

# **KEEPING YOUR DRUG COURT ALIVE**

## **Building a Sobriety Court to Last**

**By**

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### **Introduction**

This planning guide is based on a 9 year effort to reduce repeat drunk driving in the communities served by the 52/1<sup>st</sup> District Court. The impetus for this guide can be traced to the frustration many in local criminal justice system felt about seeing a large number of defendants the same defendant reappear charged repeatedly with drunk driving, over and over again. In 1999, 1200 drunk driving cases were filed in the 52/1<sup>st</sup> District Court, thirty-six percent were of which repeat offenders. Our experience was These numbers are consistent with those national studies that establish have found about one-third of all DUI arrests are repeat offenders.

Research conducted in 1997 by the National Highway Traffic Safety Administration (NHTA) indicated for the year 1997 indicates that 46% of car crashes involved alcohol. Of and 39% of those were fatal crashes, 39% were fatal.. Fatally injured drivers in this category were seven times more likely to have had a prior conviction for drunk driving. NHTA projected in this study that drivers with a blood alcohol content over .15% are at increased increase the risk for of involvement in fatal crashes by a factor of 200. If times and, if the blood alcohol level is greater than .20%, they are 460 times more likely to be involved in a fatal fatality crash. Although drivers Drivers with very high blood alcohol levels account for only one per cent of all drivers,, yet they are implicated in half of all the fatal crashes in the United States, specifically those that occur at night and on the weekends. The same group of drivers is responsible for serious injury, high medical expenses, increasing insurance costs, property damage and escalating increasing costs to the courts.

From the standpoint of court resources, drunk driving cases are the misdemeanor charges most likely to go trial. These defendants are more likely do demand jury trials. They Because, these cases never seemed to be ready to go to trial, they generate more motions and evidentiary hearings. As a result, these cases never seem to be ready to go to trial, creating multiple scheduling contacts. If convicted then most state laws require that the

offender submit to an alcohol assessment prior to sentencing. And finally, these defendants are the most likely to violate a probation order that brings them back into court. And most troubling of all, if the defendant is convicted, a jail sentence seems to have little affect.

They are also the misdemeanor most likely to be sent to jail. Yet, most troubling of all, a jail sentence may have little effect on their behavior.

Given the nature of the problem, what can the criminal justice system do?

In March of 2001 the 52/1<sup>st</sup> District Court instituted a DWI-Drug Court, or as it is known in Michigan as “a sobriety court”. Now entering its 9th year, this effort has significantly affected the incidence of repeat drunk driving.

This planning guide is an attempt to capture and convey our experience, and is offered with the understanding that every Court has unique resources, needs and populations to serve. Consider this guide as a series of suggestions to help create a long-lasting drug court.

## **GETTING STARTED**

Change is difficult. Before there can be change there must be a perception that change is needed. There must also be a belief that there can be a solution is possible. As you imagine changing your own court’s strategies and structures, consider. Consider which government agencies and local groups have an interest in your type of drug court, and invite those leaders to a planning meeting. It is vital that youAt the first meeting work together, to create a consensus about the that there is a need for change and how to create that change, at your very first meeting.a new strategy. This consensus will be critical to implementing enduringmaking the change. Once this agreement exists you can begin to plan your program.

## **PLANNING**

### **STRUCTURE**

Begin by creatingdesigning a meeting structure. Without a strong structure, a project can become little more than a set of gatheringsactivities with limited, even contradictory, direction and focus. Individuals assigned to tasks without leadership can begin to work at cross-purposes. To prevent this, a leader who is thoroughly committed to the project should actserve as the coordinator. Because of the nature of the criminal justice system, a judge should be on the planning committee. is a necessity. Careful consideration should even be given to making that a judge the coordinator, if your state’s judicial ethics rules allow for this.

WhenOnce a coordinator has been chosen, theya member should schedule monthly

meetings, involving all of the interested parties, including judges, court personnel, probation officers, victim advocates, prosecutors, and a variety of relevant social service agencies. Team Convened monthly, team planning meetings will allow members to exchange information and ideas on the most effective way to structure your drug court. The periods between the formal meetings will allow the members of your team to informally communicate with each other.

