



## 10 Steps to a Strategic Review of the DWI System: A Guidebook for Policymakers



TRAFFIC  
INJURY  
RESEARCH  
FOUNDATION

A DRIVING FORCE FOR SAFETY

enforcement



prosecution



sanctioning



monitoring



# 10 Steps to a Strategic Review of the DWI System: A Guidebook for Policymakers

Proceedings of the 3<sup>rd</sup> Annual Meeting of the Working Group on DWI System Improvements

This initiative was made possible by a charitable contribution from **The Anheuser-Busch Companies**

Robyn Robertson  
Ward Vanlaar  
Herb Simpson



TRAFFIC  
INJURY  
RESEARCH  
FOUNDATION

A DRIVING FORCE FOR SAFETY

[www.trafficinjuryresearch.com](http://www.trafficinjuryresearch.com)

## **The Traffic Injury Research Foundation**

The mission of the Traffic Injury Research Foundation (TIRF) is to reduce traffic-related deaths and injuries.

TIRF is a national, independent, charitable road safety institute. Since its inception in 1964, TIRF has become internationally recognized for its accomplishments in a wide range of subject areas related to identifying the causes of road crashes and developing programs and policies to address them effectively.

For more information or for assistance in setting up a systems review process in your state, please contact:

### **Traffic Injury Research Foundation (TIRF)**

171 Nepean Street, Suite 200

Ottawa, Ontario K2P 0B4

Canada

Ph: 877-238-5235

Fax: 613-238-5292

Email: [tirf@trafficinjuryresearch.com](mailto:tirf@trafficinjuryresearch.com)

Traffic Injury Research Foundation

Copyright © January 2007

ISBN: 978-0-920071-64-9

# Table of Contents

Letter to Policymakers. . . . . 4

How the System Too Often Works . . . . . 6

How the System Should Work . . . . . 7

Overview . . . . . 8

Background. . . . . 9

STEP 1 - Selecting a Review Strategy and Building a Team . . . . . 10

STEP 2 - Identifying Purpose, Goals and Objectives . . . . . 11

STEP 3 - Establishing Guiding Principles. . . . . 12

STEP 4 - Assessing the System . . . . . 13

    Critical Questions. . . . . 14

STEP 5 - Evaluating Potential Solutions. . . . . 16

STEP 6 - Selecting a Viable Strategy. . . . . 17

STEP 7 - Creating Consensus. . . . . 18

STEP 8 - Developing Recommendations . . . . . 19

STEP 9 - Setting Responsibilities and Timelines. . . . . 20

STEP 10 - Measuring Outcomes . . . . . 21

Caveats . . . . . 22

Conclusions . . . . . 24

## Dear Policymaker,

You have been a vital player in passing proven and effective laws, programs and policies designed to reduce impaired driving. Under your guidance, states uniformly passed .08 laws; in addition, many jurisdictions addressed repeat and high-BAC (blood alcohol concentration) offenders, implemented ignition interlock programs, and increased penalties to reflect society's collective disdain for impaired driving.

*Unfortunately, legislation alone will not reduce impaired driving or the number of fatalities and injuries. Efforts are needed to close commonly exploited loopholes that have been identified at all phases of the criminal DWI system. To illustrate, more than 40 jurisdictions have ignition interlock programs, yet less than 10% of the 1.5 million DWI offenders arrested annually participate in these programs; and, despite administrative license suspensions, a majority of convicted offenders continue to drive, often at BACs almost double the legal limit.*

The justice system comprises multiple interdependent agencies with diverse and overlapping responsibilities. Yet each is working to achieve the same overarching goal -- to protect the public and change offender behavior. At this juncture, the greatest payoff will arise from fostering and improving cooperation among agencies and jurisdictions, and simplifying the system to encourage the coordination of activities. Streamlining the DWI system can close loopholes exploited by savvy offenders.

***A linchpin to making this happen is a guided strategic review of the DWI system undertaken within each jurisdiction with leadership from legislators, policymakers, and key agencies.***

The following Guide has been designed to aid policymakers in leading a strategic review of the DWI system. It contains 10 critical steps that are based on sound research and have been developed with input from criminal justice professionals across the country, representing a diverse spectrum of agencies. These 10 steps can assist policymakers in creating an effective team and conducting an impartial system assessment that highlights priority needs. The guide contains tools to aid in the decision-making process, and recommends ways to successfully implement change built upon consensus. Important caveats to critical issues in the system are also provided.

This review can benefit from the latest research that highlights the importance of ensuring that current laws and policies achieve their intended goals and create a comprehensive and seamless strategy to reduce impaired driving. Guidance and input from practitioners who work in the criminal DWI system everyday can assist in this process. Such support can create a powerful tool for change.

*The Working Group on DWI System Improvements can help you accomplish this goal.*

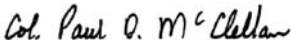
There are two compelling reasons for you to focus on this issue. First, the social costs of this problem cannot be ignored. Everyday thousands of people across the country are coping with the preventable death or disability of family members and friends.

Second, the staggering economic cost of this problem is an overwhelming burden borne by all jurisdictions. A single fatality is estimated to cost taxpayers \$3.5 million, and the cost of alcohol-related crashes exceeds \$50 billion annually. These costs must be reduced by all possible means.

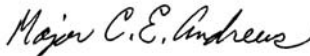
This guide can be used at local state, and national levels. We look forward to working with you to conduct effective and strategic reviews that will achieve meaningful gains and reduce impaired driving.

