

# Candy? Or Jail?

TAC, Legislature look to DWI Court models to lower dangerous  
recidivism among alcoholic offenders

/ By Maria Sprow

**J**UDGE TIM WRIGHT SITS AT HIS BENCH, A MISFIT group of offenders sitting in the benches in front of him, all in his courtroom because they were convicted of just one crime: driving while intoxicated.

Standing directly in front of him is a thin, pretty blonde haired woman in her early 30s, wearing jeans and a t-shirt. The judge smiles at her like a teacher smiles at their model student and tells the whole courtroom the story of how the woman, even though she doesn't have a car and has to ride her bicycle everywhere she goes, still managed to pay \$400 for court fines in just three weeks, and how she rode that bike during a rain storm just to comply with her probation requirements. As a result, she's about to move into the final phase of her probation, and the judge won't be seeing her nearly as often as he has been.

"It doesn't surprise me at all," the judge says of her dedication to his program. "Go ahead and take a piece of candy."

The woman takes a piece of candy from a large bowl sitting in front of the judge's bench and turns around, smiling, as the 20 or so other convicted DWI offenders break into a round of applause.

**T**his is no ordinary court – it's DWI Court in Williamson County's Court-at-Law 2 room. The court was established less than a year ago, funded by a \$100,000 grant from the Governor's Criminal Justice Division and through participant fees.

Despite its name, DWI Court is not really a court – it's a post-conviction probation and rehabilitation program, in which those who plead guilty or no contest to a second offense DWI charge voluntarily enter in the hopes of getting their conviction dropped from a Class A misdemeanor to a Class B misdemeanor. A Class A misdemeanor is punishable by up to \$4,000 and 30 to 365 days in

jail plus driver's license suspension of up to two years; a Class B misdemeanor is punishable by a fine of up to \$2,000 and 3 to 180 days spent in jail, plus driver's license suspension for up to a year.

In order to complete the program and have their records changed, defendants in Williamson County's DWI Court must agree to intensive supervision and reporting requirements, attend counseling multiple times per week and come to court weekly to receive either a candy "reward" or reprimands from the judge. They must also abide by all the same rules of a regular second-conviction probation term – vehicles must be fitted with Ignition Interlock Devices and participants must perform community service. Participants can be sent to jail at any time for not complying with the program; unlike in regular probation, where offenders rarely have to meet with the judge, in DWI court, any noncompliance is discovered and taken care of immediately because offenders meet with the judge regularly.

Not every offender is eligible for DWI court. Most first-time offenders wouldn't want to be in the program, since there would be no incentive if the charge wasn't going to be reduced upon completion. The program isn't easy – there are three phases, and during the first phase, defendants in Williamson County are required to visit the probation officer's office once a week, visit the court once a week, participate in intensive outpatient therapy three times a week for 3.5-hour group counseling sessions and meet with a substance abuse counselor one-on-one once a week. Participants are assigned a color and required to call the court daily to see if they have to submit to a random urine analysis on any given day. There's also a 10 p.m. to 6 a.m. curfew to abide by.

Most offenders spend about two months in the first phase of the program, meaning that for about eight weeks, every single day, they could have a DWI-related appointment with someone, whether ➤



it's their counselor, probation officer, judge or group therapist. With all three phases together, the program lasts at least 10 months, usually longer, meaning that it can treat about 45 participants per year. Last year, the county had 280 total repeat DWI convictions, so that's about 16 percent of those cases.

There's also a lot of work involved for the judges, attorneys and probation officers who sign on to DWI court.

In Williamson County, every week before the actual court session takes place, the DWI team meets to discuss the cases going through the court; at any given time, there are between 30 and 40 participants of the program. The team consists of Judge Wright, DWI/Drug Court Officer Sabrina Bentley, LifeSteps Counselor Lance Lein, Assistant County Attorney Dee Hobbs, Defense Attorney Wayne Porter, Adult Probation Director Marty Griffith and several others. They assemble around a table and together decide who should be admitted to the program and the progress of those already in the program.

Part of Lein's job is to assess whether a person convicted of his or her second DWI actually has an alcohol problem and whether they would be successful in the program. Not everyone can be accepted, because, first, space is limited, and second, those who do not belong run a much greater risk of failure than those the program is designed to help. As Griffith says, "if you over-treat someone, you do more harm than good."

Motivation is a big factor in determining whether someone should be accepted into the program, as is the kind of personal support system a person has in their lives. Without those two things, few people could successfully complete the court's requirements.

"Our biggest failures have been those who did not have the support in their homes," Wright said.

