey report that they are able to spend less than 5% of their time searching various record systems because of competing priorities, and 62% of officers rated the accuracy and accessibility of criminal history records as poor or average; 70% said the same about driver records. Accordingly, timely access to accurate and easy to interpret records is critical.

♦ **The consequences.** If probation officers are unable to identify all prior convictions accumulated by an offender, they cannot be included in the PSR, so judges may sentence inappropriately or more leniently than is required by legislation or sentencing guidelines. The inability of officers to locate new charges, arrests or dispositions for offenders in their caseload can also result in inaccurate decisions on the part of probation officers to reduce supervision or revoke probation. Offenders that cannot be tracked following relocation can often avoid monitoring altogether as well as sanctions for non-compliance.



♦ **The solution.** Officers report that greater efforts to standardize the record systems would significantly improve their ability to locate in a timely manner important information that is both accurate and up-to-date. They also support increased automation of record systems to facilitate record searches. Automatic reporting from criminal justice agencies would also reduce delays in entering important data and result in more current records. Almost all officers (95%) support maintaining records of diversion for the legislated look-back period. These records prevent offenders from qualifying for diversion more than once, meaning they will be appropriately identified as a repeat offender when arrested subsequently.

6.8.1 Problem Description and Scope

Our previous reports on prosecution (Robertson and Simpson 2002a) and sanctioning (Robertson and Simpson 2002b) highlighted ways in which the availability of and/or inconsistent access to important records adversely affect the prosecution, adjudication and sanctioning of repeat offenders. Similar problems impact the preparation of PSRs by probation officers and their programming and monitoring of offenders.

Records are often maintained by different agencies, for different time periods, none of which may be compatible with legislated look-back periods (the specified period in which prior convictions may be counted for the purpose of increasing a sentence), the content of these records may not be comparable, and their accuracy or completeness may be inconsistent at best. But officers in our survey report that they are able to spend less than 5% of their time searching various record systems because of competing priorities. Accordingly, timely access to accurate and easy to interpret records is critical, but more often than not, is lacking.

Timely access to accurate and easy to interpret records is critical, but usually lacking.

As discussed in Section 4.0, probation officers prepare PSRs, usually in felony cases, to assist the judge in determining appropriate sentences. During the preparation of PSRs, officers search criminal history records at both the state and federal level. Although, officers believe that the reciprocity of

62% of officers rated the accuracy and accessibility of criminal history records as poor or average.



information exchange that occurs among criminal justice agencies is fairly good, almost two-thirds (62%) of officers in our survey rated the accuracy of criminal history records and their ability to access them as poor or average; 70% said the same about driver records. This underscores that there is considerable room for improvement.

One of the most common uses of criminal records is to determine prior convictions. Information on priors is important for identifying offenders that qualify as a habitual or repeat offender, or for sentencing enhancements. Legislation can also specify mandatory periods of incarceration for repeat offenders, which means prior convictions can limit immediate eligibility for probation. In order for officers to be able to include prior convictions in their report, there must be a record of the disposition or sentence imposed by the court for each criminal charge. Prior convictions without a disposition cannot be counted against the offender for the purposes of sentencing. However, similar to other criminal justice professionals, officers report that a record of the disposition is often not included in criminal history records obtained from state or federal criminal history systems. As evidence of this, a recent survey of state criminal history record repositories indicates that nine states and territories have dispositions associated with less than 50% of their arrests in the past five years (CO, IN, MS, NE, NV, NM, OK, PA, VI) (BJS 2001).

Nine states report dispositions for less than 50% of their arrests in the past five years.

To complicate searches of criminal history records further, states vary considerably in the format and content of the information included in these records. No two states use an identical format for criminal history records and many are not even remotely similar (BJS 2001). There is also no mandatory format that states must use and many states cannot adequately match records of arrests to the appropriate records of dispositions because the number used to identify an arrest is different than the number used to identify a disposition for the same offense. This can make the identification and review of records from different states nearly impossible for probation officers searching for prior or new convictions. The National Crime Information Center (NCIC) is a national criminal history database maintained by the Federal Bureau of Investigation (FBI) but it only contains information about felony offenses. Since the majority of DWI offenses are charged as misdemeanors, this database is limited in value.



Officers also report considerable variation in the type of offenses and level of information included in criminal history records. Some states produce relatively thorough records including bail and pre-trial release data, detention data and prosecutor charge modifications, whereas others report little more than arrests and dispositions. Many states report felony offenses; however, the types of misdemeanors reported differ substantially. Additionally, some states may not flag offenses to indicate they are felonies. This lack of standardization is problematic for officers who must search criminal records in several states and require complete information on which to base recommendations.

The accuracy and completeness of criminal history records has long been recognized as a substantial problem (BJS 2001). Past audits of criminal records have illustrated several inconsistencies and reported unacceptable levels of inaccuracies, although the automation of these records has significantly improved the quality of data. However, the level of automation available in each state is vastly uneven and, despite these changes, real problems still exist.

The accuracy and completeness of criminal history records has long been recognized as a substantial problem; it persists today.

“In the view of most experts, inadequacies in the accuracy and completeness of criminal history records is the single most serious deficiency affecting the Nation’s criminal history record systems.” (BJS 2001, p.38).

Officers also report that criminal history and driver records are rarely up-to-date because of delays in court-reporting and the entering of data into state record systems. For example, the average length of time it takes for a state record repository to receive a final trial court disposition is 30 days -- ranging from 1 day (e.g., CO, DE, NJ) up to 110 days (e.g., WI). It also takes an average of an additional 39 days for the state repository to enter the disposition into their database (BJS 2001). This means that officers searching criminal or driver records can often omit prior convictions in a PSR because these convictions have not yet been entered on the record.

Officers usually also review criminal history, driver, and other associated records to identify any new charges that are pending to ensure that offenders are not involved in criminal activity while on probation or parole. Delays in the entering of pertinent



information can result in officers being unaware of pending criminal charges and this impacts their decisions to increase supervision or revoke probation.

Officers also report considerable difficulty tracking offenders who relocate to other jurisdictions or states. This is not surprising as society has become increasingly mobile. People relocate to different counties and states regularly to pursue education, employment, or to be closer to family.

46% of officers said their ability to track offenders who relocate is poor.

Indeed, almost half (46%) of the officers in our survey said their ability to track offenders who relocate is poor. This is not a trivial issue since estimates indicate that each year approximately one-quarter of a million offenders on probation or parole cross state lines (CSG 2000). Repeat offenders quickly learn that relocating is one way to evade monitoring because “there is simply not a structure presently in place that can effectively monitor the movement of parolees and probationers across state lines.” (CSG 2000, p.2).

There are a multitude of complexities associated with transferring cases and records and, until recently, the legislation governing the transfer of offender supervision was badly outdated. Prior to the creation of a new Interstate Compact for Adult Offender Supervision in 2001, some states had passed legislation independently to address this issue, which resulted in conflicts between states (e.g., level of supervision).