Sincerely,

**The Members of the Working Group on DWI System Improvements**



**Colonel Paul D. McClellan**  
Ohio State Highway Patrol



**Major Charles E. Andrews**  
Alabama Department of  
Public Safety



**L.R. "Bob" Jacob**  
Director  
Institute of Police Technology and  
Management



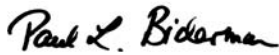
**David Wallace**  
Prosecuting Attorneys Association  
of Michigan  
National Association of Prosecutor  
Coordinators



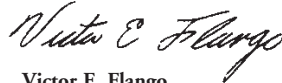
**Gregor Datig**  
Chief Deputy District Attorney  
Riverside County District  
Attorneys Office  
California District Attorneys  
Association



**Honorable Michael R. McAdam**  
Kansas City Municipal Court  
Past President  
American Judges Association



**Paul L. Biderman**  
Director Institute of Public Law  
University of NM School of Law  
Past President  
National Association of State  
Judicial Educators



**Victor E. Flango**  
Executive Director  
Program Resource Development  
National Center for State Courts



**Carl Wicklund**  
Executive Director  
American Probation and Parole  
Association



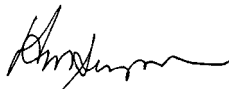
**Lewis Gallant**  
Executive Director  
National Association of State  
Alcohol and Drug Abuse Directors



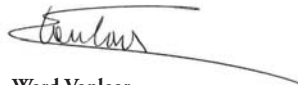
**Kay Chopard Cohen**  
Deputy Executive Director  
National Criminal Justice  
Association



**Robyn D. Robertson**  
President and CEO  
Traffic Injury Research Foundation



**Herb M. Simpson**  
Research and Policy Consultant  
Traffic Injury Research Foundation



**Ward Vanlaar**  
Research Associate  
Traffic Injury Research Foundation

---

**With special assistance from:**

**Richard J. Ashton**  
Grant and Technical  
Management Manager  
Highway Safety Committee  
International Association of Chiefs  
of Police

**Honorable Harvey Hoffman**  
Eaton County District Court  
National Judicial College

**Marcia Cunningham**  
Director  
National Traffic Law Center  
American Prosecutors Research  
Institute

**Jeanne Mejeur**  
Program Director  
Legislative Information Services  
National Conference of State  
Legislatures

**Drew Molloy**  
Senior Policy Advisor for  
Corrections  
Bureau of Justice Assistance

**Jim Davis**  
President  
Association of Traffic Safety  
Information Professionals

**Michael R. Sandoval**  
Director, Traffic Safety Bureau  
New Mexico Department of  
Transportation

## How the System Too Often Works

At 10:00 pm on a Friday night, a state trooper stops the driver of a car on a busy highway for speeding. The trooper calls his dispatcher with the license plate number and determines that the car is owned by Jack Jones. The trooper takes the driver's license and again contacts the dispatcher to run a records check. The driver's history shows that Mr. Jones has a previous conviction for drunk driving. Because there is no central database of information, the history does not show that Mr. Jones is on probation for an offense committed in another state and has a drunk driving charge pending in a neighboring county.

The trooper notes the driver has bloodshot eyes and smells of alcohol and asks him to perform field sobriety tests, which he performs poorly. The trooper asks Mr. Jones to take an alcohol breath test but the driver refuses. Mr. Jones is taken into custody.

The officer spends the next several hours filling out the paperwork for the arrest, including written descriptions of the driver's performance on the field sobriety tests. He completes all the required forms and turns in his report which will be forwarded to the prosecutor's office.

The prosecutor files the appropriate charges for a second offense, unaware of two additional drunk driving convictions. No pre-trial assessment is performed due to a lack of probation services and no alcohol assessment is conducted.

Mr. Jones pleads innocent, arguing he had only consumed two drinks. The case is assigned to an inexperienced prosecutor because drunk driving cases are lower priorities for the overworked prosecutor's office. The trooper testifies in court and describes the results of the field sobriety test but there is no BAC result to indicate how drunk Mr. Jones actually was.

Mr. Jones is found guilty of refusing the breath test but gets off on the drunk driving charge, due to lack of evidence and the inexperience of the prosecutor. He is given a one-year license suspension and is back on the road driving despite having a suspended license.

**Research shows that problems impact the criminal DWI system at all levels -- enforcement, prosecution, sanctioning and monitoring. Priority problems include:**

- excessive paperwork;
- inadequate or inconsistent evidence;
- refusal by offenders to cooperate with police investigations or submit to evidentiary breath tests;
- poor access to current driver and criminal history records;
- failure of offenders to appear in court;
- heavy caseloads;
- delays in the processing of offenders; and,
- the lack of appropriate sanctions.

**The good news is that fixing just one problem in one phase of the system can have positive reverberations throughout all its levels.**

## How the System Should Work

At 10:00 pm on a Friday night, a state trooper stops the driver of a car on a busy highway for speeding. The trooper runs the plates using a laptop computer and determines that the car is owned by Jack Jones who has a previous impaired driving conviction. The trooper takes the driver's license to run a record check. A search of DMV, criminal history, and court records reveals the driver has a revoked license from an adjoining state and another impaired driving charge pending in a neighboring jurisdiction. Probation records show the driver has a warrant for failing to attend court-ordered substance abuse treatment imposed for his previous conviction.

The trooper notes the driver has bloodshot eyes and smells of alcohol and asks the driver to perform field sobriety tests which are conducted in full view of the dashboard mounted camera. Based on the driver's poor performance, the trooper requests the driver submit to a preliminary breath test. The driver refuses. Mr. Jones is taken into custody where a trained phlebotomist conducts a blood draw based on the driver's refusal to consent to a breath test.

The officer completes much of the necessary paperwork using the information automatically captured by swiping the driver's license. The video tape of the tests is entered into evidence and the incident report is entered into the state's automated information system that is connected to information systems of the jail, state prosecutor, court and local probation department.

The prosecutor files appropriate charges for a repeat offense. The probation department performs a pre-trial assessment and conducts a record search to find the current conditions of supervision from Mr. Jones' home state, which indicate Mr. Jones was not to have left his state of residence. The pre-trial report is electronically forwarded to the judge, prosecutor and defense counsel.

Mr. Jones pleads innocent at trial, arguing he had only consumed two drinks. With assistance from a traffic safety resource prosecutor, an inexperienced prosecutor wins a conviction based on the results from the blood draw, the video showing the swerving vehicle, and the tape showing the failed field sobriety tests which was corroborated by the testimony of the trooper in court.

