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A Driving While Intoxicated/Suspended Court List for Victoria

Background Paper

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A Driving While Intoxicated/Suspended Court List for Victoria

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1. Introduction

Drink driving is a major cause of serious road trauma and death on Australian roads each year. Past studies indicate that there are high rates of recidivism amongst drink drivers, particularly those with alcohol abuse problems.¹ Laws in Victoria against drink or drug driving are governed by section 49 of the *Road Safety Act 1986* (Vic). Penalties for infringements against section 49 are graduated according to the licence classification of the driver, the level of alcohol or drugs in the driver's system and increase in severity for first, second and subsequent offences.

Those drivers caught driving with a blood alcohol level (BAC) of 0.15 and over can receive heavy fines and be disqualified from driving for between 15 and 48 months. Many of these people continue to drive and to commit further drink drive offences while their licence is disqualified without attempting to regain their licence after their first offence. Repeat offenders also face possible sentences of imprisonment up to a maximum of 18 months.

Victoria has sought to deter serious and repeat drink drivers with increased penalties, education programs and the use of alcohol interlock devices. These approaches alone, while necessary, do not appear to be effective for a group of core drink driving offenders who continue to reoffend.

This background paper considers one innovative program developed in the United States, the Driving While Impaired/Suspended (DWI/S) or Driving Under the Influence (DUI) Court as a strategy to address this group of offenders. In this paper the terminology DWI will be used for the sake of consistency. DWI Courts are a problem-oriented court that use principles developed in drug courts to target the underlying cause of offending of the 'hardcore' drink driving offender. By addressing alcohol or drug dependency and even psychiatric co-morbidity, the DWI Court seeks to bring about behaviour change in the offender to reduce recidivism and protect the community.

This paper builds on recommendations of the Sentencing Advisory Council in 2009 that a problem-oriented court for driving whilst disqualified or suspended offenders be

¹ Jiang Yu, 'Punishment and alcohol problems: recidivism among drinking- driving offenders' (2000) 28 *Journal of Criminal Justice* 261; see also Stephen M Simon, 'Incapacitation alternatives for repeat DWI offenders' (1992) 8 *Alcohol, Drugs, & Driving* 51; Jiang Yu and William Williford, 'Calculating DWI/DWAI recidivism with limited data using state driver license file for drinking-driving research' (1991) 21(4) *Journal of Drug Education* 285.

established.² It is proposed in this paper that a DWI Court List be established as a pilot program in the Magistrates' Court of Victoria to provide Victoria magistrates with an important tool to deal with offenders who appear to be undeterred by other sanctions. Such a List would utilise existing powers contained in Part 3A the *Sentencing Act 1991* (Vic) to create community correction orders that are tailored to the repeat drink driver and, in particular, using the judicial monitoring to supervise offenders while they complete their order.

² Sentencing Advisory Council, *Driving While Disqualified or Suspended: Report*. (Melbourne: Sentencing Advisory Council, 2009).

2. Drink driving as a societal and criminal justice problem

A quarter of deaths in road accidents in Australia involve drink driving.³ In Victoria, these rates are lower but still significant with 16% of drivers killed with alcohol in their blood.⁴ Driving while under the influence of drugs is also problematic as 28 to 39% of drivers killed in 2011 were found to have drugs in their system.⁵ Repeat drink driving offenders are responsible for a significant proportion of fatalities and serious injuries in Victoria and impose significant costs to the community.⁶

Australian studies have shown that drink drivers are at an approximately 15% risk of reoffending within three years of a first offence.⁷ A recent NSW study indicated that 15.5% of drink drivers returned to court within five years for other drink driving offences.⁸ Many of these drivers were male, indigenous, below the age of 25, lived in areas of high socio-economic disadvantage, had had their licence disqualified for between one to six months and who had two or more prior convictions.⁹ Victorian Police aggregated data from 2005-2009 indicates that 30% of drink drivers were recidivist offenders.¹⁰ High level BAC drink drivers of 0.15 and over made up 11% of offenders and 39% of those offenders were recidivists.¹¹ These figures are consistent with similar studies from overseas.¹² A snapshot of recidivist drink data from Victoria Police as at the end of October 2011 shows that there were 594 drivers in Victoria with five or more drink-driving offences. Of these drivers, offenders who had ten or more offences were all male and ranged from age 35-71 years of age. As the Table One shows,

³ Transport Accident Commission, Drink Driving Statistics.

<<http://www.tacsafety.com.au/statistics/drink-driving-statistics>>; Australian Transport Council, *National Road Safety Strategy 2011-2010* (Australian Transport Council, 2011)

<http://www.atcouncil.gov.au/documents/files/NRSS_2011_2020_15Aug11.pdf>; Soames Job, 'Why it's time to lower Australia's blood alcohol driving limit', *The Conversation* (21 September 2012) <<http://theconversation.edu.au/why-its-time-to-lower-australias-blood-alcohol-driving-limit-9619>>. The figures in Australia are similar to those in Europe: European Transport Safety Council, *Drink Driving: Towards Zero Tolerance* (Brussels: European Transport Safety Council, 2012) <http://www.etsc.eu/documents/Drink_Driving_Towards_Zero_Tolerance.pdf>

⁴ Martin Boorman, 'Victoria Police: The drink and drug driving enforcement link to public health.' (Paper presented at The First International Conference on Law Enforcement and Public Health, Melbourne, Australia, 12 November 2012.)

⁵ Ibid.

⁶ Mary Sheehan, Barry Watson, Cynthia Schonfeld, Angela Wallace and Bradley Partridge, *Drink Driver Rehabilitation and Education in Victoria*. (Research Report 0501, Royal Australian Automobile Club of Victoria, 2005); Boorman, above n 4.

⁷ Homel, R, 'Penalties and the drink- driver: a study of one thousand offenders', (1981) 14 *Australian and New Zealand Journal of Criminology* 225.

⁸ Lily Trimboli and Nadine Smith, 'Drink-Driving and Recidivism in NSW'. *Crime and Justice Bulletin* 135. (Sydney: NSW Bureau of Crime Statistics and Research, 2009).