Approximately 45 states now participate in the new Interstate Compact, which became effective in 2001 (Wicklund 2003) but improvements in the exchange of information and the tracking of offenders may not be readily apparent until the Compact has been in operation for several years. More information on the Interstate Compact for Adult Offender Supervision can be found at the Council of State Governments (www.csg.org) or at the Interstate Commission for Adult Offender Supervision (www.adultcompact.org).

A new tracking system is also being developed by the American Probation and Parole Association, under funding from the Bureau of Justice Assistance. The Interstate Compact Information Management System Planning Project has recently prepared a report that describes in considerable detail the capabilities and qualities needed in a system to track offenders.



Officers also identified a number of other concerns regarding their ability to access important information. The maintenance of diversion records is frequently inconsistent and many states routinely expunge these records after a specified period (e.g., CT). This means that offenders may be able to qualify for diversion programs repeatedly and avoid identification as a repeat offender.

The problems associated with records extend even to treatment -- an integral part of the rehabilitation process for repeat offenders and closely linked to the monitoring process. Treatment professionals are often unable to access arrest or criminal history records in order to verify the information provided to them by offenders during screening or evaluation (Chang et al. 2002; Owens 2001; Fallis and Shaver 2000). By minimizing past criminal and drinking histories, offenders know that they can often avoid more intensive treatment. This can affect probation officers because those offenders who do not receive appropriate treatment are likely to continue to drink and drive, meaning they will return to the probation officer's caseload.

6.8.2 Consequences of the Problem

A lack of standardization in the format and content of criminal history and driver records can result in the omission of prior convictions from PSRs, which impacts sentencing options and decisions. The inability of officers to match records of arrests to dispositions or to identify new charges because of delays in receiving and entering data can also result in incorrect sentencing information in a PSR. When probation officers are unable to identify all prior convictions accumulated by a certain offender, judges may sentence inappropriately or more leniently than is required by legislation or sentencing guidelines.

The inability of officers to locate new charges, arrests or dispositions for offenders in their caseload can result in inaccurate decision-making on the part of probation officers to increase supervision or revoke probation. This can result in offenders avoiding revocation and remaining a threat to society while on release. Offenders that cannot be tracked following relocation can often avoid monitoring altogether as well as sanctions for non-compliance.



Finally, when treatment professionals are unable to confirm the criminal history of those offenders undergoing evaluation or treatment, it is more likely that offenders will receive inappropriate treatment.

6.8.3 Recommended Solutions

Probation officers identified three ways to address the problems associated with records.

♦ **Standardization of reporting and records.** Officers report that greater efforts to standardize the record systems in use in various states would significantly improve their ability to locate in a timely manner important information that is both accurate and up-to-date. According to a recent report by the Bureau of Justice Statistics, “efforts to redesign data collection forms and to simplify and standardize reporting forms, procedures and reporting terminology have also been proven to have a favorable impact on data accuracy” (BJS 2001, p.39).

♦ **Greater automation of record systems.** Officers in our survey support increased automation of record systems to facilitate record searches. Automatic reporting from criminal justice agencies can greatly reduce delays in entering important data and result in more current records. Moreover, officers believe that as more states move towards the automation of records there will be greater standardization in procedures and officers will encounter considerably fewer difficulties searching records and locating necessary information. Some states (e.g., CA, NE) have implemented automation with considerable success. More recently, many states have been moving towards new systems that will share information (e.g., CO) and automating existing systems. Officers believe continued efforts in this field will result in substantial improvements in the quality of records.

♦ **Maintenance of diversion records for legislated look-back periods.**
A majority of officers (95%) support maintaining records of diversion for the legislated look-back period. Currently Oregon is one of the few states that maintains diversion records for a substantial period of time (10 years). These records prevent offenders from qualifying for

95% of officers support the maintenance of diversion records for look-back periods.



diversion more than once, meaning they will be appropriately identified as a repeat offender when arrested subsequently.



7.0 Summary —●

It should be evident that the monitoring of DWI offenders is complex, involving a broad range of sentences with varying levels of supervision that rely on considerable cooperation and coordination with a variety of criminal justice and other agencies. In addition, decreasing resources combined with an unprecedented growth in DWI offenders under correctional control has significantly affected the ability of officers to provide adequate supervision, compromising the effectiveness of probation as a sentence.

When defendants are ultimately convicted, there are currently no guarantees that the sentence imposed will actually be fulfilled despite the best efforts of probation and parole officers. There is a need to streamline and simplify the monitoring of DWI offenders to improve the effectiveness and efficiency of the system. This is a primary concern for probation officers and a linchpin to successfully improving the DWI system. The importance of this cannot be emphasized enough if public safety is to be protected if offenders are to benefit from rehabilitation programs.

In addition to this general recommendation, a variety of specific changes to the DWI system can improve the monitoring of repeat offenders. These improvements are organized below in terms of the general method by which this can be achieved.

7.1 Training and Education

Probation officers identified several areas in which training and education can improve the monitoring of hard core drinking drivers. They recommend:

- ◆ providing more opportunities for judicial education on the effectiveness of various sentencing options to create consistency in sentencing and reduce recidivism. This echoes a recommendation made by judges themselves (see Robertson and Simpson 2002b) and was underscored very recently by Judge Steve Teske in his report on the work of APPA's Judicial Committee, "...it is not a lack of judicial desire to engage a 'best practices' approach to sentencing and supervision, but



rather a lack of knowledge among many in the judiciary of the ‘what works’ literature” (Teske 2003, p.18);

In this context, the conditions of probation must be achievable for offenders and the conditions must be relevant, realistic and research-supported;

- ◆ improving judicial education to include an emphasis on relationship between addition and offending, so that treatment is widely recognized as a necessary element in sentencing hard core DWI offenders; and
- ◆ increasing training opportunities for probation officers regarding the operation and the effectiveness of the various sentences and programs they are required to monitor.

7.2 Communication and Cooperation

Officers believe that improved communication and cooperation with other professionals involved in the DWI system will facilitate the monitoring of offenders. They support:

- ◆ facilitating communication with treatment and service providers to improve the exchange of information and permit officers to have timely access to information on offender behavior and compliance; and
- ◆ encouraging greater cooperation and coordination between police and probation agencies to improve the supervision of offenders in the community, promote the sharing of information, reduce service duplication, and increase security.

7.3 Record Linkages, Availability and Access

Records containing data and information pertinent to the preparation of PSRs and monitoring of DWI offenders are maintained by a diversity of agencies. Records vary in terms of how current the information is with regard to content (both in terms of the nature of the information and its scope), as well as its accuracy and completeness. Officers require timely access to accurate, contemporary and comprehensive records to facilitate the monitoring of DWI offenders. The importance of this has been underscored by numerous agencies and remains a critical need. Officers support the following improvements to ensure the availability of needed information:

- ◆ increasing efforts to standardize and automate important local, state and national record systems to facilitate timely access to records that contain accurate, up-to-date information, consistent in content and structure; and



- ♦ maintaining diversion records for legislated look-back periods to prevent offenders from qualifying for diversion more than once and improve the identification of repeat offenders.