The judge imposes sentence based upon a pre-sentence investigation, including an alcohol assessment. The sentence includes 60 days in jail, a one year license suspension with supervised probation, and substance abuse treatment. The 60 days in jail are waived if Mr. Jones wears a transdermal device that will monitor alcohol consumption for the duration of his probation. The device is also used to monitor his success in treatment. After 90 days of sobriety, he is eligible to get a restricted driver's license that requires the use of an ignition interlock.

***Policymakers play a key role in improving the DWI system -- they are the fulcrum to ensure loopholes in the system are closed.***

This report outlines 10 critical steps in the strategic review process. Each one is designed to assist policymakers in implementing a comprehensive review process that will achieve meaningful outcomes and address key factors contributing to impaired driving.

### **Legislators can pursue a strategic review of the DWI system in their state by:**

- convening legislative hearings;
- establishing a task force or commission to study the issue;
- appointing legislative staff to conduct a study of the system and report back to the legislature;
- appointing agencies to conduct a review with legislative involvement and oversight; or,
- passing an interim bill to study the issue.



# Overview

Research has shown that loopholes in the DWI system allow savvy offenders to avoid arrest, prosecution, conviction, treatment and serving imposed penalties. To illustrate:

- offenders escape to hospital emergency rooms or flee the scene of an accident to avoid detection and testing;
- in some jurisdictions more than 50% of offenders refuse to take a breath test as a way to avoid conviction;
- repeat offenders are charged and sentenced as first offenders because of problems with record systems;
- savvy offenders fail to appear in court to avoid conviction or sanctioning;
- less than 10% of the 1.5 million DWI offenders arrested annually have an ignition interlock installed even though programs exist in more than 40 states;
- an estimated 70% of offenders who have a suspended or revoked driver's license continue to drive;
- a majority of offenders who are ordered to abstain from alcohol continue to drink undetected and drive; and,
- more than 50% of jurisdictions report that more treatment facilities are needed.

Many of these problems impact the system at all levels -- police, prosecutors, judges, and probation.

***The good news is that fixing just one problem in the system can have positive reverberations at all levels.***

***Policymakers can provide leadership and close loopholes in the DWI system by conducting a strategic review.***

This report outlines 10 critical steps in a strategic review:

- Build an effective team representing a suggested list of agencies and conduct the review using one of several recommended methods.
- Identify the goals of the review based on making the system work better.
- Establish guiding principles for the review from a recommended list.
- Conduct a strategic assessment of the system using a provided **list of critical questions** developed from existing research.
- Discuss and evaluate potential solutions based on clear criteria.
- Select reasonable and viable solutions to all identified problems.
- Create consensus among stakeholders by building support.
- Develop clear, concise, unambiguous and practical recommendations.
- Assign responsibilities to team agencies and set timelines for completion.
- Measure outcomes and share successes.

***Existing research and support from practitioners can guide this effort.***

# Background

In 2003, the Traffic Injury Research Foundation (TIRF), with funding from Anheuser-Busch Companies, completed a landmark study examining all phases of the criminal DWI system. The study identified priority problems throughout the system and recommended practical solutions based on the expertise and experiences of thousands of frontline professionals representing police, prosecutors, judges, and probation officers across the country. This research pinpointed ways that offenders successfully evade detection and arrest, prosecution, conviction and sanctioning, and identified practical solutions to overcome these problems.

***Perhaps the most startling revelation of the research was that many of the identified problems impact the criminal DWI system at all levels.***

At the national level, this research contributed to a movement among criminal justice, traffic safety, government and not-for-profit agencies towards a “systems improvement” approach -- concrete efforts to improve the effectiveness and efficiency of the criminal DWI system and integrate its many interdependent parts.

Recommendations for change put forward by the research and collectively embraced by key agencies emphasize the importance of:

- **communication and cooperation;**
- **training and education;**
- **the use of proven technologies;**
- **the standardization of records; and,**
- **making existing legislation work better.**

At the state level, jurisdiction-specific information derived from national surveys of police, prosecutors, judges, and probation officers has been used by agencies to internally review policies and practices to address critical needs and ensure professionals have the tools, information, skills and resources needed to fulfill their respective responsibilities. It has also provided opportunities for some agencies to work collaboratively to address persisting issues.

***Policymakers can use this momentum to maximize opportunities to reduce impaired driving and inspire positive change by leading a strategic review of the DWI system.***

State involvement in the criminal DWI system is vital to reducing fatalities and injuries, since the state controls licensing, consolidates information developed by law enforcement officers at all levels, and passes statutes. State-specific information can form the basis for discussion among key agencies within the system, and result in a broader strategic review of the criminal DWI system that provides policymakers with insight into where and why problems exist, and how they can be fixed.

***A system-wide review will allow policymakers to address problem areas and maximize the effectiveness of laws, programs, and policies that have been implemented.***

Reviews can be undertaken at the local, county, or state level.

# STEP 1 - Selecting a Review Strategy and Building a Team

## Key Points:

- Identify a strategy for conducting the review
- Establish a review team of qualified stakeholders
- Limit the size of the team
- Involve other stakeholders in secondary roles and create buy-in

Legislators and/or policymakers can initiate a review by convening legislative hearings, establishing a task force, or appointing agencies and/or legislative staff to complete the necessary steps. Legislators and policymakers can lead the review, or designate an individual or agency to lead it. The person(s) leading the review should carefully consider the individuals or agencies who will be invited to be members of the review team. Members should be selected based on experience, expertise, skills, and knowledge of the *system*. Any role for partisan participants not directly involved in processing impaired driving cases on a regular basis should be minimized. Specific criteria for including potential members are needed to guide the selection process, and the process should be transparent.

Many agencies will have some stake in the process and those most likely to be impacted by the process should be included in the team. Ultimately the team should remain focused on the entire criminal DWI system.

## Agencies that should be considered for involvement in the process include:

Police	Court administrators	Records	Employment
Prosecutors/defense	Probation	Driver licensing	Victims/public
Judges/administrative	Treatment/medical staff	Social services	Mental health

Court administrators and information technology managers should also be engaged in the review as they are most often responsible for the efficient operations of the courts and relevant offender-based programming. The participation of legislative staff should also be considered as they will likely be involved in any re-drafting of legislation that is required. University faculty and staff may be able to contribute impartial processes and research to the effort. The rationale for the participation of selected members and their role should be articulated. This will be useful in providing the proper perspective for members and creating accountability downstream.