⁹ Ibid. See also Sentencing Advisory Council, above n 2.

¹⁰ Boorman, above n 4. See also Sentencing Advisory Council, above n 2.

¹¹ Boorman, above n 4.

¹² G Davies and L Smith, 'Reconvictions of drink/drive course attenders: a six year follow up', Transport Research Laboratory, TRL 574 (Transport Research Laboratory, 2003).

the worst drink-driver offender had 31 drink drive offences against his name and 323 had five offences, 137 people had 6 offences.

Table One. Victoria Police Recidivist Drink Driver Data, 31 October 2011.

Number of Drink Drive Offences	Number of Persons
31	1
23	1
20	1
19	1
18	1
16	1
15	1
14	2
13	2
12	2
11	5
10	3
9	11
8	33
7	69
6	137
5	323

A Victorian study of disqualified drivers in 2008 found that just over half of drivers had lost their licence for drink driving and continued to drink drive while their licence was disqualified.¹³ Disqualified drivers are over-represented in serious road accidents¹⁴ and those who become involved in crashes are three times more likely to have been drinking.¹⁵ Other studies in Queensland reveal that over one quarter of unlicensed drivers report that they have driven at some time when they were over the legal limit and are also more likely to have alcohol dependence issues.¹⁶ A third of these unlicensed drivers reported continuing to drive unlicensed even after they had been detected by the police.¹⁷

¹³ Belinda Clark and Irene Bobevski, *Disqualified Drivers in Victoria: Literature Review and In-Depth Focus Group Study. Report No 274.* (Monash University, Accident Research Centre, April 2008) <<http://www.monash.edu.au/miri/research/reports/muarc274.pdf>>. See also Anna Ferrante, *The disqualified driver study: A study of actors relevant to the use of licence disqualification as an effective legal sanction in Western Australia (Report).* (Western Australia: Crime Research Centre, University of Western Australia, 2003).

¹⁴ Wayne Harrison, 'An exploratory investigation of the crash involvement of disqualified drivers and motorcyclists.' (1997) 28(2) *Journal of Safety Research* 105; Sentencing Advisory Council, *Driving While Disqualified or Suspended: Information Paper.* (Melbourne: Sentencing Advisory Council, 2007).

¹⁵ Sentencing Advisory Council, *Driving While Disqualified or Suspended: Discussion Paper.* (Melbourne: Sentencing Advisory Council, 2008), 32.

¹⁶ Barry Watson, *The road safety implications of unlicensed driving: A survey of unlicensed drivers.* (Civic Square, ACT: Australian Transport Safety Bureau, 2003).

¹⁷ Ibid.

The extent of a person's alcohol problems is a key indicator that they will reoffend.¹⁸ Studies have shown that for many recidivist drink drivers the behaviour is heavily entrenched and difficult to change.¹⁹ These drink drivers report a motivation to change their drink-driving behaviour but not their drinking behaviour.²⁰ This means that a motivation to change drink-driving behaviour may not stay stable over long periods of time if patterns of heavy drinking are not addressed.²¹ Not only do many repeat drink drivers meet the criteria for lifetime dependence on alcohol,²² but research in the United States suggests that repeat drink-driving offenders have higher rates of psychiatric co-morbidity than the general population and this is also a contributing factor to their offending.²³ This research has found 50% of women and 33% of male drink driving offenders who have alcohol use disorders also have at least one additional psychiatric disorder other than drug abuse and 32% of women and 38% of male drink driving offenders had a drug use disorder.²⁴ The prevalence of psychiatric morbidity and drug use disorder also has implications for the effectiveness of responses to, or sanctions for, drink driving offences.²⁵ An unidentified psychiatric or drug problem will impact on the effectiveness of any alcohol treatment program that might be ordered by the court.²⁶

These findings suggest that repeat drink drivers could appropriately be described as a clinical population rather than a non-clinical population with long terms problems requiring long term responses.²⁷ As will be discussed further below, research suggests that a treatment program that is tailored to the individual needs of each offender in terms of their offending behaviour, severity of alcohol abuse problems and psychiatric condition is necessary.²⁸

¹⁸ Yu, above n 1; Howard Shaffer, Sarah Nelson, Debi La Plante, Richard La Brie, Mark Albanese and Gabriel Caro, 'The epidemiology of psychiatric disorders among repeat DUI offenders accepting a treatment-sentencing option', (2007) 75(5) *Journal of Consulting and Clinical Psychology* 795; Sentencing Advisory Council, above n 2; James Freeman and Barry Watson, 'Drink driving deterrents and self-reported offending behaviours in a sample of Queensland motorists' (2009) 40(2) *Journal of Safety Research* 113.

¹⁹ James Freeman, Cynthia Schonfeld and Mary Sheehan, 'Re-offending after program completion: A study into the characteristics of the hard-core recidivist drink driver' (Paper presented at the International Conference on Alcohol Drugs and Traffic Safety (T2007), Seattle, USA, 26-30 August 2007).

²⁰ James Freeman, Poppy Liossis, Cynthia Schonfeld, Mary Sheehan, Vic Siskind, Barry Watson, 'Self-reported motivations to change and self-efficacy levels for a group of recidivist drink drivers.' (2005) 30(6) *Addictive Behaviors* 1230.

²¹ Ibid.

²² Sandra Lapham, Elizabeth Smith, Janet C'de Baca, Iylin Chang, Betty Skipper, George Baum, and William Hunt, 'Prevalence of psychiatric disorders among persons convicted of driving while impaired.' (2001) 58 *Archives of General Psychiatry* 943.

²³ Lapham et al, above n 22; Shaffer et al, above n 18; Freeman et al, above n 19; James Freeman, Jane Maxwell and Jeremy Davey, 'Unraveling the complexity of driving while intoxicated: a study into the prevalence of psychiatric and substance abuse comorbidity. (2011) 43(1) *Accident Analysis and Prevention* 34.

²⁴ Lapham et al, above n 22.

²⁵ Lapham et al, above n 22; Shaffer et al, above n 18.