7.4 Technology

Probation officers believe that greater use of technology can improve the efficiency and effectiveness with which they monitor hard core drinking drivers. They support:

- ♦ improving and expanding the use of technological innovations such as ignition interlocks and EM to increase the supervision of high-risk offenders;
- ♦ increasing the use of technology and automation in the record systems to facilitate the location and acquisition of important information, simplify the sharing of information, and reduce errors; and
- ♦ increasing the random testing of offenders in the community to ensure abstinence from alcohol and/or drugs which are the source of offending.

7.5 Legislation and Regulation

Officers also identified a number of legislative and regulatory changes that would improve the monitoring of repeat DWI offenders. They recommend:

- ♦ imposing reasonable limits on caseloads to permit greater supervision and increase rehabilitative activities;
- ♦ certifying treatment programs and developing program standards at the state level to create consistency in program quality and improve effectiveness;
- ♦ facilitating efforts to match offenders to appropriate programs to reduce recidivism and use resources more effectively;
- ♦ developing reasonable incentives to promote and encourage the consistent enforcement of penalties and improve compliance; and
- ♦ strategically reviewing legislation and policy pertaining to the administration and implementation of alternative penalties and programs to assess where and how net-widening occurs, reduce and control its negative effects, and decrease the caseload burden on officers.



7.6 Resources

Officers report that more resources are needed to improve the monitoring of offenders and increase the effectiveness of probation as a sentence. Without an infusion of new resources or the reallocation of existing monies, probation agencies will be unable to achieve their goals of promoting public safety and reducing recidivism. With adequate resources, probation as a sentence can be very effective in reducing recidivism.

At the same time, to make the best use of available resources, there is a need for more research on the effectiveness of various penalties and programs to guide the development of a “best practices” approach to supervision and intervention programs.

They support:

- ◆ making rehabilitation a priority for probation agencies to reduce recidivism among hard core drinking drivers;
- ◆ ensuring treatment facilities, particularly those for women and minorities, are available to address addiction issues, change problem behavior and provide an added layer of supervision in the community;
- ◆ increasing the availability of in-patient treatment programs for offenders with severe addiction problems to reduce recidivism, reduce time demands on officers and permit greater supervision of all offenders;
- ◆ permitting more contact with offenders in the community to gather relevant information, increase compliance, and create the perception of constant supervision;
- ◆ hiring technical staff to perform collateral duties (e.g., random surveillance and testing, searching records) to permit officers more time to engage in direct supervision of offenders and rehabilitation activities;
- ◆ hiring more probation officers to reduce caseloads and improve the quality of supervision of offenders; and
- ◆ creating more indigent offender funds to reduce class-bias in sentencing and increase access to alternative penalties, thereby promoting rehabilitation as an objective.



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Appendix A

Administrators and Staff Who Assisted in Organizing the Workshops



Administrators and Staff Who Assisted in Organizing the Workshops

American Probation and Parole Association

1. Kathy Waters - President , APPA
2. Ray Wahl – Past President, APPA
3. Carl Wicklund, Executive Director, American Probation and Parole Association
4. Yolanda Swinford – Institute and Manager, Secretariat Services
5. Susan Meeks – Training and Exhibit Coordinator



Appendix B

Probation and Parole Workshop Participants



Probation and Parole Workshop Participants

San Diego, California

1. Frank Haag – Probation Supervisor, San Diego County Probation
2. Rosa Castro – Probation Officer, San Diego County Probation