The number of participants should remain manageable. Too many participants will impede the decision-making process and decrease the likelihood of positive outcomes. It may be useful to develop a complete list of agencies that will likely be impacted, and then make selections based on direct relevance. Dividing participants into primary and secondary members to create a two-tiered process may facilitate the review and ensure that relevant parties can contribute and provide input into the process without slowing it down.

As a last consideration, buy-in among agencies and participants is needed to encourage their active participation and support for recommendations. Agencies should understand how this process will be beneficial to all participants and improve communication and cooperation within the system. Streamlining and simplifying the system can effectively reduce workloads, increase productivity, and improve outcomes.

## STEP 2 - Identifying Purpose, Goals and Objectives

### Key Points:

- Establish and prioritize short-term and long-term goals and objectives
- Assign responsibilities to team members
- Promote communication and cooperation among members / agencies
- Avoid partisanship

Once a team has been created, the first task is to articulate the purpose of the review. It should reflect the needs, circumstances, and culture of each jurisdiction. The purpose will be instrumental in shaping content and outcomes of the review. Having said this, a key focus should be reducing impaired driving by addressing *priority* problems within the criminal DWI system. Establishing and prioritizing goals and objectives will assist in planning this initiative and agencies and individuals engaged in the review must be assigned responsibilities and empowered to implement findings and effect change.

The purpose, goals and objectives must be clearly articulated for participants, including a clear recognition that this process is not designed to address occasional irregularities and various parochial concerns, but instead focus on common priority problems substantially impeding the effective and efficient processing of offenders.

An emphasis is needed on long-term goals as opposed to short-term and short-lived gains. Risk-reduction as a means to achieve long-term public safety is the best outcome that can be achieved. As such, the importance of treatment in changing offending behavior cannot be overlooked. While increased penalties may be more palatable politically, research has proven that incapacitation is a short-term solution that only increases the burden on the system. It also creates incentives for offenders to refuse to cooperate and delay processing, leading to the increased expenditure of already limited system resources. Moreover, increasing penalties merely ensures the failure of offenders to effect and sustain long-term change, creating a revolving door that cycles offenders back into the system repeatedly. Sentences must be realistic and achievable, relevant to the offending behavior, and research-based. With effective sanctions, offenders are less likely to re-offend and thereby save time, money, and lives.

Efforts should focus on overcoming problems by encouraging agencies to work cooperatively, share information, access tools, utilize laws as intended, and gain the necessary skills and expertise that allow them to be effective in their respective jobs. Groundwork must be laid for communication and cooperation to become hallmarks of the system. Agencies should be encouraged to interact at all levels, facilitating the collaboration of agencies to overcome obstacles and achieve common goals. To date, professionals typically operate in silos even though their work is often interdependent. As such, they currently have no recourse to communicate or address their concerns, and cannot harness their collective energy to resolve issues in a meaningful fashion.

At the same time, efforts are needed to educate the public about the goals of the review and the operation of the system. Despite limited knowledge, they are keenly aware that the system is not working efficiently. Information and efforts to address this inadequacy are needed to ensure a supportive and receptive public that understands the outcomes.

Above all, this process should be devoid of politics and focus on reducing deaths and injuries caused by impaired driving.

## STEP 3 - Establishing Guiding Principles

### Key Points:

- Adopt principles to guide the process
- Establish parameters for the review

The following principles are recommended to guide the review process:

**Achievable:** Recommended outcomes must be associated with practical and realistic ways to achieve them. For example, implementing an ignition interlock program requires policy development, resources and training for those expected to take part in it.

**Context:** Understanding and recognizing differences in context between jurisdictions is critical to the effective delivery of recommendations. Programs or solutions that work well in a large jurisdiction or with a homogeneous population may be less effective in smaller jurisdictions or in heterogeneous populations.

**Comprehensive:** The review should encompass the broader criminal justice system and consider any peripheral agencies that will be impacted by recommendations.

**Compromise:** Agencies and participants will have to compromise on some issues. Negotiation will be central to the process. Agencies must demonstrate flexibility and willingness to understand other points of view.

**Constructive:** The identification and discussion of key issues should focus on problems that exist and positive steps that can overcome obstacles. Blaming and finger-pointing only impede the process and detract from opportunities to work cooperatively.

**Culturally and socio-economically sensitive:** Agencies should be culturally and socio-economically sensitive to the lifestyles and values of various populations and ensure recommendations consider implementation and the impact among these populations.

**Evidence-based:** Agencies and participants are encouraged to seek out and rely upon hard data and good research, basing recommendations on sound science.

**Inclusive:** The perspectives of multiple agencies who will be impacted by recommendations from the review (e.g., licensing agencies, medical professionals, social service and public health agencies) should be considered.

**Measurable:** Specific outcome measures should be identified so the effectiveness of the review can be evaluated. Measures should be associated with each objective.

**Responsive:** The process should be responsive to the concerns of the professionals and agencies involved, as opposed to political will or public pressure.

**System-centered:** The review should emphasize ways to integrate segments of the criminal DWI system and facilitate cooperation among agencies instead of emphasizing improvements limited to one phase. For example, cross-professional training relating to the science involved in impaired driving cases is a cost-effective solution that can benefit all professional groups as opposed to multiple separate trainings.

## STEP 4 - Assessing the System

### Key Points:

- Interview key players in the system
- Gather hard data
- Locate source of problems

This step is the core of a strategic review -- assessing the current state of affairs. States need to determine where they are at before they can decide where they need to go. Both primary and secondary participants in the assessment process should investigate activities within their respective agencies and talk with frontline staff to develop a good understanding of where problems may lie and what suggestions staff have for addressing them. Most often, those who experience problems on a daily basis have good insight into why they occur and what can be done about them. Staff should regularly identify information they need but do not get, tools they lack, and what agencies impact and are impacted by the work they do in order to assess relationships.