²⁶ Lapham et al, above n 22.

²⁷ Ibid.

²⁸ Ibid.

3. Present responses to DWI/S offenders

Responses to drink driving include licensing sanctions, vehicle sanctions, mandatory education and treatment programs and the range of usual sentencing options including community correction orders and imprisonment.²⁹ Thus, as with many other facets of the criminal justice system, there has been a mixture of rehabilitative and punishment approaches. Rehabilitative programs seek to address the underlying alcohol problems of offenders and punishment to penalise and deter the offender from further drink driving.³⁰ Research suggests that success is most likely when rehabilitation is combined with some punishment, and when the rehabilitation program targets the needs and risk factors of the offender.³¹

In Victoria, responses to drink driving over the past 30 years have ranged from random breath testing, advertising campaigns, stricter blood alcohol driving limits,³² increased penalties, drink driver education programs and alcohol interlock devices. Detecting unlicensed drivers and repeat offenders has been made easier by the use of automated number plate recognition technology. Other options, which have not yet been used in Victoria, include licence plate confiscation, vehicle impoundment, vehicle forfeiture and vehicle immobilization.

The various measures are also aimed at general and specific deterrence of offenders, yet the evidence of the deterrent effect of these responses is mixed:

- While **random breath testing** is known to have a generally positive effect on road safety,³³ it is less effective as a deterrent for those individuals who consume high levels of alcohol and who have a negative attitude towards random breath testing.³⁴
- Driver **disqualification** is a common result for serious drink drivers and may be effective in deterring many drink drivers from reoffending.³⁵ However, as noted above, many drivers who have been disqualified continue to drive. Research suggests that disqualification or licence restriction is most effective when combined with rehabilitation or remedial programs.³⁶

²⁹ Shaffer et al, above n 18.

³⁰ Faye Taxman and Alex Piquero, 'On Preventing Drunk Driving Recidivism: An Examination of Rehabilitation and Punishment Approaches' (1998) 26(2) *Journal of Criminal Justice* 129.

³¹ Ibid.

³² While the current blood alcohol driving limit in Victoria is 0.5 there have been suggestions in Australia to lower the legal limit: Australian Transport Council, above n 3; Job, above n 3. Calls have been made in Europe also to reduce the limit be reduced to zero: European Transport Safety Council, above n 3.

³³ Peter Anderson and Ben Baumberg, *Alcohol in Europe: a public health perspective. A report for the European Commission*. (UK: Institute of Alcohol Studies, June 2006); Amanda Delaney, Kathy Diamantopoulou and Max Cameron, *Strategic principles of drink-driving enforcement*. Report No 249 (Monash University Accident Research Centre, July 2006).

³⁴ Barry Watson and James Freeman, 'Perceptions and experiences of random breath testing in Queensland and the self-reported deterrent impact on drink-driving' (2007) 8(1) *Traffic Injury Prevention* 11.

³⁵ Trimboli and Smith, above n 8.

³⁶ Ibid.

- **Increased fines** or penalties for drink driving offenders has been found to have little specific or general deterrent effect,³⁷ as have mandatory minimum fines.³⁸ There are concerns that the current measures to counter drink driving will not be effective for bringing about long term changes in repeat drink drivers.³⁹
- **Alcohol interlock devices** have been used in Victoria since 2002 for offenders convicted of drink driving with a blood alcohol level above 0.15. Orders for alcohol interlock devices in Victoria are discretionary for first time offenders and mandatory for repeat offenders.⁴⁰ Data from VicRoads Registration and Licensing Services shows that magistrates have imposed 41,093 interlock conditions since 2002 and 59 percent of interlocks installed were for repeat offenders.⁴¹ 7681 drivers had interlocks fitted as at 25 May 2013; these drivers were predominately male (85%) and lived in metropolitan Melbourne (67%).⁴² There are indications that these devices have been successful in changing the behaviour of some serious offenders.⁴³ However, the positive effects appear to dissipate once the interlock device is removed.⁴⁴ Therefore, it has been recommended that ongoing rehabilitation was also required for those who have interlock devices fitted.⁴⁵ The Victorian Government has recently announced plans to increase the use of these devices for offenders convicted of drink driving with a blood alcohol level of 0.5 and there have been suggestions in the media that all new cars may be fitted with such devices.⁴⁶ Perceptions of recidivist drivers who have used alcohol interlock devices indicate

³⁷ Suzanne Briscoe, *The Impact of Increased Drink-Driving Penalties on Recidivism Rates in NSW, Alcohol Studies Bulletin 5*. (Sydney: NSW Bureau of Crime Statistics and Research, 2004); Steve Moffatt and Suzanne Poynton, 'The Deterrent Effect of Higher Fines on Recidivism: Driving Offences' *Crime and Justice Bulletin 106*. (Sydney: NSW Bureau of Crime Statistics and Research; 2007); Don Weatherburn and Steve Moffatt, 'The Specific Deterrent Effect of Higher Fines on Drink-Driving Offenders', (2011) 51(5) *British Journal of Criminology* 789.

³⁸ Alexander Wagenarr, Mildred Maldonado-Molina, Darin Erickson, Linan Ma, Amy Tobler, Kelli Komro, 'General Deterrence Effects of U.S. Statutory DUI Fine and Jail Penalties: Long-Term Follow-Up in 32 States' (2007) 39 *Accident Analysis and Prevention* 982.

³⁹ James Freeman, *Influencing recidivist drink-drivers' entrenched behaviours: the self-reported outcomes of three countermeasures* (PhD thesis, Queensland University of Technology, Centre for Accident Research and Road Safety, Brisbane, 2004).

⁴⁰ Sentencing Advisory Council, *Maximum Penalties for Repeat Drink Driving: Report*. (Melbourne: Sentencing Advisory Council, September 2005).

⁴¹ Email Communication from Asha Pask to Mark Kelly, 7 June 2013.

⁴² Ibid.