St. Louis Park, Minnesota

1. Jeanie Cooke – Corrections Program Therapist, Minnesota Department of Corrections

St. Cloud, Minnesota

1. Chris Schill – Probation Agent, Stearns County Human Services

Gering, Nebraska

1. Stephen Lovelidge – Senior Probation Officer, District #10 Probation Office

White Plains, New York

1. Daniela Urusin – Victim Resource Coordinator, Westchester County Probation

Oregon City, Oregon

1. Launie Hitchcock – Adult Probation/Parole Officer, Clackamas County Probation

Portland, Oregon

1. Pam Mindt – Community Justice

Alexandria, Virginia

1. Robert N. Levy – Director of Corrections, Volunteers of America, Inc.

Vancouver, Washington

1. Kathy Kelly – Program Manager, Clark County Corrections.

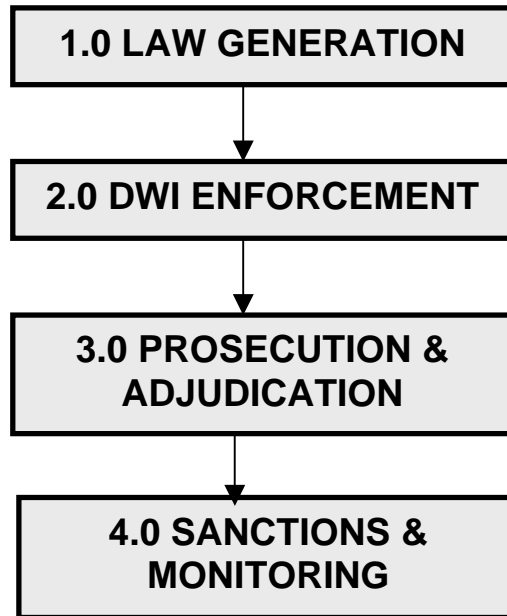


Appendix C

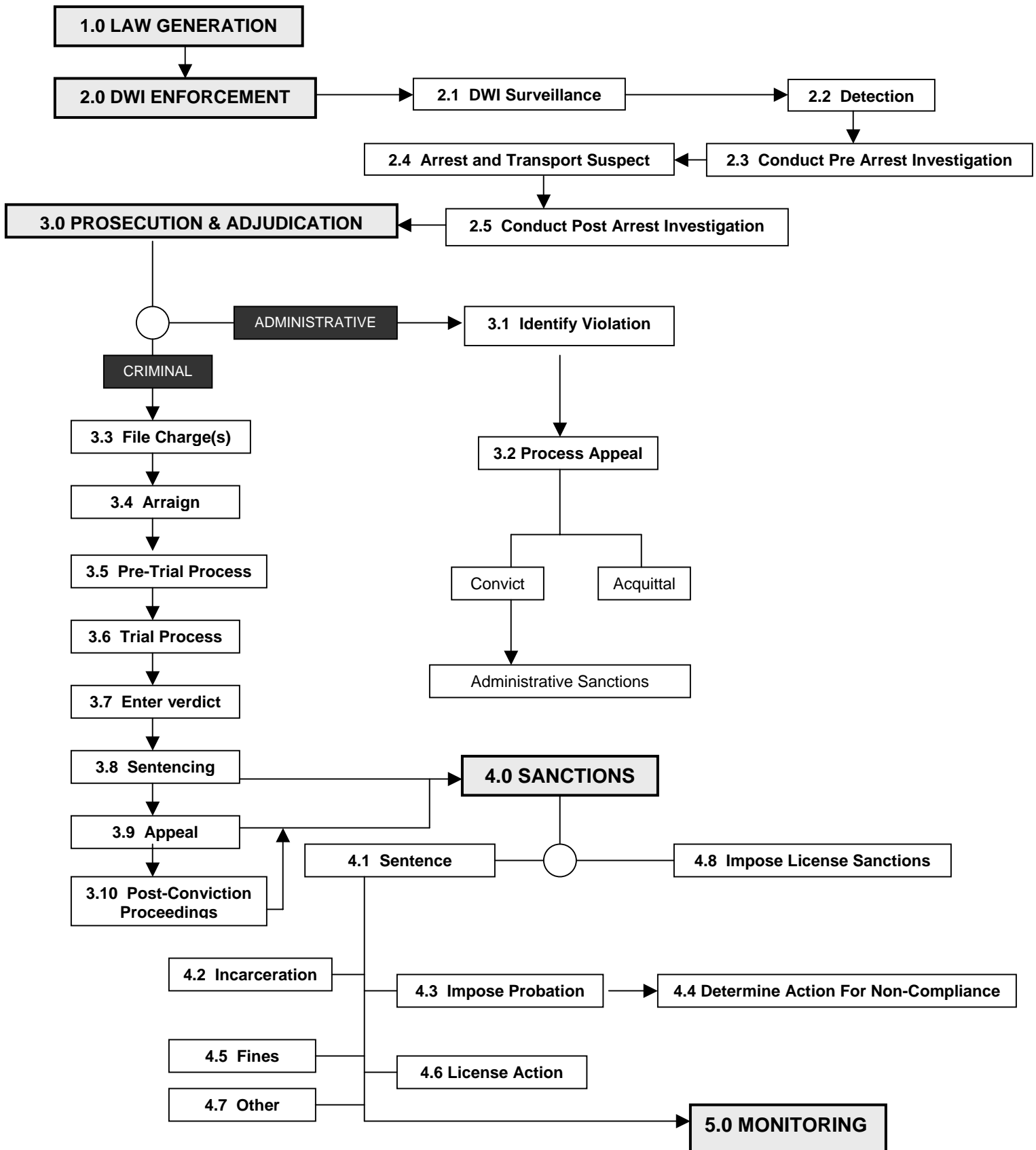
Schematic Representation of the DWI System