Figure 1 provides a list of *critical questions* to guide participants in the review process. This list is based on priority problems facing criminal justice professionals representing all phases of the criminal DWI system -- police, prosecutors, judges, and probation. These problems were identified in a major research study on DWI System Improvements that examined all phases of the system and the findings have been widely accepted by criminal justice, traffic safety, government and not-for-profit agencies across the country.

This list will be useful to help members assess the adequacy of communication and cooperation among agencies, training and education opportunities that are offered, information exchange that takes place, technological devices and their availability, and legislative initiatives.

Participants in the process are encouraged to review the state-specific findings (available at [www.tirf.org](http://www.tirf.org)) that were derived from national surveys of justice professionals where available. This will provide participants with additional feedback from frontline professionals and preliminary information to further guide the assessment process. Existing policies should also be reviewed to determine if they support the priority recommendations emanating from the research.

During the assessment process, members should also seek out relevant information that will be useful in identifying problems and evaluating reviews. Many jurisdictions have available experts, databases, and research studies that can provide substantive information to inform the members on the specifics of the situation within their own states. Hard data should be sought to substantiate initial findings where possible and there should be substantive information to point to problems that exist. Members should not rely solely on anecdotal experiences. Moreover, participants in the review should develop a good understanding of previous strategies and their impacts.

Finally, members of the review should reach out to rural areas and local communities as this is where the majority of DWI cases are processed. Professionals from these areas are most able to provide participants with expertise gained from daily experiences, and will provide greater insight into some of the problems that exist and their effects. Communities that appear to be managing problems well should also be examined in greater detail to identify lessons that can be learned from their successes.

## Figure I - Critical Questions

The following list of critical questions is derived from research examining priority problems facing all criminal justice professionals involved in processing impaired driving offenders. These questions can serve as a framework for identifying systemic problems.

1. Do police and prosecutors have regular opportunities to interact, discuss cases, and develop an understanding of the demands of each other's role? Do professionals receive assistance from each other when needed?
2. Do police and medical professionals understand policy regarding their responsibilities in dealing with suspected impaired drivers who are admitted to the hospital? Does this result in appropriate levels of cooperation?
3. Are agencies that exchange paperwork able to communicate easily and share information? Are there suitable efforts to minimize the paperwork associated with impaired driving cases?
4. Do professionals receive enhanced training and education related to hard core repeat offenders, which are more challenging to detect and process? Do opportunities exist for mentoring and on-the-job training with experienced professionals?
5. Is a traffic safety resource prosecutor available to provide education, assistance, and guidance to new and experienced prosecutors throughout the state?
6. Is there a database that tracks expert witness testimony in impaired driving cases?
7. Is the look-back period for counting prior criminal offenses appropriate and compatible with the periods for which relevant records are kept?
8. Is sufficient training available to all professionals pertaining to the science associated with impaired driving cases? Are professionals afforded opportunities to gain knowledge about substance abuse, addiction, and relevant treatment?
9. Are reasons for plea agreements and case outcomes routinely and consistently recorded on court records within a reasonable period?
10. Are diversion records maintained for the look-back period?
11. Are the conditions of probation relevant, realistic, and research-based?
12. Do judges receive regular and rapid information regarding offender non-compliance that allows them to take action?
13. Do communication mechanisms exist that facilitate regular dialogue and exchange of information among judges, probation officers, treatment and service providers to ensure the comprehensive supervision of offenders?

14. Are police and probation agencies able to share information about offenders and collaborate when necessary?
15. Are professionals adequately trained and provided access to relevant technologies, including:
  - passive sensors;
  - preliminary breath testing devices;
  - automated paperwork systems;
  - in-vehicle and booking video systems;
  - caseload management systems; and,
  - electronic monitoring technologies including ignition interlocks and transdermal alcohol monitoring devices?
16. Are professionals regularly informed about and provided access to legislative and regulatory changes and new case law?
17. Do professionals have consistent access to current, uniform driver and criminal history records from within their home state and from out-of-state areas?
18. Are driver and criminal history records available for the legislated look-back period that stipulates the period for counting prior convictions?
19. Is there adequate legislation addressing the following issues:
  - test refusal (to minimize the benefits of refusing to cooperate);
  - failure to appear (to ensure that offenders do not avoid convictions or the serving of sanctions);
  - leaving the scene of an accident (to ensure offenders are not encouraged to leave an accident scene to avoid detection and arrest for DWI);
  - case processing guidelines (to ensure that cases are processed in a timely fashion and that undue delays that can lead to dismissals are minimized);
  - jury trials (to ensure offenders are not acquitted based on public empathy);
  - judicial driving permits (to ensure unlicensed driving is not encouraged);
  - tiered sanctions (to provide judges with options to sanction repeat offenders according to the severity of their crime);
  - empirically based sentencing options (to provide judges with effective alternatives to incarceration);
  - caseload limits (to ensure that offenders receive the level of attention and quality of supervision that is required); and,
  - certification of treatment providers (to ensure a minimum quality of treatment for all offenders)?
20. Do communication channels exist that facilitate regular dialogue among legislators, criminal justice professionals, and other interested parties to resolve issues when they arise?



## STEP 5 - Evaluating Potential Solutions

### Key points:

- Evaluate solutions for problems in the system using clear criteria
- Avoid unintended negative consequences
- Emphasize assessment and treatment

The team will likely propose a range of possible solutions for the problems that are identified during the assessment of the system. Members should encourage frontline staff in their own agencies to offer solutions from their various perspectives, creating a genuine marketplace for ideas. It may be useful for participants to identify optimal outcomes to problems, and work backwards to identify effective ways to achieve them.

The team should derive evaluation criteria from the goals and objectives they have established. Each solution should be assessed according to these criteria. Obviously each solution will have advantages and disadvantages and these should be discussed and explored, and input should be solicited from agencies most likely to be impacted.

Members should carefully consider the potential unintended consequences of each solution. For example, arresting more impaired drivers increases the burden on courts and probation, who are likely already overwhelmed; imposing mandatory jail sentences when jails are unable to handle this influx means offenders will avoid serving their sentence; imposing mandatory jail sentences can result in offenders losing their job and forcing families to rely on social services. Such solutions serve to shift the burden instead of alleviating the problem.