⁴³ Australian Transport Council, above n 3; Randy Elder, Robert Voas, Doug Beirness, Ruth Shults, David Sleet, James Nichols and Richard Compton, 'Effectiveness of Ignition Interlocks for Preventing Alcohol-Impaired Driving and Alcohol-Related Crashes: A Community Guide Systematic Review' (2011) 40(3) *American Journal of Preventive Medicine* 362.

⁴⁴ Emma Palmer, Ruth Hatcher, James McGuire, Charlotte Bilby and Clive Hollin, 'The Effect on Reconviction of an Intervention for Drink-Driving Offenders in the Community' (2012) 56(4) *International Journal of Offender Therapy and Comparative Criminology* 525.

⁴⁵ Sheehan et al, above n 6.

⁴⁶ Henrietta Cook, 'Firms push for tougher booze lock laws' *The Age* (online) 25 February 2013 <<http://www.theage.com.au/victoria/firms-push-for-tougher-booze-lock-laws-20130225-2f1s9.html>> ; See also Australian Transport Council, above n 3, recommendation 36.

that these devices perform an important educative role, but that do not address the underlying alcohol misuse or dependence issues.⁴⁷

Deterrence theory in sentencing of course assumes that offenders make rational decisions to offend based on their perceptions of risk of being caught and the sanction they will receive.⁴⁸ There is self-reported evidence from drink drivers in Queensland that the available legal deterrents and sanctions do discourage many drink drivers.⁴⁹ However, there is thought to be a discrepancy between the self-reported attitudes or perceptions of drink drivers and their subsequent behaviours because a significant number go on to reoffend.⁵⁰

It appears that both first time offenders⁵¹ and serious offenders are at high risk of reoffending regardless of the sanction imposed. Pogarsky and Piquero's research suggests that for some offenders this may be from 'resetting effect' whereby the offender thinks that once they have been convicted and punished once for a drink driving offence, they are unlikely to be caught again in the short term, thus the low perceived risk of apprehension outweighs the deterrent effect of potential harsher punishment.⁵² For serious drink driving offenders harsher punishments do not appear to affect recidivism rates due to the high rates of problematic alcohol use amongst this group.⁵³ Many offenders seem unreceptive to threats of, or actual, sanctions and researchers have suggested that alcohol treatment programs are vital in order to break the drink driving sequence.⁵⁴

The research on the efficacy of **drink driver rehabilitation programs** is also mixed.⁵⁵ There is a concern that many treatment/rehabilitation programs for drink drivers treat them as a homogeneous group rather than distinguishing between the different types of drink driving offenders, such as those who engage in social drinking and those who are problem drinkers.⁵⁶ Freeman et al's research on the impact of a drink driving rehabilitation program on a group of recidivist drink drivers showed that while the program had some positive effects on motivations to change their drinking and drink driving behaviour, the majority continued to drink heavily after the program.⁵⁷ Yu's

⁴⁷ James Freeman, Mary Sheehan and Cynthia Schonfeld, 'The impact of alcohol ignition interlocks on a group of recidivist offenders: A case-study approach' (Paper presented at *International Conference on Alcohol Drugs and Traffic Safety (T2007)*, Seattle, USA, 2007).

⁴⁸ Yu, above n 1.

⁴⁹ Freeman and Watson, above n 18.

⁵⁰ Ibid.

⁵¹ Eileen Ahlin, Paul Zador, William Rauch, Jan Howard, Doug Duncan, 'First-time DWI offenders are at risk of recidivating regardless of sanctions imposed' (2011) 39 *Journal of Criminal Justice* 137.

⁵² Greg Pogarsky and Alex Piquero, 'Can Punishment Encourage Offending? Investigating the "Resetting" Effect' (2003) 40 *Journal of Research in Crime and Delinquency* 95.

⁵³ Yu, above n 1.

⁵⁴ James Freeman, Poppy Liopsis, Cynthia Schonfeld, Mary Sheehan, Vic Siskind and Barry Watson, 'The self-reported impact of legal and non-legal sanctions on a group of recidivist drink drivers. Transportation Research Part F' (2006) 9(1) *Traffic Psychology and Behaviour* 53.

⁵⁵ Taxman and Piquero, above n 30.

⁵⁶ Ibid.

⁵⁷ James Freeman, Poppy Liopsis, Cynthia Schonfeld and Mary Sheehan, 'A preliminary investigation into the self-reported impact of a drink driving rehabilitation program on a group of recidivist drink drivers.' (2005) 14(3) *Road and Transport Research* 14.

research of recidivism among drink-driving offenders suggested that providing effective treatment to those offenders with alcohol problems is a critical strategy in reducing drink-driving recidivism.⁵⁸

Rehabilitation programs for drink drivers in Victoria have not always distinguished between repeat offenders, high level drink drivers, or first time offenders.⁵⁹ Further, generally there has been a lack of integrated programs that focus on high risk offenders, particularly those high risk or repeat offenders serving custodial sentences.⁶⁰ In its review of the penalties relating to disqualified and suspended drivers in Victoria the Sentencing Advisory Council suggested that while rehabilitation programs are important for many offenders often they do not occur until the relicensing stage which many offenders may avoid doing because of the expense and complexities of relicensing after disqualification.⁶¹ Further, the programs on offer, may have limited efficacy for repeat or serious offenders.⁶² However, the Drink Driver Diversion Program for Recidivists run by Associated Drink Driver Services Australia in Victoria which commenced as a pilot in 2004 takes an individualised approach and has shown positive results.⁶³

Sheehan et al's review of drink driver rehabilitation and education in Victoria found that more programmes were needed that provided treatment, as well as, 'a combination of intervention modes including education/information, lifestyle change strategies, and probationary contact and supervision.'⁶⁴ Tailored intervention programs for disqualified drivers tend to be more effective in changing behaviour,⁶⁵ as do lengthy cognitive therapy treatment programs.⁶⁶ Freeman et al's research on the perceptions of recidivist drink drivers of alcohol intercept devices has highlight the need for supervision of these offenders while using these devices as well as focussed efforts to change attitudes to drink driving and alcohol counselling where necessary.⁶⁷

Sanctions for drink drivers also need to be certain and swift.⁶⁸ Disqualified drivers in Victoria have highlighted that there is a common perception that magistrates are

⁵⁸ Yu, above n 1. See also James Nichols, 'Treatment versus deterrence: the impact of education and treatment versus deterrent approaches' (1990) *Alcohol Health Res World* 1444; Elisabeth Wells-Parker, James Landrum, Jeff Topping, 'Matching the DWI offender to an effective intervention strategy: an emerging research agenda.' In R Jean Wilson and Robert Mann (eds.) *Drinking and Driving: Advances in Research and Prevention*. (New York: NY Guilford Press, 1990) 267-289.