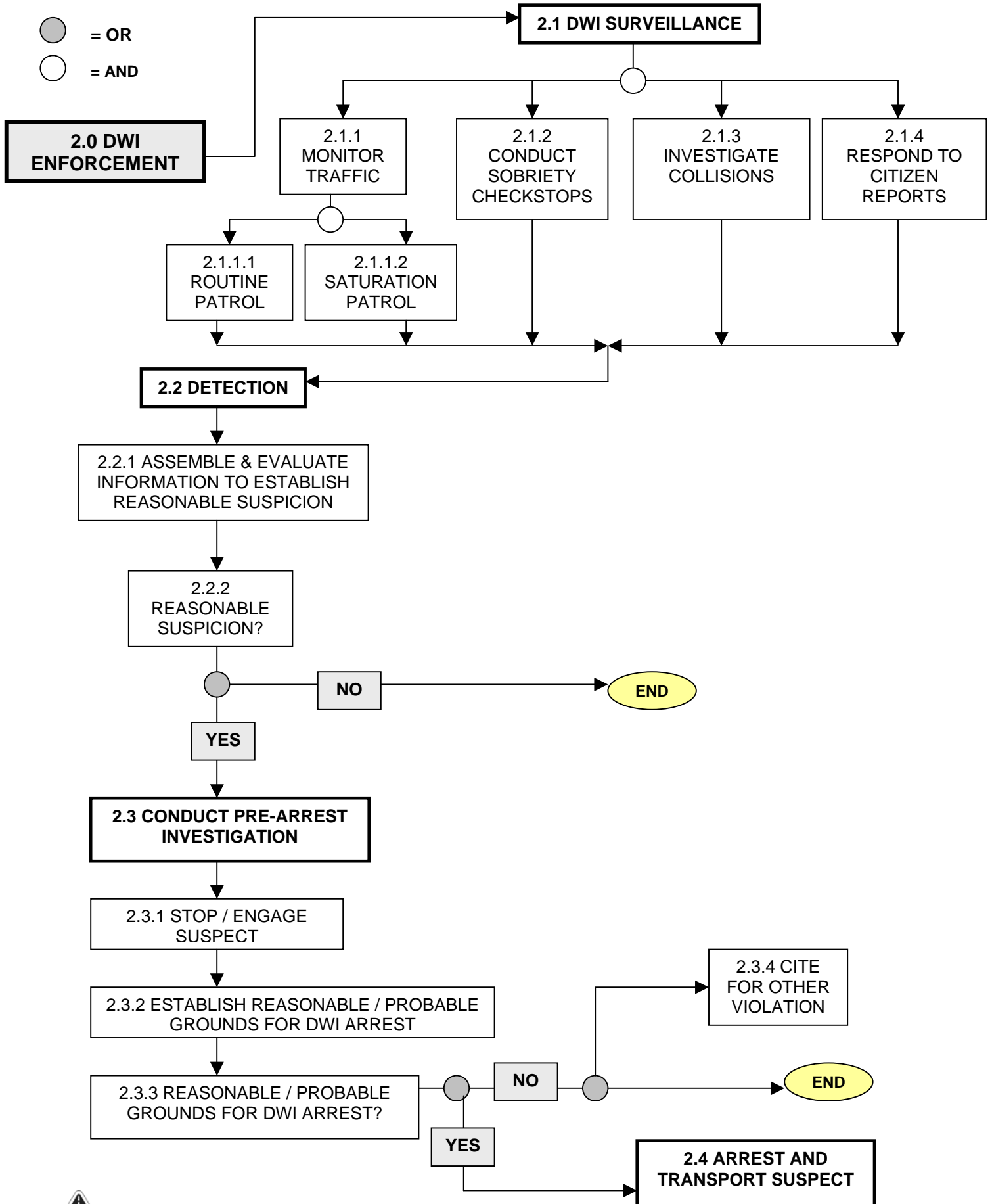


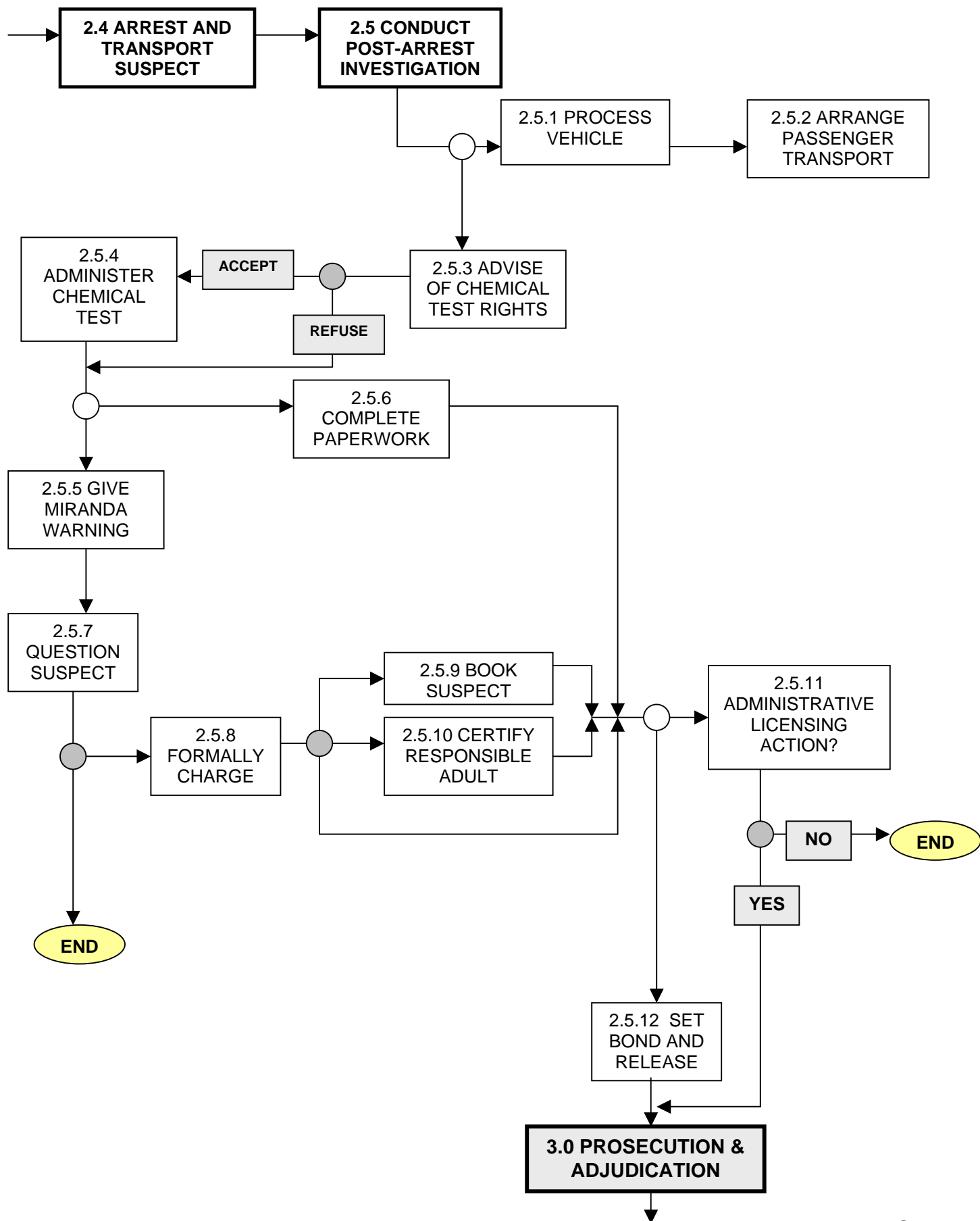
Overview

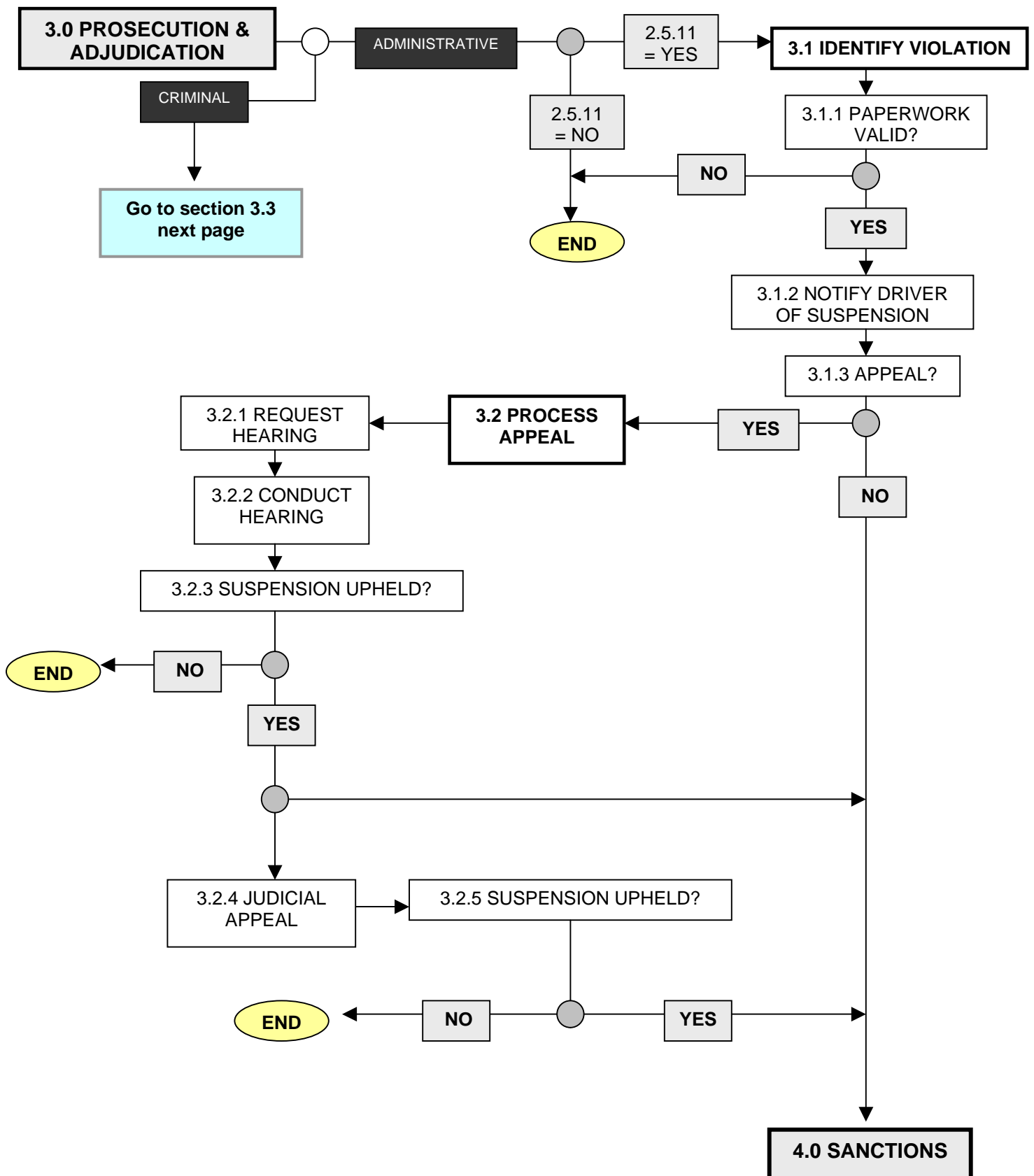


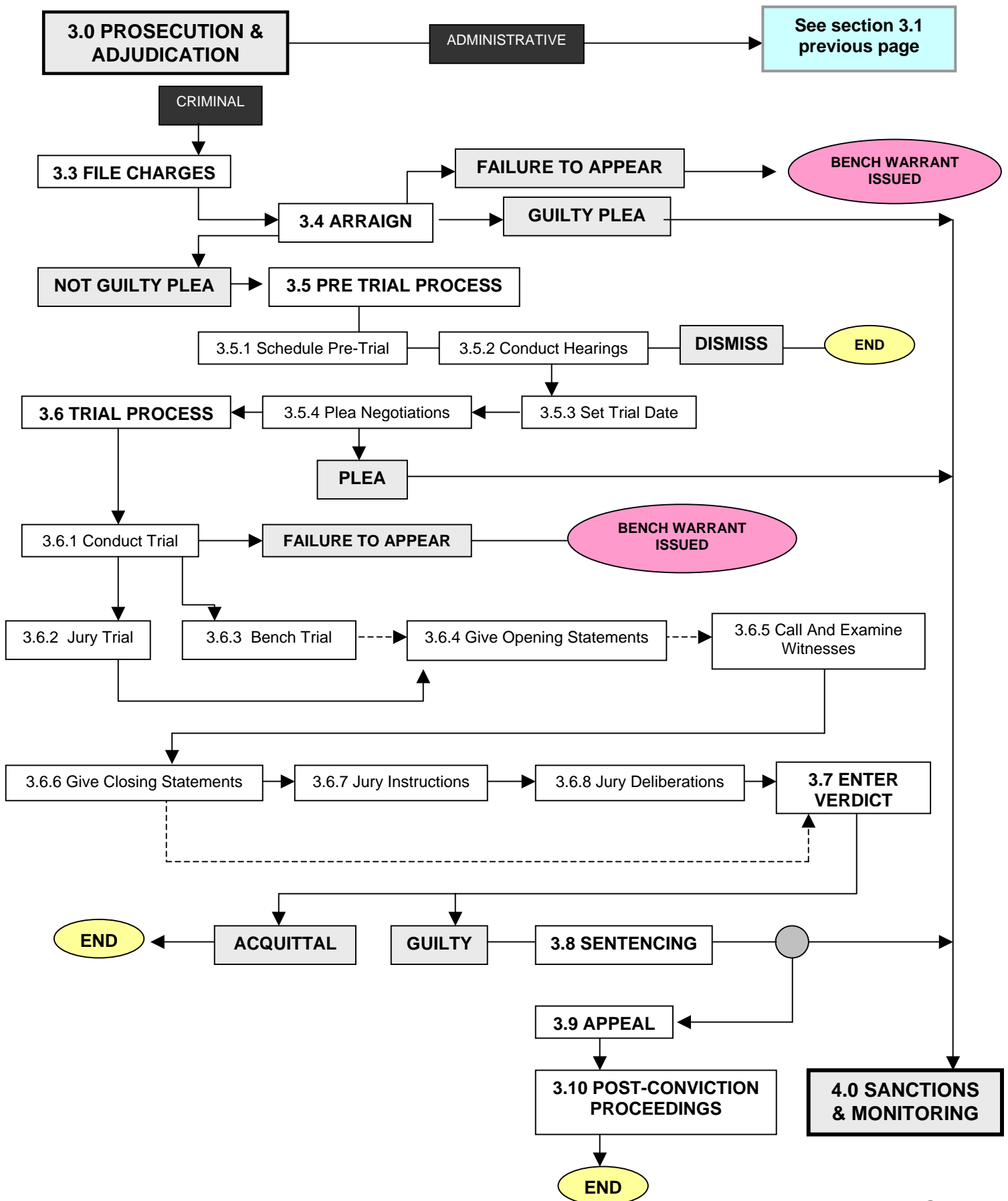
Overview

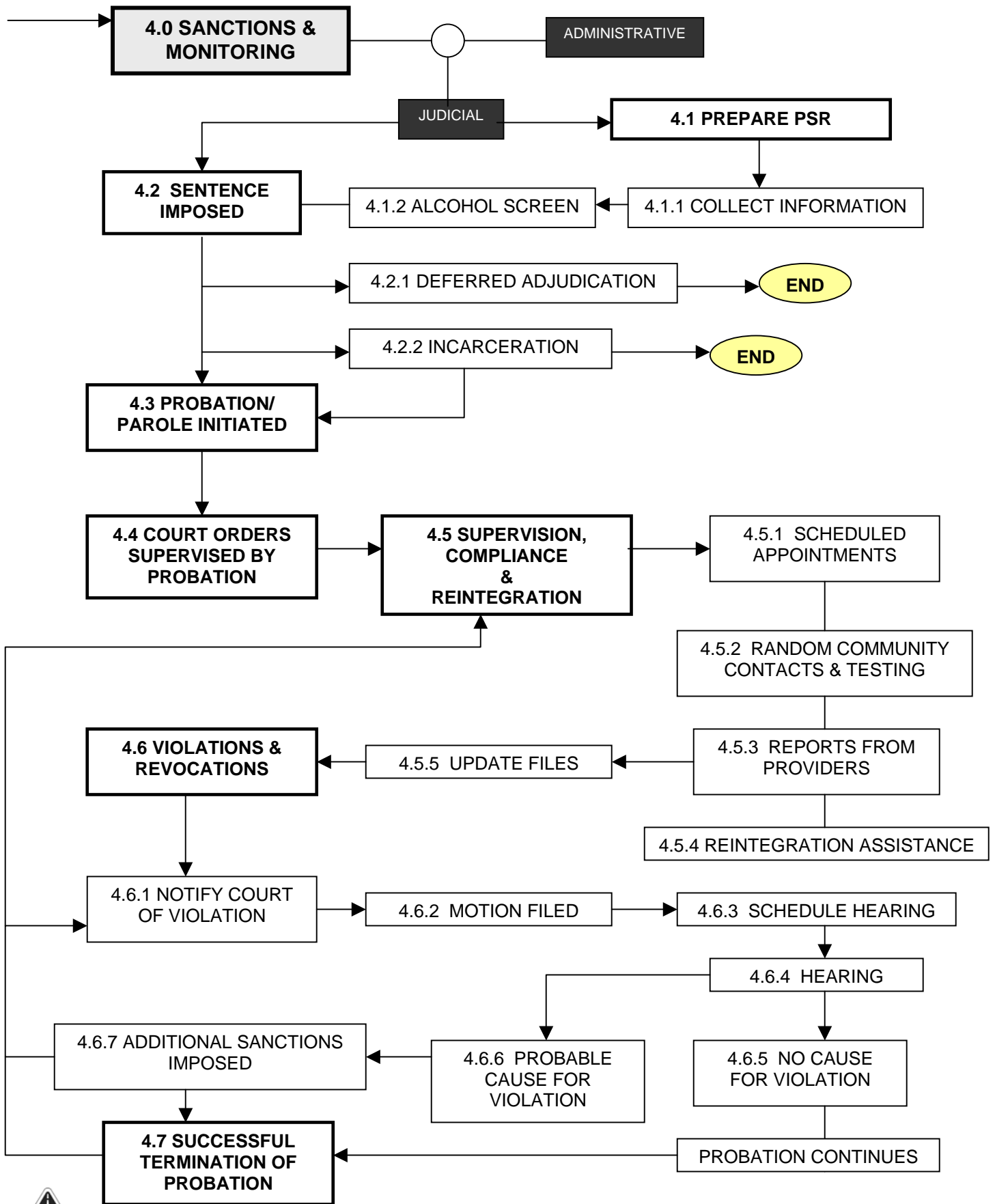












Appendix D

Problem List Distributed at Probation and Parole Workshops



Problems in Monitoring Hard Core Drunk Drivers —●

RANK*

- **COMPLIANCE WITH SANCTIONS:** Many sanctions are difficult to consistently monitor and enforce. This results in and encourages non-compliance, particularly among repeat offenders who are familiar with program inadequacies. _____
- **PROGRAM DESIGN AND OPERATION:** Program design flaws, inconsistent operation, and inappropriate assignment of offenders compromise the effectiveness of sanctions. This minimizes the intended deterrent and rehabilitative effect. _____
- **CORRECTIONAL DILEMMA:** Opportunities for treatment within sanctioning programs are overlooked or compromised as a result of security concerns. As a consequence, a majority of repeat offenders who are diagnosed as alcohol dependent rarely receive the needed treatment which ultimately reduces the efficacy of sanctions. _____
- **NET-WIDENING:** Intermediate sanctions are often applied inappropriately to lower-risk offenders due to technical and enforcement problems. This increases the number of offenders under direct supervision, depletes valuable resources and burdens an already over-loaded system. _____
- **SENTENCING DISPARITY:** There is often substantial disparity in sentencing practices across judges. This can lead to offenders receiving inappropriate sanctions or those with which they cannot readily comply. _____
- **INADEQUATE RESOURCES:** The quantity and/or quality of resources is often limited. This hampers successful program operation, thereby impeding the effectiveness of sanctions. _____
- **CASELOAD:** Staff lack sufficient time to efficiently monitor individual offenders. This drastically increases the opportunity for offender non-compliance and detracts from the deterrent effect of sanctioning. _____
- **RECORDS:** Incomplete offender records and/or inadequate access to records interfere with the ability of staff to effectively monitor repeat offenders and enforce compliance with imposed sanctions. _____
- **PAPERWORK:** Maintaining case files and completing appropriate paperwork detracts from an officer's ability to monitor repeat offenders. This results in non-compliance with sanction programs and minimizes supervision capabilities. _____



