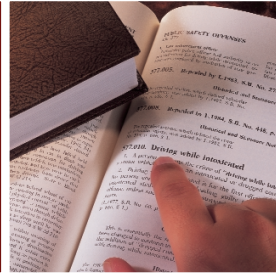




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DWI System Improvements: Stopping the Revolving Door



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The Traffic Injury Research Foundation has facilitated the formation of a *Working Group on DWI System Improvements* to advance the recommendations contained in this report.

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DWI System Improvements: Stopping the Revolving Door

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Herb Simpson is President & CEO of the Traffic Injury Research Foundation (TIRF). Previously he was a Clinical Psychologist in the Federal Penitentiary System and a Professor of Psychology at several universities. Dr. Simpson serves on numerous national and international road safety boards and committees. He has been recognized for his contributions, particularly in the areas of young drivers and drinking-driving, and has received a number of prestigious awards for them. During his 28-year career in traffic safety, he has produced several hundred reports and articles on traffic safety issues, is a member of the editorial board of several journals, and a consultant to government and industry around the world.

DWI System Improvements: Stopping the Revolving Door

This final report consolidates information gleaned from four previously released, comprehensive reports that clearly delineated problems at all phases in the criminal DWI system and focused in detail on how to stop what is a revolving door for hard core repeat offenders. Its purpose is to highlight the most significant improvements that can be made in the criminal justice system to address the drunk driving problem and to facilitate action.

THE ISSUE

After remarkable strides were made in reducing drunk driving in the 1980s and early 1990s, progress stalled. Many believed that this was due, in large measure, to the persistent behavior of a small group of offenders who frequently drive after consuming substantial quantities of alcohol, making them a serious threat on the roadways. There is now a strong consensus that we need to be more effective in dealing with hard core repeat offenders to reduce impaired driving. The good news is that many of the hard core do have contact with the criminal justice system. The bad news is that they frequently evade arrest, prosecution and conviction. Even if convicted, these offenders often fail to comply with the sanctions imposed. As a result, the effectiveness of the DWI system is seriously undermined.

To be effective the DWI system must contain sanctions and programs that protect the public by keeping drunk drivers off the road (e.g., home arrest, license suspension, vehicle impoundment, alcohol ignition interlocks), and that change offenders' behavior (e.g., treatment). Fortunately, research has identified sanctions and programs that are effective, and in the past decade, literally thousands of new laws were introduced putting these measures in place.

Unfortunately, the presence of these measures in the DWI system is no guarantee of success. The system itself must ensure that guilty offenders are apprehended, successfully prosecuted, and subjected to these effective sanctions and programs.

Yet in many cases, the legislation enabling these measures has not been carefully crafted or integrated, with the unintended consequence of making a complex DWI system even more complicated. DWI statutes have become so extensive and convoluted that they are among the most challenging and onerous encountered by criminal justice professionals. As a consequence, the DWI system is replete with loopholes. Repeat offenders know how to exploit these loopholes and are “slipping through the cracks”, compromising the effectiveness of the system – the public is not being protected and the behavior of these savvy offenders is not being changed.

THE BACKGROUND RESEARCH

Overcoming the deficiencies in the DWI system – improving its effectiveness and efficiency – is critical for achieving progress in reducing the drunk driving problem. In response to this need, the Traffic Injury Research Foundation (TIRF), with a charitable contribution from Anheuser-Busch Companies, completed a unique, comprehensive study that identifies where the problems are in the system and how they can be addressed with practical, cost-effective solutions.

Identification of priority problems and development of solutions was guided by front-line criminal justice professionals – police, prosecutors, judges, and probation and parole officers (henceforth referred to as probation officers for simplicity). This widely acclaimed and acknowledged study was facilitated and endorsed by many national organizations representing these professionals. Released as four separate documents, each report deals with the problems faced at different levels in the system – enforcement (November 2001), prosecution (June 2002), adjudication and sanctioning (December 2002), and monitoring (July 2003). The reports and related information can be found on the TIRF website at www.trafficinjuryresearch.com.