⁵⁹ Sentencing Advisory Council, above n 2; Sheehan et al, above n 6.

⁶⁰ Sheehan et al, above n 6.

⁶¹ Sentencing Advisory Council, above n 2.

⁶² Ibid; Sheehan et al, above n 6.

⁶³ ADDSA, *The Drink Driver Diversion Program for Recidivists* (pamphlet); The Keldrick Group, *The Advanced Drink Driver Education Program - Pilot Final Report* (September 2006).

⁶⁴ Sheehan et al, above n 6, v. See also Clark and Bobevski, above n 13.

⁶⁵ Leon Bakker, Stephen Hudson, Tony Ward, 'Reducing recidivism in driving while disqualified: A treatment evaluation' (2000) 27(5) *Criminal Justice and Behavior* 531.

⁶⁶ Kathleen Moore, Melissa Harrison, M. Scott Young, and Ezra Ochshorn, 'A cognitive therapy treatment program for repeat DUI offenders' (2008) 36 *Journal of Criminal Justice* 539; Palmer et al, above n 44.

⁶⁷ Freeman et al, above n 45.

⁶⁸ Freeman et al, above n 52; James Freeman, Poppy Liossis and Nikki David, 'Defiance, deviance and deterrence: an investigation into a group of recidivist drink drivers' self-reported offending behaviours' (2006) 39(1) *Australian and New Zealand Journal of Criminology* 1.

inconsistent in applying sentences and that a jail term is rarely applied, lessening the deterrent effect of harsher penalties.⁶⁹ However, while swiftness and certainty are important, these things alone are unlikely to be sufficient. This was highlighted by a study of an expedited case processing program in Washington, United States, which found that while the program was swift, expedited case processing was not a sufficient deterrent for many drink drivers and treatment was also required.⁷⁰

A new approach is required for hardcore drink drivers that incorporates the findings from the research that a tailored, multifaceted approach, that incorporates intensive supervision, alcohol interlock devices, individual treatment programs, and possibly short jail sentences may be the best option to reduce recidivism.⁷¹ A problem-oriented court is an intervention that offers the type of comprehensive program that is aimed at changing the long-term behaviour of hardcore drink drivers, which the research suggests is required.⁷² This would operate in the form of a list and could combine individualised treatment programs, an interdisciplinary court team, together with ongoing court supervision to address the underlying causes of offending.⁷³ The value of judicial supervision in particular in cases involving offenders with complex problems has been illustrated in problem-oriented courts in Australia and overseas over the past 20 years. This option is explored further below.

⁶⁹ Clark and Bobevski, above n 13.

⁷⁰ Jeffrey Bouffard and Leana Bouffard, 'What works (or doesn't) in a DUI Court? An example of expedited case processing.' (2011) 39 *Journal of Criminal Justice* 320.

⁷¹ Sandra Lapham and Elizabeth England-Kennedy, 'Convicted Driving-While-Impaired Offenders' Views on Effectiveness of Sanctions and Treatment' (2012) 22 *Qualitative Health Research* 17.

⁷² Sentencing Advisory Council, above n 40; Sentencing Advisory Council, above n 2.

⁷³ Sentencing Advisory Council, above n 15.

4. Driving While Intoxicated or Driving Under the Influence Courts

In 2009, the Sentencing Advisory Council recommended a specialist list for driving offences stating that an opt-in list could be developed 'for cases involving defendants for whom the traditional interventions have failed and who are willing to plead guilty and undergo more focussed and intensive programs.'⁷⁴ The Sentencing Advisory Council stated that this list could be particularly appropriate for repeat 'drink driving offenders who have not been responsive to previous court orders and who pose a significant danger to the community if they continue to drive in breach of licence sanctions and court orders.'⁷⁵ The Sentencing Advisory Council, drew the analogy between the CREDIT bail program and the Drug Court, stating that while the former program is appropriate for many offenders who come before the courts with drug and alcohol problems, the Drug Court provides a specialised process for those offenders who have not been deterred by the traditional interventions.⁷⁶

DWI Courts were first established in the United States in New Mexico in 1995,⁷⁷ and there are now more than 600 such courts in that country.⁷⁸ Many of these courts are designated DWI courts but the majority are DWI/Drug Court Hybrids. Another model is the Misdemeanor/DUI Court which is similar to a DUI Court but has a wider eligibility criteria and admits people with other misdemeanor charges apart from DUI offences.⁷⁹ DWI Courts are modelled on the drug court and involve intense supervision, regular and random testing for alcohol use, regular court appearances and incentives and sanctions depending on their performance on the program. DWI Courts seek to alter the behaviour of alcohol and drug dependent offenders who have been convicted of drink driving offences and thereby protect the community from future offences.

DWI courts incorporate the usual features of drug courts (and other problem-oriented courts) including a focus on case outcomes, system change, intensive judicial monitoring, collaboration amongst criminal justice stakeholders (including magistrate, prosecution, defence, law enforcement, corrections and treatment providers) and non-traditional roles.⁸⁰ These courts involve the use of 'incentives, punishment, treatment, behavioural modification and oversight.'⁸¹ An individualised treatment plan is developed that seeks to change a person's behaviour. This will generally involve referral to drug or alcohol treatment services and other rehabilitative programs or services.

⁷⁴ Sentencing Advisory Council, above n 2, ix.

⁷⁵ Ibid.

⁷⁶ Sentencing Advisory Council, above n 2.