## **MISSION OR GOAL STATEMENT**

Very early in the planning process, write a begin by defining your mission statement for your drug court. As part of this exercise, you should formulate will need to divide the mission into clear goals. This should be a collaborative process effort, with contributions from every organization that is a part of the team. Participation in goal development ensures that team members gain an understanding of the project and the reasons the other members are involved, and brings about creates ownership for the ideas established. This collaboration will also pay significant dividends over time, as each organization is asked to sustain the energy levels necessary to promote and defend these institute new methods in addition to their regular duties.

Examples of goals that may emerge from such an exercise include: In setting your goals, the primary question is “What do we want to accomplish?”. To find this answer, your group should be encouraged to be freewheeling, unrestrained, and imaginative in their ideas. After considering all the possibilities, the group can select, sort, and prioritize possibilities into meaningful and achievable goals. In setting your goals, the primary question will be “What do we want to accomplish?”. To find this answer, your group should be encouraged to be freewheeling, unrestrained, and imaginative. After considering all possibilities, the group then can select, sort, and prioritize possibilities into meaningful and achievable goals.

- To reach a common understanding that drunk driving is a dangerous crime and should be treated like one.
- To hold perpetrators accountable for their behavior and for stopping that behavior.
- To rehabilitate the perpetrator through appropriate intervention.
- To protect the general public.

To improve public trust and confidence in the criminal justice system.

Some of the goals that emerged from our planning were:

- A common understanding that drunk driving is a dangerous crime and should be treated like one.
- Holding perpetrators accountable for their behavior and for stopping that behavior.
- Rehabilitation of the perpetrator through appropriate intervention.
- Protecting the general public.

- Improving public trust and confidence in the criminal justice system.

Once your goals have been agreed upon, you should outline the steps that must be taken to reach them. This will constitute your plan.

## **BASIC AGREEMENTS**

Using the process described above, the 52/1<sup>st</sup> District Court, working with, the Oakland County Prosecutors office, Jail Alternatives for Michigan, Sequoia Recovery Services, law enforcement, MADD, a local defense attorney and other treatment professionals, reached began to work on a series of agreements understandings.

The first and most important of these involved selecting repeat drunk drivers as the target population. Agreeing to focus resources on this group had far reaching consequences, and served as the foundation for each subsequent agreement and action.

The second agreement was to limit admissions to defendants from the communities served by the court.

The third agreement was to set up initiate a small pilot program. Because the initial program was compact, it could be established quickly and easily, without any agency or entity group being overwhelmed. At the outset, it was agreed no more than only 10 defendants were to be accepted into the program, but as the experience and confidence of the team grew, additional defendants would be admitted.

The fifth agreement was a commitment to continuous training for everyone involved. The fourth agreement was that new forms of communication were necessary. Judges, probation officers, counselors, prosecutors and defense advocates must to be able to speak freely with and to each other. The fourth agreement was that, in this new court environment, new forms of communication were necessary. Judges, probation officers, counselors, prosecutors and defense advocates must to be able to speak freely with and to each other.

The sixth agreement was that all judges in the court would participate in the program and utilize a uniform approach.

The fifth agreement was a commitment to find and fund continuous training for everyone involved.

The sixth agreement was that all judges in the court would participate in the program and utilize a uniform approach for all defendants.

The seventh agreement was that defendants would only be supervised by experienced probation officers.

The eighth agreement was to create a non-profit advisory board to provide victims and community groups the opportunity to participate in the program and to raise monies for such things as rewards and graduation ceremonies.

The final agreement was to apply for grant money to fund the sobriety court and to seek at least one non-grant source of program funds.

A final cautionary note on planning: Don't hurry in recruiting team members or in creating a new drug court. There is a tendency to feel that each day without a program is a lost day, but. However, a bad plan can actually be worse than no drug court at all. Planning for the 52/1<sup>st</sup> District Court program took almost a year, but in that year many problems were discovered, and as a result, were addressed before the first defendant entered.