GOALS OF THIS REPORT

This report can help in the following ways:

- by providing a convenient summary and synthesis of the findings and recommendations from the four reports, which collectively offer a roadmap for improving the effectiveness and efficiency of the DWI system;
- by further encouraging the various professional groups to begin implementing key recommendations within their area of responsibility;
- by underscoring the need for interagency coordination, capitalizing on interdependencies in the system – lessening a problem in one part of the system can have system-wide benefits; and,
- by stimulating communication and cooperation between and within the key professional groups to facilitate a coordinated and strategic action plan.

FINDINGS AND RECOMMENDATIONS

Police, prosecutors, judges, and probation officers across the country each identified a set of priority problems they face in dealing with hard core repeat offenders and offered their views about practical remedies to improve the effectiveness and efficiency of the DWI system. Their recommendations have been conveniently clustered under six headings:

- Communication and Cooperation
- Training and Education
- Records
- Technology
- Legislation
- Resources

Communication and Cooperation

Communication among criminal justice professionals is obviously essential for the system to work effectively and efficiently. Somewhat surprisingly, vital communication is lacking and examples abound. In many jurisdictions, police and prosecutors, who work on the same cases and share common concerns about the quality and quantity of evidence, rarely discuss what evidence is most needed, how it is collected, and how it should be presented in court.

At the other end of the DWI system, judges say they are often uncertain if the sentences they impose are actually completed by offenders because of communication breakdowns between the judiciary and probation. Similarly, probation officers report that ensuring compliance with sanctions is challenging because of the need for constant contact and follow-up with a multitude of available service providers and programs. Improved communication among the different professional groups in the DWI system is essential for it to work more effectively and efficiently.

At the same time, a need for better communication lies within each of the professional groups. In seminars conducted across the country and in the numerous presentations given, we have been struck by the lack of contact between members of the same professional group. For example, prosecutors from adjoining counties had never met or discussed their common problems and were unaware of enormously differing practices among them. This situation arose again and again, whether we met with police, prosecutors, judges, or probation officers. It was evident that professionals were unaware of the fact that their colleagues often encountered the same problems and harbored similar concerns, because of a lack of communication. Moreover, for the same reason, “good ideas” about how to solve them existed in isolation.

On a positive note, all the professional groups recognized the consequences of working in isolation and the need to overcome this. The lack of communication not only undermines effectiveness but it poses a serious barrier to cooperation, breeding misunderstandings, professional

contempt, and even blaming. The net result is that the professional groups remain apart and insulated, further eroding opportunities for communication and cooperation.

What is encouraging is that these issues are clearly recognized by professionals and reflected in their recommendations for change:

Police officers recommend:

- workshops with prosecutors, which would highlight evidentiary requirements for obtaining a conviction, keep officers informed about new case law, and allow police the opportunity to share with prosecutors the complexity, dynamics and realities of the arrest environment;
- dialogue with medical personnel, which would clarify concerns and expectations with respect to the drawing of blood samples for BAC tests, clarify legal requirements, and establish a policy regarding the level of cooperation to be extended to police officers investigating drunk drivers; and,
- dialogue with their Department of Motor Vehicles (DMV; or its equivalent) and other stakeholders to simplify forms completed by officers making DWI arrests.

Prosecutors recommend:

- workshops with police officers (as noted above, already endorsed by police), that would highlight evidentiary requirements for obtaining a conviction, keep officers informed about new case law, and allow police the opportunity to share with prosecutors the complexity, dynamics and realities of the arrest environment;
- mentoring of newer prosecutors by those who have more experience; and,
- dialogue with legislators, criminal justice professionals and other stakeholders external to the justice system to undertake a comprehensive review of current DWI legislation and practices in order to improve the effectiveness and efficiency of the system.

Judges recommend:

- facilitating more contact and better communication among judges, probation officers, treatment professionals and offenders to ensure that offenders comply with imposed sanctions and conditions;
- centralizing the reporting process so judges receive a single report from probation officers who collate and synthesize the needed information from relevant agencies about offender monitoring and compliance;
- streamlining the monitoring process so that judges can efficiently review information from probation officers and quickly identify and take action with offenders failing to comply with imposed sanctions and conditions; and,
- making bond a condition of a bench warrant issued for an offender that has failed to appear, to ensure that the arraigning judge will be aware of this behavior and take adequate steps to guarantee future appearances.