Participants should also carefully examine any costs that are associated with implementation of changes. For example, implementing a substance abuse treatment program will require that judges and probation officers are able to communicate with treatment providers and exchange information to ensure offender compliance, and that professionals are able to manage the associated paperwork. Imposing responsibilities without funding adequate to support the changes is likely to result in poor and unsatisfactory implementation. Solutions must be supported by the requisite resources.

Recommended changes should also be considered in relation to the core function of the agency that will be responsible for implementation. “Mission bleed” frequently occurs when professionals are required to complete tasks that are unrelated to their main purpose and mission. For example, the core function of the probation system is to supervise offenders and assist in providing them with rehabilitative and support services. As such, completing paperwork and entering data into information systems should not become a core function that detracts from their primary function. It is understood that some of these functions are necessary to support the operation of the agency, but there should be some degree of balance. Similarly, the role of police officers is to enforce the law, not provide for the rehabilitation of probationers. It is critical that these factors be examined when making recommendations for change.

Finally, agencies must consider the role of offender assessment and treatment as part of the review. Failing to address the root cause of the problem will result in continued offending. Treatment must become a more palatable and acceptable solution. Focusing solely on more and harsher penalties will limit success in changing behavior. At the same time, jail may be the only solution for some persistent offenders.

## STEP 6 - Selecting a Viable Strategy

### Key points:

- **Agree on most effective strategies**
- **Integrate system components and facilitate communication**
- **Streamline the process and fill gaps using concrete steps**

The selection of a viable strategy is a critical step. All members of the review must be afforded opportunities to share their thoughts, concerns, support or disagreement regarding this strategy in an organized fashion. Special consideration should be given to efforts to reduce duplication in the system. This can reduce workload within agencies. Since multiple agencies collect similar information, recommendations should support the automated sharing and exchange of data, and facilitate access to information.

Solutions should focus on improving outcomes and the system itself, and not merely punishing offenders to a greater extent. Unduly harsh penalties for first offenders are likely to cause greater harm and do little to deter repeat offenses. Any penalties imposed should be realistic and related to the behavior in question. For example, requiring offenders to pay increasing fines and fees will contribute to the likelihood of non-compliance if offenders are unable to meet these obligations. Some offenders have limited financial means and imposing conditions that they are unable to meet will only help guarantee their failure, and inevitable return to the justice system. Imposed conditions should be achievable and consider the long-term goal of public safety.

Recommended solutions should include some manner of essentially “triaging” offenders to determine which ones pose the greatest risk. Unfortunately, the reality is that the system is not practically able to manage all offenders with the same level of attention due to limited resources. Moreover, undue focus on low-risk offenders is counter to the research on effective interventions. Those with more serious substance abuse issues are in greater need of treatment that is both suitable to the offender and cost-effective. The cost associated with treatment in the short-term can result in long-term savings for the correctional system and reduce the drain on resources for the multiple agencies that are likely to be impacted by continued offending.

Emphasis should also be placed on integrating the various segments of the system so they work more effectively and efficiently. Establishing communication channels between agencies is critical to assisting them in looking beyond their traditional parochial boundaries and developing a better understanding of the system as a whole.

Viable strategies to resolve the identified problems will require practical and measurable steps to guide the implementation process. This will require consultation with and input from the agencies that are implicated by the process and that will have ultimate responsibility for implementing certain recommended changes. Members should ensure that all recommendations are feasible, practical, and will be supported by the agency(s) in question. Otherwise the recommendation will have no effect.

As a final consideration in selecting the most viable solution, participants should initially focus on tactics to address the most pressing problems. Since it will not be possible to implement solutions for all problems at once, efforts should be prioritized.

## STEP 7 - Creating Consensus

### Key points:

- **Remain focused on goals**
- **Encourage cooperation and compromise**
- **Develop support for changes among stakeholders**

Agencies involved in the review process are likely to approach it from perspectives deriving from their respective priorities and goals. Not surprisingly, agencies will place high priority on maintaining their area of influence as well as their budget. However, these concerns should not be permitted to dominate the process. While such positions cannot be avoided in some circumstances, members should be encouraged to remain focused on outcomes that will contribute to reductions in the impaired driving problem, and recognize that concessions will be part of the negotiation process.

Agencies must recognize at the outset that they are unlikely to achieve everything they desire from the process. Participants must be willing to come to the table and make concessions for the greater good. Before agencies enter into negotiations with others involved in the review process, they should discuss their recommendations privately to identify areas of flexibility and which solutions are non-starters. Agencies should also be afforded opportunities to express the reasons for their positions and interference from others outside the process should be kept to a minimum.

In the event that agreement between some agencies cannot be achieved, an executive decision will have to be made. At this point, it is likely that senior management within the respective agencies will have to be engaged in the process. Ultimately, the decision should come from a person with the necessary authority, and the agencies impacted by the decision-making must have the sense that the process was fair and transparent. Ultimately, much of the negotiations will center on minimizing costs while maximizing benefits. Agencies should be strongly encouraged to be mindful of long-term goals, risk-reduction, and public safety.

It is critical that all agencies buy in to the recommendations and are convinced that such changes will be effective in reducing impaired driving. Hard data and evidence will be critical to achieving this, and to the extent possible, recommendations should be substantiated by facts, not anecdotes or innuendos.

Moreover, efforts are needed to ensure that those agencies impacted by the recommendations feel comfortable in their ability to successfully implement them and recognize that they will experience positive benefits in terms of more efficient operations and successful outcomes. Highlighting the net benefits for agencies in terms of more efficient operations, and an increased ability to achieve goals will be an important factor in creating consensus.

## STEP 8 - Developing Recommendations

### Key points:

- Finalize and prioritize the recommendations
- Support delivery of each recommendation
- Communicate the strategy

Each recommendation should outline practical, feasible and achievable strategies that can be supported and endorsed by all members of the review. The reasons justifying the recommended actions should also be included. Recommendations should contain a clear statement of the rationale for the steps to be taken, referencing the problem that is being addressed. Reasons for rejecting alternative solutions should be explained.