⁷⁷ Scott Ronan, Peter Collins and Jeffrey Rosky, 'The Effectiveness of Idaho DUI and Misdemeanor/DUI Courts: Outcome Evaluation' (2009) 48 *Journal of Offender Rehabilitation* 154.

⁷⁸ The DWI Court Reporter, 'DWI Courts Surpass 600 Nationally: Courts Tout Success Stories During Impaired Driving Prevention Month.' (February 2013) VI(1) *The DWI Court Reporter* 1, 7.

⁷⁹ Ronan et al, above n 77.

⁸⁰ Greg Berman and John Feinblatt, 'Problem-Solving Courts: A Brief Primer' (2001) 23(2) *Law and Policy* 125.

⁸¹ Hon. Peggy Fulton Hora, 'Impaired Drivers and Judicial Supervision' (Paper presented to Victorian Association of Drink & Drug Driver Services (VADDS), Melbourne, 29 November 2012).

Verification of program compliance occurs through frequent alcohol and drug testing.⁸² Judicial supervision is a key attribute of the DWI Court and direct interaction with participants is involved. The emphasis in DWI Courts is on accountability of offenders,⁸³ and long-term treatment for alcohol dependency and/or substance abuse. A DWI Court uses a designated magistrate or magistrates. This addresses the perceptions noted above that there is an inconsistent approach between magistrates applying sentences and that harsh sentences such as imprisonment are rarely received.

The benefits of DWI Courts are that they apply the successful approach utilised in drug courts and provide repeat drink drivers who have underlying alcohol abuse or dependence problems with access to the necessary treatment programs that may not be included in standard drink driving programs, as well as targeting other needs. These courts involve an interdisciplinary court team including a designated magistrate to supervise offenders while on the program increasing accountability for the repeat offender. Offenders who participate in the program are subject to an order that combines punishment with rehabilitation. DWI Courts provide an intensive, integrated approach that is both certain and swift but is directed at the underlying cause of the drink driving behaviour. Research on repeat drink driving behaviour has found that this is the type of approach that is most likely to reduce recidivism for this complex group of offenders.

The aim of a DWI Court is not necessarily to divert a person from prison but to find a more effective way to deter future offending and protecting the community through treatment rather than incarcerating the person. However, as incarceration or the threat of incarceration does not appear to deter repeat drink drivers, incarcerating these offenders without attempting to treat the underlying causes of offenders comes at a great financial cost to the community and may not be the best use of public monies.

The initial spread of DWI Courts in the United States was based on the previous evaluations of successful Drug Courts, rather than on studies of DWI Courts.⁸⁴ In a systematic review of 41 DWI Court programme evaluations published up to April 2007, Marlowe et al⁸⁵ highlighted that most evaluations of DWI Court programmes had serious methodological shortcomings and only one study could be deemed 'methodologically good.' Only 21% of the studies reviewed by Marlowe et al were randomised.⁸⁶ Many studies did not account for participant dropout or provide information on dosages of services or court hearings.⁸⁷ However, of the five evaluations that Marlowe et al identified that satisfied at least 65% of the recommended criteria for methodological quality, these studies generally showed reductions in recidivism.⁸⁸ As

⁸² William Brunson and Pat Knighten, *Strategies for Addressing the DWI Offender: 10 Promising Sentencing Practices*. (National Highway Traffic Safety Administration: 2004).

⁸³ David Wallace, 'The Promise of DWI Court: What Does it Mean and Why Should Prosecutors Care?' (2011) 2(1) *Chapman Journal of Criminal Justice* 101, 102. Wallace describes DWI Court as an 'accountability court.'

⁸⁴ Ronan et al, above n 77.

⁸⁵ Douglas Marlowe, David Festinger, Patricia Arabia, Jason Croft, Nicholas Patapis, and Karen Dugosh, 'A Systematic Review of DWI Court Program Evaluations.' (2009) VI(2) *Drug Court Review* 1.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ These criteria include study design, replicability, baseline measures, quality control, follow up intervals, dosage, collaterals, objective verification, dropout/attrition, statistical power, analyses, generalizability, and follow up rate: Marlowe et al, above n 85, Table 2.

Marlowe et al notes, the ‘disappointing’ state of affairs with the quality of DWI Court evaluations, at the time of his review of 41 evaluations in 2007, was very similar to the situation with drug court evaluations in the 1990s and early 2000s.⁸⁹ This does not mean that programs are ineffective but there is arguably a lack of strong data to support the efficacy of the programs and they will be thus vulnerable to criticism.⁹⁰ Since Marlowe et al’s 2007 review, other evaluations have been published which appear to have stronger design and DWI Courts continue to show promise as a means of reducing recidivism in the hardcore drink driver group.⁹¹

In the United States, the National Center for DWI Courts has developed ‘The Ten Guiding Principles of DWI Courts’⁹² which if used, it says, will lead to a ‘good quality’ DWI Court that is more likely to be successful in reducing recidivism. These principles are discussed in the next section of this background paper.

⁸⁹ Marlowe et al, above n 85.

⁹⁰ Ibid.

⁹¹ Michigan State Court Administrative Office & NPC Research, *Michigan DUI Courts outcome evaluation: Final Report*. (Portland, OR & Lansing, MI: re-release March 2008). Available at: http://www.dwicourts.org/sites/default/files/nadcp/MI%20DUI%20Outcome%20Evaluation%20FINAL%20REPORT%20Re-Release%20March%202008_0.pdf; see also Ronan et al, above n 74; James Fell, Scott Tippetts and DeCarlo Ciccel, ‘An Evaluation of Three Driving-Under-the-Influence Courts in Georgia’ (2011) 55 *Annals of Advances in Automotive Medicine* 301.

⁹² National Center for DWI Courts, ‘The Ten Guiding Principles of DWI Courts.’ At http://www.dwicourts.org/sites/default/files/ncdc/Guiding_Principles_of_DWI_Court_0.pdf

5. Operation of Court List

Name of the List

It is intended that the name of the list in Victoria will be the Drink Disqualified Driver Court List (the 'DDDC List').