Probation officers recommend:

- 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.

Priority Recommendation:

Improved communication within and between the professional groups (e.g., police, prosecutors, judges, probation officers) as well as among other key stakeholders (e.g., DMV, service providers, medical professionals) is a consistent and priority recommendation from the professional groups on how to improve the criminal DWI system.

Training and Education

Enforcing DWI laws is challenging indeed. The detection of drunk drivers, particularly alcohol tolerant ones, is difficult because the signs of intoxication can be subtle. The arrest process itself -- guided by complicated statutory requirements -- is detail laden and takes place in a dynamic, often complex environment. The subsequent prosecution of DWI cases is no less challenging, given the technical and scientific nature of evidence, constantly changing statutes and legal precedents, and increasingly sophisticated motions and arguments offered by defense. And, judges and probation officers are faced with an ever-changing array of sanctions with often mixed information on their administration and effectiveness, and methods to ensure compliance.

Given the complexities of the system, solid foundational training and education specific to DWI is essential for all professionals. This is particularly important because, paradoxically, the professionals assigned to DWI are often new to the job. For example, prosecutors across the country say that DWI cases are often seen as a “training ground”, so they are handled by the least experienced. They need training and mentoring as soon as possible. And, given the inevitable turn-over -- a related issue that needs to be addressed to encourage professional continuity and to reap the benefits of experience -- this training needs to be as detailed and technical as feasible.

For the professionals who remain in this field, there is a need for continued training and education to keep abreast of statutory changes and case law developments, the use and admissibility of evidence, sentencing strategies and the use and application of different sanctions, to mention a few.

Moreover, given the overwhelming caseloads and competing priorities faced by criminal justice professionals, particularly those in more rural areas, innovative methods are needed to facilitate training and education.

Police recommend:

- enhanced training at the academy in conjunction with more on-the-job experience in the detection of hard core drinking drivers -- the most difficult to identify because of alcohol tolerance and familiarity with the system -- and in the complexities of arrest procedures;
- wider training in the use of the Standardized Field Sobriety Test (SFST) as well as in the use of Preliminary Breath Test (PBT) devices and passive sensors; and,
- enhanced training and experience in providing testimony in DWI trials, through such methods as mock trials and direct observation of experienced mentors.

Prosecutors recommend:

- enhanced on-the-job training of new prosecutors in the complexities of DWI evidentiary issues, trial proceedings, and legislation in general;
- specialized training courts that would provide prosecutors with experience in presenting technical, scientific evidence, to cross-examine witnesses and to refresh their trial skills;
- enhanced training of police officers in the collection of evidence to improve its quality and quantity (also endorsed by police themselves); this is particularly important in the prosecution of alcohol tolerant repeat offenders; and,
- continuing education for the judiciary to provide contemporary information on the effectiveness of alternative sanctions.

Judges recommend:

- greater opportunities for judicial education on DWI evidentiary issues to prepare and familiarize them with a variety of specialized scientific and legal issues; and,
- more training for all criminal justice professionals so that they acquire the necessary technical and specialized skills and

knowledge to ensure the proper apprehension, prosecution, sanctioning and monitoring of hard core drinking drivers.

Probation officers recommend:

- increased training regarding the operation and effectiveness of the various sanctions and programs they are required to monitor;
- improved judicial education that includes an emphasis on the relationship between addiction and offending, so that treatment is widely recognized as a necessary element in sentencing hard core DWI offenders; and,
- 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. In this context, the conditions of probation must be achievable for offenders and must be relevant, realistic and research-supported.

Priority Recommendation:

The need for training and education has been underscored by all professional groups. Most of them recommend this not only for their own profession but for others as well, reinforcing the fact that their effectiveness and efficiency depends on that of others in the system. Perhaps of greater importance, most recommend training and education initiatives that would bring together the professionals whose work is intimately connected in the system.