The relative priority of each of the recommendations should be clarified. Some recommendations will address more pressing problems and should be implemented before others. Consideration should also be given to the phases of the system (e.g., prosecution, monitoring) that are most in need of action. It would be unwise to increase enforcement and bring more offenders into the system until it is confirmed that courts and probation agencies will be able to effectively cope with this influx of offenders. Similarly, legislation permitting the use of various sanctioning alternatives is premature unless agencies have the resources, policies, and procedures in place to facilitate use.

The means of achieving the recommendations should be clearly articulated and conveyed to agencies that will be impacted by the process. Agencies should have an understanding of how the recommendations will be implemented and the organizational and/or procedural changes that will be necessary within their respective groups. Moreover, agencies should be alerted to all interagency collaborations that will be needed to effectuate the recommended changes

*It cannot be emphasized enough that, without supporting appropriations, policies and procedures in place, legislative changes will not be embraced by those working within the system.* The ability to sentence offenders to a treatment program is useless if there are long waiting lists to enter the program or if varied treatment resources appropriate to the offender are insufficient. *It bears repeating that legislation alone will not be effective in reducing impaired driving.* Moreover, the public will only be further disillusioned to discover that such penalties are not being used.

Formal recommendations that result from the review process should be communicated in language that is unambiguous, concise, and linked to concrete objectives. They cannot be subject to different interpretations by different segments of government and/or society.

The recommendations should include a strategy for communicating to the public the importance of assessment and treatment in reducing impaired driving. In the last decade, the most common message the public has received with regard to impaired driving, is that increased penalties are the most effective countermeasure. The public needs to understand that this is not the case, and informed that a significant percentage of these offenders suffer from serious substance abuse and mental health issues. Treatment is often misinterpreted as being “soft on crime”. The public should be aware that in fact most offenders would rather serve time in jail than participate in treatment because jail is easier than dealing with the issues that are the source of their drinking.

# STEP 9 - Setting Responsibilities and Timelines

## Key points:

- **Assign responsibilities**
- **Establish timelines**
- **Develop implementation plan**

Setting responsibilities and creating timelines are both critical to ensuring the implementation of the recommendations. From the outset, there must exist a clear understanding of which agencies will be responsible for implementing each of the recommendations. Coordination among agencies will be vital to success.

A detailed implementation plan should also be developed. Some recommendations will need to be implemented prior to others so there is a logical flow. Contingency plans should be available in case members encounter obstacles that impede their ability to effect scheduled changes.

Those agencies responsible for effecting change must be part of the decision-making process as well, even if they were not directly involved in the review. Specific tasks should be assigned to individuals who are capable of achieving them and who have the power and control necessary to effect the changes. For example, modifications to police paperwork associated with impaired driving cases cannot be achieved by frontline officers, or even the heads of traffic units. The head of the police agency, perhaps in conjunction with the heads of other police agencies, will be needed to effect such a change. Moreover, this change will be contingent on the means and ability to modify any automated paperwork systems, and related data entry systems, as needed.

In this context, agencies tasked with the delivery of recommendations must be consulted to ensure actions are feasible and that they possess the requisite resources to achieve them. “Unfunded mandates” are typically ignored by agencies because they have no means to achieve them. For example, imposing two-day jail sentences for all first-time offenders requires that jails have the available space and staffing to manage these offenders. If facilities and staff are not available, the sheriff will have no alternative but to send these offenders home -- offenders will not serve their sentence and will avoid any sanctioning. This only serves to reinforce the message to offenders that there will be no consequences for their actions.

Accountability must be built into the process. It should be possible to identify where in the implementation process scheduled activities remain incomplete and why, and who is ultimately responsible for their completion. There should also be avenues of recourse to ensure that these tasks are completed.

The implementation of the recommendations should also be linked to specific timelines that are reasonable and achievable. In most instances, it will not be possible to effect changes rapidly. The team should project reasonable time frames in consultation with those agencies involved in implementation.

# STEP 10 - Measuring Outcomes

## Key points:

- Determine which outcomes should be measured
- Determine how measurements are taken
- Establish an ongoing review

An evaluation component will permit legislators and others to measure the impact of the review process and its success in reducing impaired driving. This evaluation is critical to inform the process and develop an understanding of what strategies are most effective, and a means for improving or replacing those that are not.

It comprises the first step towards developing evidence-based practices to ensure that resources are used effectively by all participating organizations.

As such, each of the recommendations developed through the review process must be associated with a method of measuring effectiveness in order to establish a means of evaluating their impact. Considerable thought should be given to identifying the most important measures and ensuring that there is a realistic method for taking measurements. Too often agencies measure what is easy to measure, and not necessarily that which is important or will provide useful information.

In selecting measures of success, participants engaged in the review process should be strongly encouraged to look beyond traditional measures involving reductions in fatal crashes and injuries, and reductions in recidivism. Other considerations include: offender success in treatment, reductions in offender unemployment, the unification of families and improvements in family life, a reduction in reliance on child welfare agencies, increased morale among professionals working in the system, greater acceptance among the public of alternatives to incarceration, victim satisfaction, and greater public confidence and satisfaction with the criminal justice system.

Above all, the evaluation of the criminal DWI system should be an ongoing process. Mechanisms should be established to ensure outcomes are used to inform the review process and provide feedback to professionals to help them improve their effectiveness and efficiency.