Williamson County's DWI Court was modeled after a similar program in Fort Bend County, but it is still a work-in-progress. Wright and his team members flexibly change the rules as lessons are learned – they began requiring that participants without a vehicle purchase home breathalyzers for sobriety testing about nine months into the program, and after hearing too many excuses from participants about not being able to make it to the court's preferred testing center for random urinary analyses tests due to work schedules, began telling participants that they could drive to the Central Texas Treatment Center in Granger – 20 minutes outside of the county seat – for such tests, since that center is open 24 hours a day.

The staff is always trying to find ways to improve the program.

During one meeting, Griffith began talking about finding more



Bosque County Court Coordinator Tab Ferguson and County Judge Cole Word, along with defense attorney Brad Newsom, discuss the logistics of setting up a DWI Court in the county during a training workshop held in Austin in August.

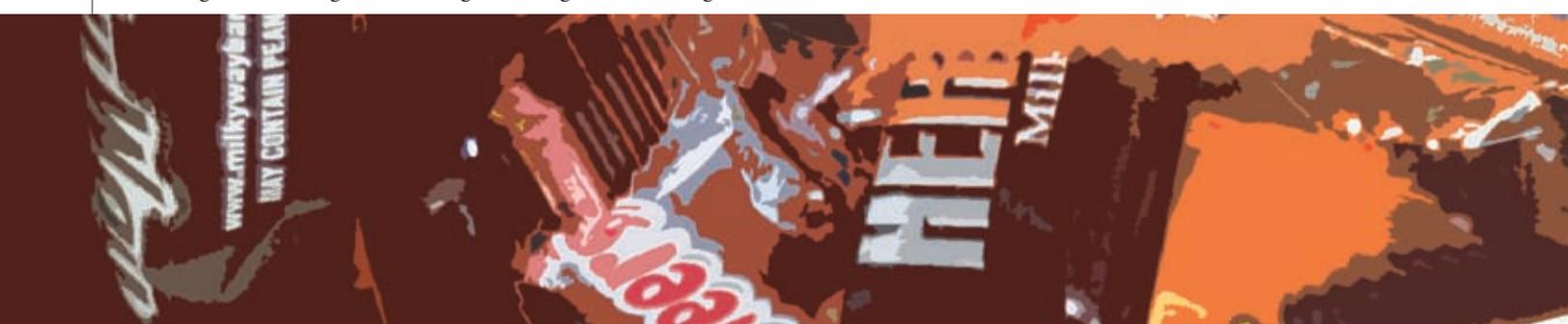
incentives. A light bulb turned on, and the staff started talking about creating some kind of UA punch card, where a certain number of clean urine analyses would earn participants a reward. The staff decided to keep brainstorming, but it's that kind of inventive thinking that makes DWI courts successful.

"We're filling holes in the program," Wright said.

Another discussion focused on how to treat those participants with the ability to pay their fees and fines but who aren't actually paying versus how to treat those participants who really can't afford the court costs. Originally, the court had been lax about having participants pay their fines – it was important to Wright that money didn't get in the way of a person's treatment – but then the court decided to take a different approach.

"Part of recovery is always doing the right thing. When people go to bed at night and they are \$500 behind on their fees, but they are doing everything else right, that adds a lot of worry to their life," Griffith said, adding that forcing participants to pay their fines in a timely fashion helps ensure that the court can continue its work and accept new participants. "You can leave a legacy for the people who come behind you to get the same chance at sobriety."

The idea behind DWI courts isn't new. The post-conviction sentencing model used in most DWI courts is an offshoot of drug courts, created to help rehabilitate drug offenders; the main difference being that DWI courts require more pre-screening before those convicted are admitted to the program, mainly because not everyone convicted of a DWI actually has an alcohol problem.



DWI courts first started gaining national attention several years ago after areas in New Mexico, California, North Carolina and Michigan all showed long-term success at reducing their DWI recidivism rates. Now, both the American Council on Alcohol and the National Commission Against Drunk Driving have taken an active stance for having DWI courts in communities, believing that rehabilitation is key to stopping drunken driving. "If we do not address the root problem of alcohol abuse and alcoholism as it relates to drunk driving, then we will never solve the problem of drunk driving," states the ACA Website.

About a year ago, the Texas Association of Counties applied for and received grant funding through the National Highway Traffic Safety Administration and the Texas Department of Transportation to help create DWI courts in rural counties. Rural counties – the 170 counties without any court-at-laws – statistically have a greater number of DWI convictions than urban counties. They hold 10 percent of the population but 15 percent of the state's DWI cases.