## **PLANNING PROBLEMS**

Part of the reason you should be patient and methodical when building your drug court is that you are going to experience will encounter problems during planning. Here are some of the problems we encountered in creating our sobriety court:

- n There was a concern that putting a defendant on probation for a year or less would not be sufficient, but that continuing beyond a year would drain to many resources and burn staff out. The resolution was to create an intensive phase of 9 months, and a regular probation phase of 9 months.
- n There was concern that defendants would not be able to comply with all of the demands of the program. The resolution was to create support services, including a website, where defendants could help each other.
- There was also concern that the other members of the team would not feel free to communicate disagreements with the judges. The resolution started with a commitment by the judges to work within the team framework and to encourage open lines of communication. Each judge had a different sentencing philosophy. The resolution was a written common approach by the judges that all agreed to follow.
- There was a concern outside defense attorneys would obstruct the cooperative approach of drug court. The resolution was to incorporate a provision into the defendant's waiver of rights, where they agreed to waive their right to the attorney of their choice, and to be represented by the sobriety court defense advocate so long as they were in sobriety court. Each judge had a different sentencing philosophy. Our resolution was to forge a written common approach that all judges agreed to follow.
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would not be sufficient, but that continuing beyond a year would drain too many resources and burn out staff. Our resolution was to split the program into two phases. An intensive sobriety court phase of 9 months in duration, followed by a regular probation aftercare phase of 9 months.

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- n There was also concern that the other members of the team would not feel free to communicate disagreements with the judges. Our resolution was to create an environment that encouraged open lines of communication based upon a commitment by the judges to work within the team framework and to listen to each team member.

## **IMPLEMENTATION**

### **IMPLEMENTATION PLANNING**

The quality of your outcomes will be directly proportional to the care you take in implementing your program. Our sobriety court committed to the following implementation strategy.:

Prior to attending federal grant training, the coordinating judge and chief of probation met and selected experienced probation officers to become the sobriety court probation staff. The judges invited a defense attorney who they believed shared their philosophy to become the first defense advocate. Court personal met with members of the prosecutors office and an assistant prosecutor was assigned to the team. Then a well respect member of the treatment community was approached and he agreed to participate. The coordinating judge met with the boards of local victim's organizations and asked them to send a representative to the sobriety court advisory board. This constituted the team that went to federal drug court training.

A policies and procedures manual was created, by the head of the court's probation department, setting forth the criteria and operation standards for our sobriety court. Defendants were deemed eligible for sobriety court if they have a prior alcohol-related driving conviction, or were a high-risk first offenders and lived within the jurisdiction of the court. The initial screening for eligibility began when the arresting officer noted on the ticket that a defendant had a prior drunk driving conviction. All defendants arrested on a drunk driving charge who had a prior offense were automatically placed on an expedited docket. The expedited docket system decreased delays in the court process; decreasing the time between arrest, conviction, identification of treatment needs of the offender during the assessment process, and monitoring of the defendant in the community.

The judges asked a defense attorney who they believed shared the philosophy necessary to become the first defense advocate.

Only those defendants who plead guilty, agreed in advance to the waiver of certain of their rights to privacy and accepted all sobriety court intensive conditions were admitted.

As part of their agreement defendants signed a waiver form and requested to enter sobriety court on the record.

The coordinating judge met with the boards of local victim's organizations and asked them to send a representative to the sobriety court advisory board.

It was decided that meetings with the judge would begin thirty days following a defendant's entrance into sobriety court. Hearings would continue monthly, based upon the defendant's progress. At the first judicial review, a defendant would be required to provide proof of enrollment in counseling. They would appear for a judicial status hearing the first business day following any infraction. Should a participant fail to appear for a judicial status hearing, based upon a bench warrant issued by the judge, a law enforcement official would immediately go and arrest them.