*Note: Highest priority problem rank #1, Lowest priority problem rank # 9.

Appendix E

Probation and Parole Surveys



MONITORING REPEAT DUI OFFENDERS

A National Survey of
Probation and Parole Officers

Traffic Injury Research Foundation
www.trafficinjuryresearch.com

April 2002



PURPOSE

The purpose of this survey is to obtain your views about key problems associated with the monitoring of hard core DUI offenders¹.

PRIVACY

To ensure the anonymity of individual respondents, only aggregate results will be published. Moreover, you are not being asked to provide personal information that could lead to your identification.

GENERAL INFORMATION

1. How many years have you worked as a probation/parole officer? _____yrs.
2. How many years have you monitored DUI offenders? _____yrs.
3. What is your average caseload of offenders? _____
4. What is your average caseload of DUI offenders? _____
5. Are the DUI offenders you supervise part of an intensive supervision probation program? _____
6. In which state are you currently a probation/parole officer? _____
7. Which of the following agencies is responsible for probation in your jurisdiction?
☐ Courts ☐ Corrections ☐ Executive Dept.

Footnotes

¹ Hard core drunk drivers are repeat offenders who frequently drink and drive with high BACs.

For convenience, the abbreviation DUI is used throughout the survey, although the specific term used in state statutes may vary (e.g., DWI – driving while impaired, OUI – operating under the influence of alcohol, etc.)



1. The nine problems listed below impede the monitoring of hard core drunk drivers in many areas of the country. Rank order these problems in terms of how important they are to you. Give a rank of 1 to what you believe is the most serious problem affecting your ability to monitor hard core drunk drivers, a rank of 2 to the next most serious problem, and so on.

RANK

Enforcing compliance with sanctions....._____

Poor program design and operation..... _____

Conflicting goals (enforcing compliance vs. community integration).. _____

Net-widening....._____

Sentencing disparity....._____

Inadequate resources..... _____

Caseload....._____

Inadequate records....._____

Paperwork....._____

2. What criminal sanction programs do you monitor with respect to drunk drivers? (Please check all that apply.)