The grant funding is being used to host a number of regional training sessions and team-based workshops, including a large workshop held last month in Austin. The sessions focus on the resources needed to start a rehabilitation-based probation program, how to build a DWI Court team and the various incentives and sanctions strategies that can be used to get participants to comply with the program.

"TxDOT really was not aware of the role rural judges play in DWI offenses," said Gene Terry, who supervises TAC's DWI court training program. While some county judges are administrative and managerial in nature and do not hold court, rural county judges do hear cases, including all misdemeanor cases, such as for drunk driving. "I'd say, in rural counties, 60 to 75 percent of their docket is alcohol-related. We'd like to concentrate the training on these counties where there is no court-at-law."

The training is team-based, requiring participation from the county judge, district attorney, prosecutor, local bar association and defense attorneys, probation officers, rehabilitation professionals, volunteers and clerks. The goal is to train teams in 20 counties during the first year – the first team was trained in November – and then 10 teams in the second year and 10 in the third year, Terry said, adding that he believes TAC will exceed those numbers.

The ultimate goal is to reduce the recidivism rate of drunken driving, making sure that first time offenders do not become second time offenders.

DWI courts require a commitment from not only the county team, but also from defendants. A first time DWI offense in Texas can result in up to 180 days in jail, a \$2,000 fine and drivers license suspension for one year, plus community service work and alcohol education. But commonly, what happens is a person's sentencing, license suspension and fine are mostly probated for one year. A person agrees to certain rules in exchange for not having to spend a long term in jail, then sees the judge again months later. If all goes well, they finish their probation only having to pay part of the fine and doing community service. But if something goes wrong, then the hole often becomes too deep for the offender to easily climb out.

DWI courts are different. Instead of offering probation and then not seeing an offender again for months, the judge will offer probation, set terms and then see the offender again within one or two weeks, keeping direct tabs on the person's progress.

**"We are saving the counties money every day that these offenders are out of jail and aren't doing something that could get them thrown into jail."**

"DWI courts give offenders the ability to demonstrate rehabilitation directly to the judge. It is positive reinforcement rather than negative reinforcement," Terry said, adding that there are many ways in which judges can creatively use sentencing and the threat of jail time as an incentive to keep DWI court participants from violating their probation requirements. Some judges, for instance, will split up the 90 days jail time into 10 days each month; if the defendant doesn't have any problems during the first month, those days are dropped from the sentence. Another possibility could be requiring a defendant who has violated their probation to spend weekends in jail, making sure they can still make it to work on time. The trick, Terry said, is to both reprimand the defendant and make sure he or she can actually be successful.

Jay Johnson, the director of TAC's Education program, said he believes counties that create a DWI court will end up reducing the number of drunken driving offenses and accidents in their communities.

"The judge is right there with them," Johnson said. "They don't have to wait until they are already in a bigger mess to help them get straightened out. You get to the problems while they are still solvable."

DWI courts should also hopefully reduce the number of felony DWI cases.

"We are saving the counties money every day that these offenders are out of jail and aren't doing something that could get them thrown into jail," he said.

The most successful DWI court in the country was also the nation's first, stationed in Albuquerque, New Mexico. That court requires that participants submit to acupuncture, along with all the intensive reporting, supervision and counseling requirements. It operates at a cost of \$11.02 per participant per day with 348 active participants going through the program each year, 91 percent of whom successfully complete the program.

**T**he greatest obstacles in getting DWI Courts out to rural counties are resources and funding, but some county judges, including Bosque County Judge Cole Word, say the challenge may be worthwhile.

According to the National Highway Traffic Safety Administration, in 2005, there were 16,885 fatalities from alcohol-related car crashes. Not only is drunken driving one of the most dangerous and harmful crimes committed unintentionally by a person, but Driving While Intoxicated cases are some of the most complicated and time-consuming cases for county prosecutors and judges to argue and determine. It seems nothing the judicial system does will get a drunken driver to learn their lesson; recidivism rates for drunken driving nationally average about 40 percent.

DWI Courts have successfully reduced recidivism down to just 10 percent in some areas.

Judge Word has been aware of the problem for years; several years ago, he spent a day with Mothers Against Drunk Driving at a seminar. The session promoted utilizing a community's rehabilitative ►

resources during sentencing and steering away from the traditional probation models that focus on sanctions. Some call it “appropriate sentencing;” Word called it an interesting idea, though it took him two years to try it out in court.

“The thing I’ve found common to all rural counties is that our resources are very limited,” Cole said. “We don’t have the resources and the treatment centers.”

But then one day a man appeared in his court, having been arrested for DWI, and appealed to the judge for help. He said he had a drinking problem, that he was an alcoholic and that he wanted to change his life around, but didn’t know how.