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The head of the 521<sup>st</sup> district court's probation department became the gatekeeper for the program. She made sure every defendant who was considered for admittance met the admission criteria. She then assigned each defendant to a sobriety court intensive probation officer who acted as the case manager, monitoring the defendant throughout the eighteen-month program. That probation officer would open the sobriety court file, review the Participant Guide and sobriety court contract, and explain the process of graduation and revocation. Participants would be drug tested each time they reported to probation, and randomly through an outside testing agency, while in the intensive phase of the program. The probation officer could also drug test the defendant for alcohol/drugs at the time of a home visit. Since the intensive officers would be required to be preliminary breath test certified, alcohol tests would be conducted on site by the probation officer whenever they met with the defendant. The sobriety court judge would be immediately notified of a failed drug test, altered test or failure to test.

Only those defendants who plead guilty and agreed in advance to the waiver of certain rights and to accept all of the probationary terms were admitted into sobriety court. The signing of the waiver form and request on the record to enter sobriety court was in lieu of sentencing.

Although the initial phase was designed as a nine month program with a gradual reduction in intensity, it was decided that participation in the intensive phase of drug court could also be extended. Upon entry into sobriety court, a meeting with the judge would begin thirty days following a defendant's entrance into sobriety court. Hearings would continue once monthly based upon the defendant's progress. At the first judicial review, the defendant would be required to provide proof of enrollment in counseling. The offender would appear for a judicial status hearing the first business day following any infraction. Should a participant fail to appear for a judicial

status hearing, a law enforcement official would go out immediately and arrest the defendant based upon a bench warrant issued by the judge.

It was also agreed that the sobriety court intensive probation officer would act as the case manager, monitoring the defendant throughout the eighteen-month program. The probation officer would open the sobriety court file, review the Participant Guide and sobriety court contract and explain the process of graduation and revocation. Participants would be drug tested each time they reported to probation, and randomly through an outside testing agency while in the intensive phase of the program. The probation officer could also drug test the defendant for alcohol/drugs at the time of a home visit. Since the intensive officers would be required to be Preliminary Breath Test certified, alcohol tests would be conducted on site by the probation officer whenever they met with the defendant. The sobriety court judge would be immediately notified of a failed drug test, altered test or failure to test.

Although the initial phase was designed as a nine month program with a gradient reduction in intensity, it was decided participation in the intensive phase of drug court may be extended. Upon entry into sobriety court, the defendant would be assigned to an intensive probation officer and be placed on an intensive track. If the defendant did not progress in treatment or comply with sanctions, the intensive supervision phase could be extended to 12 months. Following graduation from the intensive phase, the defendant would move to the probationary aftercare phase. Failure to graduate from the intensive phase of drug court within 12 months would result in revocation of drug court status and immediate sentencing.

## **IMPLEMENTATION PROCESS**

In March 2001, the 52/1<sup>st</sup> District Court started its sobriety court.

The nine targeted defendants were immediately admitted into the sobriety court program. The time it took to open a file and conduct an arraignment on drunk driving cases was reduced to less than two hours. This change meant police departments were more willing to hold high risk drunk driving defendants overnight and then transport them to court for a formal arraignment, rather than releasing them to appear on their own recognizance. This in turn allowed the arranging magistrate to set additional bond conditions such as prohibiting alcohol and daily alcohol/drug testing while the case was pending. If pretrials could not be set the same day as the arraignment, they were scheduled within 6 days. Jury trials were scheduled no more than 14 days from the pretrial and bench trials in no more than 21 days.

Within two months, the team members agreed the program was working well and should admit any qualified defendant.

Nine months after the program began, 75 individuals had been accepted, with nine months after the start of the program, 75 individuals were accepted. Within two months, the team members agreed the program was working well and should start to admit whoever qualified. Almost immediately important changes occurred in the original plan.

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7 defendants were terminated due to non-compliance. The original 9 all graduated from the intensive phase at the first sobriety court graduation ceremony held on December 12, 2001. No individual in that first nine months was arrested for a new drunk driving offense.