Concrete examples of success should be tracked and shared with other jurisdictions to contribute to overall reductions in impaired driving. Jurisdictions should take responsibility for communicating the benefits of the review process and providing exemplars of the gains that can be accrued. A number of criminal justice and traffic safety agencies have websites which can share successes and serve as a resource to other jurisdictions:

<b>American Probation and Parole Association</b>	<a href="http://www.appa-net.org">http://www.appa-net.org</a>
<b>International Association of Chiefs of Police</b>	<a href="http://www.theiacp.org">http://www.theiacp.org</a>
<b>National Association of State Judicial Educators</b>	<a href="http://nasjedui.unm.edu">http://nasjedui.unm.edu</a>
<b>National Center for State Courts</b>	<a href="http://www.ncsconline.org">http://www.ncsconline.org</a>
<b>National Criminal Justice Association</b>	<a href="http://www.ncja.org">http://www.ncja.org</a>
<b>National Traffic Law Center (program section)</b>	<a href="http://www.ndaa-apri.org/apri">http://www.ndaa-apri.org/apri</a>
<b>Traffic Injury Research Foundation</b>	<a href="http://www.tirf.org">http://www.tirf.org</a>

## CAVEATS

**Scanning the system.** To a large extent, the problems that are identified in the DWI system are going to be a function of which parts of the system are selected to be reviewed. For this reason, it is important: (1) to study the entire system to ensure recommendations for improvement have overall effects rather than isolated ones, (2) to be inclusive and, (3) to consider input from a variety of agencies, even if they are not directly involved in the process.

**Avoiding unintended negative consequences.** The review team should have a good understanding of the current state of the system and the implications that making changes to one part has on other parts. For example, increasing enforcement and substantially increasing the number of offenders that are brought into the system will likely have a negative impact if courts are unable to effectively process these offenders, the caseloads of probation officers are overwhelming, and there are extended waiting times for entry into treatment. Any proposed solutions should ensure that courts, probation, and treatment professionals are able to cope with existing demands before adopting new strategies to bring still more offenders into the system.

**Feedback.** It is critical that professionals working in the system, particularly court professionals, receive feedback about outcomes of cases. Unfortunately, the only feedback that police, prosecutors, judges, probation, and treatment professionals frequently receive arises when offenders re-offend. Knowing outcomes of current cases will allow professionals to make determinations about what strategies are effective in which cases or with which offenders.

**Special populations.** Almost all jurisdictions will face issues pertaining to special populations. These may include indigenous populations, non-English speaking people, mentally ill and indigent populations. In addition, gender-specific issues may also arise (e.g., women may also have sexual/physical abuse issues, poly-drug usage, and childcare issues). These populations will require consideration in the development of recommendations for change. Providing minority groups with respectful opportunities to share their perspectives, concerns, and ideas will ensure that the review process is inclusive and has beneficial impacts across all segments of the population.

**Assessment and treatment.** Good assessment is needed to help professionals determine how best to manage each type of offender (e.g., first offenders, hard core offenders, repeat offenders). A one-size fits all approach is detrimental to the system. A good assessment can assist professionals in identifying what level of resources should be expended and what programs are most likely to be effective with each offender. The reality of the system is that jurisdictions cannot invest maximum resources in all cases. Assessments can assist professionals in making decisions based upon objective facts, available resources, and proven countermeasures. Unduly harsh penalties can have negative consequences for first offenders.

Treatment should be considered central to reducing repeat offenses. Research shows that a significant portion of impaired driving offenders have serious substance abuse or addiction issues. Moreover, many offenders also suffer from mental health conditions that are the

source of or that contribute to their substance abuse problems. Multiple or poly-drug use is common and treatment should be flexible in dealing with these issues.

**Public education.** More efforts are needed to educate the public about the operation of the criminal justice system and the various countermeasures used to reduce drunk driving. The public is most likely to support increases in penalties above all other solutions without understanding the negative impact this may have on the system, and the sometimes limited effectiveness of harsher penalties. Providing explanations of the operation of the system is the first step towards moving public opinion to embrace alternative solutions, such as treatment and electronic monitoring, which are likely to be more effective in reducing impaired driving.

**A “model” system.** Members of the review process should be encouraged to identify communities within their own jurisdictions that are working well in reducing impaired driving. No effective system operates without committed and well-trained personnel and effective leadership. Much can be learned from these agencies. No two jurisdictions are alike, and rural and urban jurisdictions will likely require solutions that are amenable to available resources, and that consider structure and operating practices. Efforts should be made to afford jurisdictions flexibility to tailor recommended solutions in ways that best suit their respective capabilities.

**Sharing successes.** Throughout this process, jurisdictions should be encouraged to identify successful strategies that agencies are already using to overcome obstacles and share them with other agencies. The systems review process provides opportunities for agencies to get together to discuss common problems and explore ways that they can be addressed. Such opportunities should be encouraged and actively facilitated. More importantly, these opportunities should not be limited to the review process. Mechanisms should be established that allow agencies to interact as a part of everyday activities to promote communication and cooperation as hallmarks of the system.



# Conclusions

This guide provides states with a process and perspective in conducting a strategic review of the criminal DWI system. This is the preferred approach based on extensive research and input from key stakeholders and will help ensure that the efforts and initiatives of legislators in the last decade maximize their potential to reduce deaths and injuries caused by impaired driving.

This problem has immense costs for each jurisdiction in terms of lives lost and dollars spent each year. These costs are unacceptable to victims, to the public, and to the professionals who work within the system.

***A well-researched roadmap is available, but now the leadership of those empowered to effect change in each state is needed to address this persisting problem.***

Practitioners have created a framework for conducting a strategic review that is well anchored to current conditions. The framework identifies 10 steps involved in the process. Important caveats that must be considered throughout the process have also been provided as context for the system and to help ensure changes do not cause undesirable or unintended consequences. Professionals across the country are ready to provide the necessary assistance to effect change and to implement the necessary strategies that can improve system outcomes. These professionals are willing to work cooperatively with legislators and policymakers to develop practical strategies to reduce impaired driving.



*T R A F F I C  
I N J U R Y  
R E S E A R C H  
F O U N D A T I O N*

**A DRIVING FORCE FOR SAFETY**

[www.trafficinjuryresearch.com](http://www.trafficinjuryresearch.com)

171 Nepean Street, Suite 200  
Ottawa, Ontario K2P 0B4  
Tel: (613) 238-5235 Fax: (613) 238-5292  
Toll Free: (877) 238-5235  
Email: [TIRF@trafficinjuryresearch.com](mailto:TIRF@trafficinjuryresearch.com)  
Registered Charity Number: 10813 5641 RR0001