Location

It is proposed that the DDDC List would operate on a designated day of the week as a stand-alone list in a major Magistrates' Court location. An appropriate location for the List would require a large catchment area, high levels of disadvantage and high levels of alcohol related offences.

The Order

The DDDC List would operate post-sentence using the existing community correction order under Part 3A of the *Sentencing Act 1991* (Vic). Community correction orders may be made for no longer than 2 years in the Magistrates' Court and contain a wide range of conditions that can be used to create a tailored sentence for the hardcore drink driver. These conditions include unpaid community work, treatment and rehabilitation, supervision, non-association, residence restrictions, place or area exclusions, curfews, alcohol exclusion, bond, and judicial monitoring conditions. A period of imprisonment for up to 3 months can also be combined with a community correction order under s 44 if the circumstances of the offence require it. A community correction order may also be combined with a fine under s 43 of the *Sentencing Act 1991* (Vic).

The treatment and rehabilitation condition, s 48D, provides:

48D. Treatment and rehabilitation condition

(1) A court which is making a community correction order may attach a condition to the order that requires the offender to undergo treatment and rehabilitation specified by the court and directed by the Secretary unless otherwise directed by the court.

(2) When attaching a treatment and rehabilitation condition the court must-

- (a) have regard to the need to address the underlying causes of the offending;
- (b) have regard to the recommendations, information and matters identified in the pre-sentence report in relation to the treatment and rehabilitation of the offender.

(3) The treatment and rehabilitation that must be specified by the court in a treatment and rehabilitation condition must be any one or more of the following-

- (a) any assessment and treatment (including testing) for drug abuse or dependency;
- (b) any assessment and treatment (including testing) for alcohol abuse or dependency;

- (c) any assessment and treatment (including testing) at a residential facility for-
 - (i) withdrawal from or rehabilitation for alcohol abuse or dependency; or
 - (ii) withdrawal from or rehabilitation for drug abuse or dependency;
- (d) any medical assessment and treatment that may include general or specialist medical treatment or treatment in a hospital or residential facility;
- (e) any mental health assessment and treatment that may include psychological, neuropsychological, psychiatric or treatment in a hospital or residential facility;
- (f) any program that addresses factors related to his or her offending behaviour;
- (g) any other treatment and rehabilitation that the court considers necessary and that is specified in the order that may include employment, educational, cultural and personal development programs that are consistent with the purpose of the treatment and rehabilitation condition.

(4) For the purposes of subsection (1) the Secretary may give a direction to the offender-

- (a) to undergo the treatment and rehabilitation or kind of treatment and rehabilitation specified by the Secretary in the direction; and
- (b) in relation to any aspect of the treatment and rehabilitation that the Secretary has specified, a direction-
 - (i) requiring the attendance of the offender at a specified location; and
 - (ii) requiring the participation of the offender in particular kinds of treatment or rehabilitation.

An alcohol exclusion order under s 48J enables a court to order that an offender not enter or remain or consume alcohol in licensed premises that may be specified in the condition, in order to address the role of alcohol in the offending behaviour. Curfew conditions enable the court to order that a person must not leave his or her place of residence (or other place) between certain hours of the day under s 48I.

Section 48K also provides magistrates with the power to bring offenders back to the court at regular intervals for judicial monitoring or review for a period specified by the court or for the period of the community correction order. Another aspect of the community correction order which would enable tailored approaches to hardcore drink drivers is s 39 of the *Sentencing Act 1991* (Vic) which enables judicial officers to incorporate intensive compliance periods within community correction orders that are six months or longer.

Community correction orders are administered by Corrections Victoria and the cooperation of Corrections Victoria will be necessary for a DWI Court List to operate. However, it is not envisaged that orders created under the DWI/S Court List would entail additional costs to Corrections Victoria. The existing infrastructure is likely to be amenable to these orders.

In the United States the use of ignition interlock devices or alcohol interlock devices has received the support of the National Association of Drug Court Professionals and guidelines for the use of these devices has been issued. These are summarised in Appendix A. The Ten Guiding Principles also suggest the following:

- The requirements of the program, including sanctions, are clearly communicated to all offenders.
- The requirements of the program are presented in writing.
- Accommodations are made for offenders who do not speak English or have issues with literacy.
- The ban on use of illegal drugs and alcohol is clearly stated.
- Offenders have regular office visits with probation officers.
- Routine drug and alcohol testing are administered as part of appointments.
- Sanctions are applied for missing probation appointments or alcohol/drug testing.
- Offenders are regularly and randomly tested for drugs and alcohol.
- The technology used for testing may include:
 - urine testing
 - breath testing including the use of portable breath testing devices
 - transdermal testing
 - ignition interlock breath testing
 - other
- If the offender has an operator's license an ignition interlock device is mandatory.
- Supervision of offender includes visits to home or workplace.
- Information secured from home or workplace visits is shared with all team members.
- Violations determined to have occurred result in immediate sanctions.
- The judge orders that the offender avoid alcohol outlets, bars, casinos or other places where alcohol is the primary item sold.⁹³

Other conditions relevant to transport include:

- The DWI Court clearly articulates the requirement that there be no driving in absence of a legal driver's license.
- The DWI Court team members emphasize to participants that they must solve their own transportation problems.⁹⁴

Target Audience and Eligibility

DWI Courts are typically reserved for the 'hardcore' drink driving offenders. This refers to 'those DWI offenders that are either arrested for the first time with a Blood Alcohol Content (BAC) over .15 or those that have a prior DWI conviction.'⁹⁵ In the United States DWI Courts are generally post-conviction courts and participants engage in programs

⁹³ National Center for DWI Courts, above n 92, Guiding Principle # 4.

⁹⁴ National Center for DWI Courts, above n 92, Guiding Principle # 8.