_____ treatment/counseling

_____ ignition interlocks

_____ license sanctions

_____ electronic monitoring

_____ community service orders

_____ payment of fines or other fees

_____ Victim Impact Panels

_____ other _____

3. Do you feel that your priority as a probation/parole officer should be to enforce compliance with sanctions or to assist with rehabilitation and community integration?

☐ Enforce compliance

☐ Treatment/Integration

☐ Both equally

4. Which of the following tasks occupy the majority of your time when monitoring DUI offenders? (Please check **two** of the following responses.)

_____ paperwork

_____ in-home visits

_____ random alcohol/drug testing

_____ appointments with offenders

_____ communicating with other agencies

_____ record checks

5. Of the DUI offenders you supervise, what percentage do you estimate fail to comply with program or probation/parole restrictions? (Please circle the appropriate percentage on the scale below.)

0 10 20 30 40 50 60 70 80 90 100



6. In your experience, which of the following sanctions are DUI offenders least likely to comply with? (Please check **two** of the following responses.)

_____ license suspension/revocation	_____ community service orders
_____ treatment	_____ payment of fines and fees
_____ ignition interlocks	_____ electronic monitoring

7. In your experience, how often do poor program planning and/or design contribute to non-compliance or technical violations?

☐ Never ☐ Rarely ☐ Occasionally ☐ Often

8. In your experience, how often are DUI offenders excluded from certain sanction or treatment programs because of their inability to pay program fees?

☐ Never ☐ Rarely ☐ Occasionally ☐ Often

9. How would you rate the ability of probation/parole agencies to monitor and keep track of DUI offenders who relocate to other jurisdictions or states?

☐ Poor ☐ Satisfactory ☐ Excellent

10. Do you feel that you have sufficient authority to enforce compliance with sanctions?

☐ Yes ☐ No

11. Of the DUI offenders you monitor, what percentage are required to participate in some form of addiction counseling or treatment program? (Please circle the appropriate percentage on the scale below.)

0 10 20 30 40 50 60 70 80 90 100

12. Are there enough treatment programs/facilities for DUI offenders in your jurisdiction?

☐ Yes ☐ No

13. In your experience, how often are DUI offenders able to circumvent or manipulate traditional screening mechanisms used during alcohol or treatment evaluations?