## **IMPLEMENTATION PROCESS: PROBLEMS**

No matter how good your planning, no matter how closely organizations work together, there will be implementation problems. Here are some (certainly not all) of the problems and the solutions we experienced in implementing the team approach.

- § Female defendants were having difficulty completing the program, in fact, only those women who were . Only female college graduates were able to do so. The entire team met with graduate from the program. After a number of meetings with outside experts and as a result, the treatment approach for women was changed. A new counseling program for women was adopted which focused upon the triggers for addictive behaviors. Also, an all-women's AA meeting was started. As a result, the number of female graduates eventually mirrored that of their male counterparts.
- § Two The two probation officers could not handle all of the defendants who were eligible to enter the program. A retired probation officer was hired to supervise the graduates from the intensive phase. When his adult son became seriously ill he quit. The next probation officer came from another court but was offered another job and left. Another was hired, who also left. The instability was affecting the defendants progress. Once again the team met and decided to change the way defendants were supervised. Thereafter, A decision was made that each probation officer supervised a defendant in would supervise their defendants in both the intensive and probationary aftercare phases. to maintain continuity. Additionally, it was decided to hire a probation officer without experience. The new probation officer was sent to drug court training and then shadowed the two existing probation officers for three months. The addition of the third probation officer allowed the court in to increase the number of defendants in sobriety court. A training approach was created for the new probation officer.
- § The state and federal grant used to pay for the probation officers was a declining grant. To address grant fund reductions the court created a new fee, used exclusively for sobriety court, called which was charged to every drunk driving defendant convicted of drunk driving and used exclusively for sobriety court. By slowly increasing this fee each year to match the decline in the grant, the monies were replaced and the program remained intact.
- § One of the sobriety court probation officers took family leave. The number of

people admitted to sobriety was cut by a third during her leave.. The position was held open for the officer who returned.

- § Individuals in the second nine month probationary phase relapsed. The team met and decided to create a shorter version of the intensive phase for those who drank in the probationary aftercare probationary phase. After completing this new what is called the aftercare intensive phase, a defendant would be entirely restart the aftercare phase of probation.
- § The stylistic differences among the judges became a problem. At a team meeting was held and the initial agreements among the judges was were modified. The new agreements were then and implemented. The ability of the team members to bring the problem to the judges attention and the meeting that resulted, enhanced increased communication thereafter..
- § The original defense advocate could not handle the entire caseload. Therefore two Two more defense advocates were appointed andas defense advocates, trained, and an attorney rotation was created.
- § One of the original judges who helped design sobriety court left and a. A new judge, unfamiliar with the principles of drug courts, was elected. He agreed to continue his predecessors do a sobriety court docket and to attend go to several state and national trainings.

## **Evaluation**

As of December 31, 2008, 788 individuals had been accepted into the 52/1<sup>st</sup> sobriety court. 128 are currently enrolled. Only thirty percent of those admitted have failed to complete the program.

In 2009, an evaluation of the sobriety court program was conducted by The Michigan Supreme Court State Court Administrative Office. Their findings stated in the two years after program completion: “No new DWI offenses were committed after two years by successful Dwi Court Participants.” The study went on to say of those who failed in the program had: “a 2.19% recidivism rate” in the two years after they were released.

## **CONCLUSION**

As ourthe sobriety court enters its ninth year we believe certain things can be emphasized with regard to maintaining a drug court team stated:

1. Continuous training helps to maintain a fresh sense of commitment.
2. An open team approach with regard to information-sharing and problem solving is a necessity.
3. Drug courts must have leadership that is committed and receptive.listens.
4. The team approach has enhanced court as well asand community relations.
5. A statistical review of outcomesthe statistical information can help solve problems that otherwise seem unsolvable. create staff frustration.
6. Any new team member must attendgo to training immediately.

7. Open communication must be maintained at all times.
8. The sobriety court approach has reduced the number of cases going to trial.
9. Strong judicial leadership is a necessity.
10. Sobriety Courts significantly reduce drunk driving recidivism.