Record Linkages, Availability and Access

Current, accurate information is critical to decision-making at every level in the system. Police need records to determine the appropriate charges to file, prosecutors need records to determine what plea agreements are appropriate and what sentencing recommendations to make, judges need

records to sentence according to legislative guidelines and mandatory minimums, and probation officers need records to complete a comprehensive pre-sentence report (PSR) upon which judges can base their sentencing decisions.

It has been widely recognized that records, particularly criminal history and driver abstracts, vary in terms of the currency of information they contain, their content (both in terms of the nature of the information and its scope), accuracy, completeness and comparability as well as the ease and timeliness of their access.

Professionals often require similar information on which to base their decisions. Yet, they often locate and access such information through different agencies using separate and unique data bases so the information they obtain is often not comparable. This can have negative repercussions for consistent and appropriate decision-making.

The ability of state repositories to maintain accurate records is largely dependent on their ability to collect and enter pertinent information from multiple agencies in “real time”. In some jurisdictions, it may take six months or more for arrests and convictions to be recorded on the appropriate records; in others, convictions may be omitted entirely. The phrase “disposition unknown” has become all too familiar to those working in the field.

This problem is further compounded in national repositories. For example, the records contained in the National Crime Information Center (NCIC) and the National Driver Register (NDR) suffer from the same problems identified in state records. In addition, the lack of standardization regarding the information collected and how it is maintained create further problems and can make the interpretation of the information challenging, particularly in cases that involve out-of-state records.

Police recommend:

- increasing access to criminal history records at the roadside to improve the identification of repeat offenders and facilitate appropriate charging decisions; and,
- expanding the use of mag-stripe readers so that driver records and special licensing conditions can be accessed at the roadside.

Prosecutors recommend:

- creating and maintaining uniform and current abstracts of driver records;
- standardizing look-back periods for driver and associated records that are consistent with look-back periods specified in criminal legislation; and,
- standardizing court reporting practices.

Judges recommend:

- improving the quality of records currently available in the National Driver Register to ensure that they reflect current charges and clearly indicate the imposed sentence;
- creating uniform driver abstracts (consistent with the recommendation by prosecutors); and,
- standardizing look-back periods and court reporting practices (also consistent with the recommendation by prosecutors).

Probation officers recommend:

- increasing efforts to standardize and automate important local, state and national record systems to facilitate timely access to accurate, up-to-date records that are 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.

Priority Recommendation:

Professionals have unanimously identified record improvements as a critical need and a priority for improving the efficiency and effectiveness of the system. Criminal justice professionals strongly encourage key stakeholders (e.g., police, courts, probation, DMV) to develop, improve and evaluate record systems to promote integration and coordinate the needed data-sharing capabilities among agencies that will ensure timely access to appropriate, accurate and current information.

Technology

Criminal justice professionals endorse expanding the use of technological innovations and information-sharing capabilities to ensure the justice system can better achieve its goals. Significant advancements in the application of new technologies permit officers to accurately detect, identify and process offenders in less time and with greater ease. The creation of multiple legal data bases with computerized searches allow prosecutors and judges alike to identify relevant case law, locate recent court decisions, access the latest scientific research, and track expert testimony pertaining to DWI cases so that complex legal issues can be adequately addressed as they arise. Perhaps of greatest importance, new technologies have significantly facilitated the tracking and supervision of multiple offenders with less direct contact, permitting probation officers to accommodate growing demands for supervision while still ensuring compliance.

Using various funding sources, a few jurisdictions have kept pace with new technologies but many jurisdictions face considerable challenges in doing so. Probation officers can employ a wide variety of technological devices to monitor and supervise offenders (e.g., interlocks, electronic monitoring, on-site alcohol testing devices), however, few jurisdictions receive sufficient funding to operate all of the necessary programs, which compromises their ability to manage caseloads and ensure offenders are compliant with sanctions.

There is a need to ensure that more agencies have access to these tools to create the balanced effort that is required to reduce impaired driving. This need has become even more critical in light of burgeoning caseloads and convincing evidence that the system is unable to adequately manage increased numbers of offenders.