So Judge Word decided to give rehabilitative sentencing a shot. He required the man to not only attend Alcoholics Anonymous meetings three times a week, but actively go through the AA program as part of his probation conditions. It wasn’t much, but Word now hopes it was the beginning of a new approach to handling drunken driving convictions in his county – an approach that will hopefully result in fewer cases, jail sentences and injuries.

“We’ve kind of had a guinea pig run-through, we’ve got a guy who has successfully done all that we have asked,” Word said. “I think we actually helped a person, you know, turn his life around.”

David, a member of the Alcoholics Anonymous group in Bosque County whose last name is being withheld according to AA practice, said he believes having a court that requires active participation in AA would change lives and reduce drunken driving recidivism in his county. But he also believes such a court would have to have a basic set of criteria in order for it to be successful.

“I’ve been sober and attending AA for 15 years now, and what I see happen most of the time when people are sentenced to go to AA meetings, they tend to go to the back of the room, they sit, they get their papers signed, and we never see them again,” David said, adding that the program Judge Word is working to install would fix that problem by requiring that each person who goes through the DWI court be assigned a sober “mentor,” or sponsor, to help aid them in working the full Alcoholics Anonymous 12-step program.

In David’s opinion, being assigned a mentor is “absolutely critical” to a DWI court and to Alcoholics Anonymous itself.

“When I got to AA, I didn’t know how to do anything. I was 35, and I didn’t know how to be a husband, I didn’t know how to be a father, I didn’t know how to be an employee, I didn’t know how to handle money. While drinking was a huge issue, just living life was the real problem,” David said. He was eventually arrested for felony theft while attempting to get sober. “I had had problems with alcohol and drinking and drugs for a long time. I finally heard some of the things they were telling me and realized I didn’t have a lot of choices. I was either going to get sober, end up in prison for the rest of my life, or end up dead, and the last two options, I didn’t like.”

His sponsor helped him with the drinking, but also helped him with the life issues; today, he sponsors six individuals himself, and he still turns to his sponsor for help when he needs it.

He added that he’d be willing to sponsor more, and he believes

other AA members would also volunteer the time. And, people who successfully delve into the program all become potential sponsors and resources who would be available in the future.

“What they are doing by just sentencing people to meetings really does not work for the most part. It used to be that if one out of every 100 people who were sentenced to attend AA, if one out of 100 actually stayed, if we changed their life, people thought that was a success. A lot of us have the attitude now that that is just not near enough,” David said.

“You have to work with a mentor, you have to work the steps,” he added. “You can stop somebody from drinking, the problem is, can you stop them forever? In AA, we talk about not drinking one day at a time, but it’s a lifetime process. ... With AA, they never have to drink again, and if you never have to drink, you never have to get another DWI.”

If the smile was any indication, it was a good day in court for the blonde-haired woman in Judge Wright’s courtroom, and for most of the others waiting on the benches. There was the 21-year-old girl with piercings, dressed in army cargo shorts and a black-shirt with a large skull on the back, ‘a cute college student in sweat-pants who spends a few minutes chatting with the judge about how she’s planning on trying out for her school’s water skiing team, a forty-something guy with a braided pony tail,’ who interrupts the court to tell the judge another judge said hi, and a ragtag team of others, all who wait patiently for their turn in front of the judge, hoping to have earned some praise, a piece of chocolate and a nice round of applause from their fellow courtmates.

Over and over again it goes – walk up to judge, hear Bentley tell the judge that there haven’t been any problems, take a piece of candy, clapping, sit back down.

And then there’s John.

John is sitting toward the back of the courtroom, and after the third or fourth person has gone before the judge and received glowing remarks from the county’s probation officer and walked off with their candy to another round of applause, he is not happy.

“I don’t want to be the one who gets the sanction,” he mutters under his breath, waiting for his turn after the judge gets finished telling the water-skier how the court is “real pleased, proud of you.”

Soon, it is John’s turn, and the Judge turns a bit ugly. John blew one of his urine analyses earlier in the week and claimed it was from Gatorade, and he also was caught driving without an interlock or a license – not to mention he owes the court \$1,746 in fees. Judge Wright is upset. It’s not the first time John has messed with his program, but it will be the last – he’s being kicked out of the probationary program, for good.

“You’re going to be the first – your attitude and the other things you have been doing, your failure to tell me that you had anything to drink – I am going to order you to jail today. Have a seat,” Wright orders, sending John to the jury box, ashamed and shaking his head.