☐ Rarely ☐ Sometimes ☐ Often ☐ Always

14. In your experience, what percentage of DUI offenders fail to pay fines or fees imposed as sanctions? (Please circle appropriate percentage on the scale below.)

0 10 20 30 40 50 60 70 80 90 100

15. In your experience, are ignition interlock programs administered effectively, meaning that the obligations and responsibilities of all parties are understood and fulfilled?

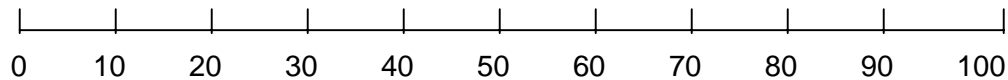
☐ Yes ☐ No



16. In your experience, can offenders be expected to comply with imposed license sanctions in light of alternative transportation options available in your jurisdiction?

☐ Yes ☐ No

17. In what percentage of DUI cases would you estimate that mandatory sanctions are not imposed by the courts? (Please circle appropriate percentage on scale below.)



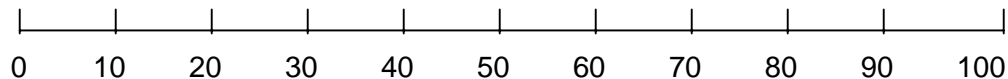
18. How would you rate the available criminal history records in terms of your ability to access records and accuracy of those records?

☐ Poor ☐ Average ☐ Excellent

19. How would you rate the available driver records in terms of your ability to access records and accuracy of those records?

☐ Poor ☐ Average ☐ Excellent

20. In what percentage of cases is it necessary to return a DUI offender to court for non-compliance with imposed sanctions? (Please circle the appropriate percentage on the scale below.)



21. Is it your experience that, on average, the sanctions imposed on DUI offenders reflect the severity of the offense?

☐ Yes ☐ No

22. Is it your experience that considerable disparity exists in sentencing DUI offenders in your jurisdiction?

☐ Yes ☐ No

23. Name a specific program that you believe is highly effective with repeat DUI offenders. Where is it operating and what agency runs it?

THANK YOU FOR YOUR COOPERATION. PLEASE RETURN COMPLETED SURVEY IN ENVELOPE PROVIDED AT YOUR EARLIEST CONVENIENCE.



MONITORING REPEAT DUI OFFENDERS

A National Survey of
Probation and Parole Officers

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www.trafficinjuryresearch.com

April 2002



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Poor program design and operation..... _____

Conflicting goals (enforcing compliance vs. community integration).._____

Net-widening....._____

Sentencing disparity....._____

Inadequate resources..... _____

Caseload....._____

Inadequate records....._____

Paperwork....._____

2. How do you think caseload issues can best be addressed? (Please check one of the following responses.)

_____ more in-patient treatment programs
 _____ more support staff to conduct random testing and check records
 _____ the use of more technological innovations for monitoring
 _____ more probation officers

3. In your experience, what is the maximum offender caseload that a probation/parole officer should monitor at any given time?

a) regular supervision:

☐ 0-100 ☐ 101-200 ☐ 201-300 ☐ 301-400 ☐ +400

b) intensive supervision:

☐ 0-30 ☐ 31-60 ☐ 61-90 ☐ 91-120 ☐ +121

4. Do you think probation/parole officers require more structure and greater guidance with regard to the reporting of and taking action on technical and other violations of imposed conditions?

☐ Yes

☐ No



5. In your experience, what is the most effective sanction that a repeat DUI offender can receive? (Please check **two** of the following responses.)

<input type="checkbox"/> jail	<input type="checkbox"/> electronic monitoring
<input type="checkbox"/> treatment/counseling	<input type="checkbox"/> community service order
<input type="checkbox"/> ignition interlock	<input type="checkbox"/> fine
<input type="checkbox"/> license sanction	<input type="checkbox"/> vehicle sanction

6. Which of the following would best improve your ability to enforce offender compliance with imposed sanctions? (Please check **two** of the following responses.)

☐ greater cooperation with police agencies
☐ improved communication with treatment agencies
☐ more personal contact with offenders
☐ more technical assistance in the form of monitoring devices
☐ more random testing of offenders for alcohol/drugs

7. Do you think vehicle sanction programs (impoundment, forfeiture) should be used more extensively?

☐ Yes

☐ No

8. How do you think ignition interlock programs could best be improved?

☐ improved communication with service providers
☐ more training on how to read and use the datalogger printouts
☐ closer working relationships with service providers
☐ more technical assistance regarding the use of these devices

9. How do you think community service orders as a sanction can best be improved? (Please check one of the following responses.)

☐ impose CSOs more frequently
☐ make community service related to offense
☐ increase supervision/reporting requirements for service agencies
☐ greater uniformity in use of CSOs and length of service imposed

10. In what percentage of cases do you feel that addiction treatment is effective with repeat DUI offenders?

☐ 0 ☐ 10 ☐ 20 ☐ 30 ☐ 40 ☐ 50 ☐ 60 ☐ 70 ☐ 80 ☐ 90 ☐ 100

11. Do you think that state governments should require the certification of treatment and service providers to ensure minimum standards of treatment?

☐ Yes

☐ No

12. In your experience, which of the following types of treatment programs are more effective with repeat DUI offenders?

☐ voluntary

☐ involuntary



13. Is it your experience that more treatment and counseling programs for repeat DUI offenders are needed in your jurisdiction?

☐ Yes

☐ No

14. Is it your experience that separate treatment facilities are needed for women and/or minority populations in your jurisdiction?

☐ Yes

☐ No

15. Do you think that more communication and exchange of information between probation/parole and treatment agencies would improve the supervision of repeat DUI offenders?

☐ Yes

☐ No

16. Do you agree that diversion records should be maintained for periods consistent with DUI legislation in order to prevent offenders from qualifying for these programs repeatedly?

☐ Yes

☐ No

17. Which of the following problems do you think is most important to address with regard to the design and operation of sanction programs? (Rank in order of importance with 1 being most important and 7 being least important.)

- _____ financial inability of some offenders to participate in programs
- _____ offenders cannot meet program requirements (e.g., transportation)
- _____ lack of uniformity/standards for program administration
- _____ programs are too short in duration
- _____ offenders are not 'matched' to the most appropriate programs
- _____ access to records is not shared by relevant agencies
- _____ poor program administration with regards to responsibilities/requirements

18. Is it your experience that judges require a more accurate understanding of the seriousness of DUI offenses and the impact of addiction on the offender?

☐ Yes

☐ No

19. Should treatment providers be required to inform probation/parole officers when an offender is abusing alcohol or drugs?

☐ Yes

☐ No

20. Name a specific program that you believe is highly effective with repeat DUI offenders. Where is it operating and what agency runs it?

THANK YOU FOR YOUR COOPERATION. PLEASE RETURN COMPLETED SURVEY IN ENVELOPE PROVIDED AT YOUR EARLIEST CONVENIENCE.