Police recommend:

- greater availability of mobile data computers and magnetic-stripe or bar-code readers to provide rapid access to driver record information, help identify suspended, revoked or bogus licenses, and reduce recording errors;
- increased use of computerized forms and digital dictation systems to reduce paperwork, processing time and recording errors; and,
- greater access to PBTs and passive sensors to enhance the detection of drinking drivers, particularly alcohol-tolerant ones.

Prosecutors recommend:

- consistent, computerized access to Westlaw, related legal websites, research materials and court rulings, such as the Brief Bank maintained by the National Traffic Law Center (NTLC) at the American Prosecutors Research Institute; and,
- development of an expert witness databank that tracks testimony and expert opinion on various kinds of scientific evidence.

Judges recommend:

- greater use of arrest and booking videos to improve the quality and quantity of evidence brought to court, clarify discrepancies in the interpretation of evidence, substantiate officer testimony and reduce their time in processing an offender; and,
- creating an integrated records system linking all relevant agencies and providing comprehensive and timely information on DWI cases.

Probation officers recommend:

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

Priority Recommendation:

Criminal justice professionals agree that the expanded, uniform use of new products and technologies is a priority for achieving the desired reductions in impaired driving that were obtained in the 1980s and early 1990s. Technological innovations (e.g., passive alcohol sensors, digital dictation systems, ignition interlocks, and onsite alcohol testing products) can improve the identification, processing and supervision of hard core repeat offenders.

Legislation and Regulation

The unprecedented growth in DWI legislation in the past decade has made an already complicated system even more so. Indeed, cases have become so complex and onerous that it is often frustrating, discouraging and even intimidating to many professionals. For example, the arrest process is detail laden and time-consuming; prosecution involves highly technical evidence and complex legal issues; sanctioning has become a minefield of competing priorities and sentencing alternatives that differ vastly in their goals; and the monitoring of offenders is inconsistent due to the diversity of programs and their delivery.

All too often it appears that despite the good intent and strong expectations of legislators, they have created a patchwork of laws with too little consideration for how the system works as a whole. On the front-lines, professionals have become accustomed to “unfunded mandates” in which their agencies become responsible for tasks with no authority or resources to accomplish them. For example,

mandatory minimum jail sentences are common; however, without addressing overcrowding, the wishes of the legislative body cannot always be carried out.

States must review, streamline and simplify their DWI codes, looking wherever possible to improve the effectiveness and efficiency of the system. By doing this, loopholes and glitches can be sealed, protecting the public and assisting offenders with substance abuse issues.

Professionals agree that some new legislation is obviously needed (e.g., to deal with the problem of test refusal) but careful consideration and wide consultation is necessary when new laws are contemplated to ensure that they complement existing statutes and can be enforced by front-line professionals. In this context, a pre-eminent concern is not with passing new laws but making the existing laws work better so they can achieve their intended goals.

Police recommend:

- consistent look-back periods, specifying the timeframe during which prior alcohol-related convictions can be considered;
- criminalizing test refusal, to ensure that offenders cannot avoid identification as a repeat offender; and allowing evidence of refusal to be admitted in court so that offenders cannot circumvent sanctioning;
- increasing penalties for test refusal, for leaving the scene of an accident, and for failure to appear; and,
- removing the opportunity for judicial driving permits.

Prosecutors recommend:

- increasing bail amounts for defendants who have previously failed to appear, or require that these defendants be held for arraignment with higher bail amounts as a condition of release;
- criminalizing test refusal and allowing evidence of refusal to be admitted in court (consistent with the recommendation by police), or making refusal a rebuttal presumption of fact;
- increasing penalties for test refusal and for failure to appear (also consistent with the recommendation by police);
- expanding the use of tiered penalty systems that specify increased sanctions for repeat offenders; and,

- adhering more closely to case processing guidelines to minimize unnecessary continuances or delays.

Judges recommend:

- making refusal a criminal offense (consistent with the recommendation by police and prosecutors);
- admitting evidence of refusal at trial (consistent with the recommendation by police and prosecutors) to permit judges and juries a fair and accurate basis for reaching a verdict;
- reducing statutory requirements to permit officers reasonable flexibility to respond to the dynamic environment in which DWI investigations and arrests occur;
- using tiered penalty systems that specify increased sanctions for repeat offenses (consistent with the recommendation by prosecutors); and,
- including more empirically-based alternatives and creative options in mandatory minimums sentences.