Nothing works for everybody. ☆

### DWI COURT INFORMATION ON THE WEB:

**The Texas Department of Transportation  
Rural Judges DWI Court Pilot Project:**  
[www.county-laws.org/\\_TXDOT2.BLP?viewpage=articles](http://www.county-laws.org/_TXDOT2.BLP?viewpage=articles)

**National Drug Court Institute:**  
[www.ncdi.org/dwi\\_drug\\_court.htm](http://www.ncdi.org/dwi_drug_court.htm)

**American Council on Alcoholism:**  
[www.aca-usa.org/dui.htm](http://www.aca-usa.org/dui.htm)

**Alcoholics Anonymous:**  
[www.aa.org](http://www.aa.org)

# The 10 Guiding Principles for DWI Courts

Courtesy of the National Drug Court Institute and the National Association of Drug Court Professionals

## **1 Target the Population**

Targeting is the process of identifying a subset of the DWI offender population for the inclusion in the DWI court program. This is a complex task, given that DWI courts, in comparison to traditional drug court programs, accept only one type of offender: the person who drives while under the influence of alcohol or drugs. The DWI court target population, therefore, must be clearly defined, with eligibility criteria clearly documented.

## **2 Perform a Clinical Assessment**

A clinically competent objective assessment of the impaired-driving offender must address a number of bio-psychosocial domains including alcohol use severity and drug involvement, the level of needed care, medical and mental health status, extent of social support systems, and individual motivation to change. Without clearly identifying a client's needs, strengths and resources along each of these important bio-psychosocial domains, the clinician will have considerable difficulty in developing a clinically sound treatment plan.

## **3 Develop the Treatment Plan**

Substance dependence is a chronic, relapsing condition that can be effectively treated with the right type and length of treatment regimen. In addition to having a substance abuse problem, a significant proportion of the DWI population also suffers from a variety of co-occurring mental health disorders. Therefore, DWI courts must carefully select and implement treatment practices demonstrated through research to be effective with the hard-core impaired driver to ensure long-term success.

## **4 Supervise the Offender**

Driving while intoxicated presents a significant danger to the public. Increased supervision and monitoring by the court, probation department and treatment provider must occur as part of a coordinated strategy to intervene with repeat and high-risk DWI offenders and to protect against future impaired driving.

## **5 Forge Agency, Organization and Community Partnerships**

Partnerships are an essential component of the DWI court model as they enhance credibility, bolster support, and broaden available resources. Because the DWI court model is built on and dependent upon a strong team approach, both within the court and beyond, the court should solicit the cooperation of other agencies, as well as community organizations to form a partnership in support of the goals of the DWI court program.

## **6 Take a Judicial Leadership Role**

Judges are a vital part of the DWI court team. As leader of this team, the judge's role is paramount to the success of the Drug court program. The judge must also possess recognizable leadership skills as well as the capability to motivate team members and elicit buy-in from various stakeholders. The selection of the judge to lead the DWI court team, therefore, is of utmost importance.

## **7 Develop Case Management Strategies**

Case management, the series of inter-related functions that provides for a coordinated team strategy and seamless collaboration across the treatment and justice systems, is essential for an integrated and effective DWI court program.

## **8 Address Transportation Issues**

Though nearly every state revokes or suspends a person's driving license upon conviction for a DUI offense, the loss of driving privileges poses a significant issue for those individuals involved in a DWI/Drug Court program. In many cases, the participant solves the transportation problem created by the loss of their driver's license by driving anyway and taking a chance that he or she will not be caught. With this knowledge, the court must caution the participant against taking such chances in the future and to alter their attitude about driving without a license.

## **9 Evaluate the Program**

To convince "stakeholders" about the power of DWI court, program designers must design a DWI court evaluation model capable of documenting behavioral change and linking that change to the program's existence. A credible evaluation is the only mechanism for mapping the road to program success or failure. To prove whether a program is efficient and effective requires the assistance of a competent evaluator, an understanding of and control over all relevant variables that can systematically contribute to behavioral change and a commitment from the DWI court team to rigorously abide by the rules of the evaluation design.

## **10 Create a Sustainable Program**

The foundation for sustainability is laid, to a considerable degree, by careful and strategic planning. Such planning includes considerations of structure and scale, organization and participation and, of course, funding. Becoming an integral and proven approach to the DWI problem in the community however is the ultimate key to sustainability.

*Editor's Note: A more in-depth report on the 10 Guiding Principles of DWI Courts can be found online at [http://www.ndci.org/pdf/Guiding\\_Principles\\_of\\_DWI\\_Court.pdf](http://www.ndci.org/pdf/Guiding_Principles_of_DWI_Court.pdf).*