Probation officers recommend:

- imposing reasonable limits on caseloads to facilitate supervision and rehabilitative activities;
- certifying treatment programs and developing program standards 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; and,
- strategically reviewing legislation and policy pertaining to the administration and implementation of alternative penalties and programs.

Priority Recommendation:

Professionals unanimously support the simplification and streamlining of existing DWI statutes. States are encouraged to undertake a legislative review that seeks input from key stakeholders and aims to close existing loopholes that permit offenders to avoid prosecution, conviction and appropriate sanctioning.

Resources

An underlying and recurring theme in many of the recommendations described above is the issue of resources. Each of the professional groups acknowledged that resources are intimately linked to the accomplishment of their directives: to detect and apprehend, to prosecute, to adjudicate and sanction as well as to monitor offenders. Yet, the availability and allocation of resources is often a function of changing political environments that are heavily influenced by public opinion and social events. Consequently, agencies must manage competing priorities and may be unable to allocate resources where they are most needed.

Although many of the recommendations can be implemented with relatively little cost (e.g., improving communication between agencies), even these will require a re-allocation of resources and, in some cases, a re-examination of priorities – e.g., justifying why DWI offenders should receive as much attention as other types of offenders. Other recommendations will require a more concerted effort that is likely to be challenging in light of the fiscal realities present in most states.

All the professional groups acknowledged the benefits that can accrue when resources are available for new technologies but emphasized that the most needed resource is people, particularly in the area of monitoring where probation officers are responsible for supervising many offenders for prolonged periods involving extensive contact and are unable to accommodate growing demands for supervision.

To derive the greatest benefit from available resources, there is a need to continue developing “best practices” at all levels of the system to improve its effectiveness and efficiency.

NEXT STEPS

Our studies have identified what changes are needed in the DWI system to improve its effectiveness and efficiency in dealing with hard core repeat offenders. The changes recommended by front-line professionals in the criminal justice system can occur from smaller efforts at the local level as well as from broad, strategic, coordinated efforts.

At the local level, the staggering paperwork burden on police officers can be reduced substantially (some have to complete manually more than a

dozen different forms for each DWI arrest), thereby improving the accuracy of the information (evidence) they gather, increasing the amount of time they spend on active patrol, and boosting morale. Prosecutors and police could resolve shared evidentiary concerns and improve the quality of evidence by opening the lines of communication. Judges in more remote locations could benefit from distance learning programs to improve their knowledge of the effectiveness of the wide array of sanctions currently available. Probation officers can work more closely with service and treatment providers to coordinate efforts and improve the supervision of offenders.

At the state level, our findings and recommendations can serve as a road map to guide agencies in identifying their own key issues and setting priorities for dealing with them. There is evidence that this is already occurring in a number of states (e.g., Minnesota, Virginia, and Washington). To facilitate these efforts, state summaries based on each of our national surveys are being compiled and will be made available upon request.

At the national level, criminal justice organizations can work with their members to improve and increase training and educational opportunities. There is evidence that this is already underway. For example, the NTLC, through the American Prosecutors Research Institute, has developed a user-friendly educational monograph series on key prosecutorial issues, which is being distributed nationwide; the National Center for State Courts is developing a DWI distance learning curriculum for judges; and the National Judicial College is developing a “best practices” for sentencing offenders that will be distributed to judges across the country. Such efforts are encouraging and should be broadly implemented and emulated by others.

At the same time, these professional groups should be encouraged to work together and provided the opportunity to do so, because the issues they face are echoed throughout the system. A problem for one professional group (e.g., evidence, records) can have significant repercussions for others. So, fixing just one problem can have system-wide benefits. There is, therefore, a pressing need to improve communication and cooperation among the professional groups involved in the DWI system. Communication and cooperation among all professional groups to facilitate the exchange of information and solve problems should be a hallmark of the DWI system. Currently it is not. Efforts are needed to rectify this situation to break down barriers and build respect. Professionals will find that they share common concerns and can leverage change more effectively by working together.