⁹⁵ Wallace, above n 83, 102 at fn 3.

for between one and three years.⁹⁶ In Victoria magistrates are permitted to make community correction orders for no longer than two years. An order for two years is likely to meet principles of proportionality in sentencing when directed at serious drink-driving offences and offenders with a history of repeat drink-driving. For more serious offences a community correction order may be combined with a sentence of imprisonment for up to 3 months. A Victorian pilot DDDC List would also seek to include those offenders who have been driving whilst disqualified or suspended.

There has been debate in the United States as to whether first time DWI offenders should be accepted into DWI Courts.⁹⁷ The position of the National Center for DWI Courts is that DWI Courts should be reserved for the hardcore offender who are most likely to be alcohol dependent and 'unable to control their behavior due to the destructive nature of their addiction.'⁹⁸ In Victoria, a pre-sentence assessment should seek to identify those hardcore drink-drivers, who for example may be repeat drink-drivers or first time offenders with high or extreme BAC levels, and would be appropriate participants in the DDDC List.

The First Guiding Principle for DWI Courts also lists the following points when determining the target group for the DWI Court:

- The DWI Court focuses on those offenders who are assessed by a substance abuse professional as being in significant need of treatment.
- The DWI Court team has established a broad based committee of community stakeholders, which shall, among other things, be consulted as to the types of offenders that should be accepted or excluded from the DWI Court.
- The DWI Court has a clearly stated target population.
- The DWI Court has clearly written admission and exclusion criteria.
- The DWI Court delineates eligibility criteria for program participation using both offender characteristics and offense characteristics.
- The DWI Court matches the number of participants that are accepted with available resources.⁹⁹

Referrals and assessment

Referrals to the DDDC List would come from magistrates, prosecutors, Victoria Police and the Victorian Bar. Education to raise awareness about the List and how to make referrals will be necessary.

Once a person has been referred to the DDDC List the magistrate will require him or her to undergo a community correction order assessment with the Community Correction Service who will provide the magistrate with recommendations regarding conditions to be attached to the order.

Relevant issues to be addressed in the assessment of participants in the DDDC List include:

⁹⁶ National Center for DWI Courts, 'DWI Court: First-Time DWI Offenders – In or Out?' *The Bottom Line*. available at <http://www.dwicourts.org/sites/default/files/ncdc/The%20Bottom%20Line.pdf>

⁹⁷ Ibid.

⁹⁸ Ibid, 1.

⁹⁹ National Center for DWI Courts, 'DWI Court Model Compliance Checklist.' At http://www.dwicourts.org/sites/default/files/ncdc/2011%20NCDC%20Checklist%20Final-Form_0.pdf, Guiding Principle # 1.

- alcohol use severity/dependence
- drug involvement
- medical status
- psychiatric status/mental health issues
- employment and financial status
- family and social relationships
- alcohol triggers and cognitions
- self-efficacy and motivation for change
- recommended level of care placement.¹⁰⁰

Guiding Principle #2 of the ‘Ten Guiding Principles for DWI Courts’ also suggests that clinical staff should use validated, reliable risk/needs assessment instruments and refer to information contained in police reports, prior convictions, previous or current probation information, and information from significant others whenever possible. The clinical officer will also identify any areas where additional specialist reports might be needed. More than one assessment may be required. The results of assessments are then incorporated into the treatment plan. Reassessments may be required throughout DWI Court involvement to determine progression in treatment, and any changes in treatment need and readiness.

Treatment and rehabilitation conditions

A person who participates in the DDDC List will therefore be subject to a comprehensive treatment plan as part of the community correction order. This treatment plan would be developed with the assistance of Community Corrections to address the risks and needs of each offender will be required in order to maximise the possibility of changing the offenders drink driving and drinking behaviour and provided in a community correction assessment report by way of recommendations to the Court.

The treatment and rehabilitation services attached to the community correction order under s 48D will be determined by the treatment needs of the offenders and the availability of resources. The types of services suggested by the Ten Guiding Principles include:

- Motivational enhancement therapies which assess the participant’s “stage of change” for alcohol and or other drug use and impaired driving issues and which match interventions to the assessed stage of change.
- Cognitive-behavioural interventions
- Evidence-based pharmacological treatments
- Continuing care / aftercare
- Relapse prevention training
- Specified participant competencies to be achieved at each phase of treatment
- An organized recovery support program (e.g., 12-step self help), accompanied by a “12-Step Facilitation Curriculum”, or other mutual aid approaches, allowing participant choice (NOTE: Courts should be aware

¹⁰⁰ National Center for DWI Courts, above n 92, Guiding Principle # 2.

of the mixed effectiveness findings of mandated 12-step attendance versus coerced or voluntary participation)¹⁰¹

Program phases

In the United States phased DWI Court programs are used. Peggy Fulton-Hora has recommended that three intensive phases to graduate be used (this is based on a two year program):

- Phase I - Most Intensive Phase lasts 3 to 6 months
- Phase II - Educational Period lasts 6 to 9 months
- Phase III - Self-Motivational Phase-3 to 6 months
- Successful participant requires 12 to 18 months
- Graduation, then six months Aftercare component¹⁰²

These phases could be adopted by the DWI Court List magistrates through varying the community correction order as required over the course of the two-year order. As previously noted, s 39 of the *Sentencing Act 1991* (Vic) provides that intensive compliance periods may be ordered for part of community correction orders that are six months or longer in duration. In the intensive compliance period, the court must determine which conditions of the order are to be completed in that period (s 39(2)).

Supervision and judicial monitoring

In the proposed DDDC List the participant would be supervised by a community correction officer and a supervision condition under s 48E is likely to be a required condition of the order to enable a more intensive monitoring or management of the offender by Corrections Victoria. Testing and monitoring for compliance with the treatment plan would be required throughout the life of the order. In DWI Courts in the United States, participants are usually required to report to court, weekly, bi-weekly or monthly.¹⁰³ In Victoria, reviews are likely to be less frequent, probably approximately once a month. The Community Correction Officer would provide written reports to the DWI Court Magistrate regarding performance against the treatment plan and any compliance issues.

Judicial monitoring is a key feature of the proposed DDDC List in Victoria. The existing power to attach a judicial monitoring condition to a community correction order bringing the offender back before the court is an important tool that increases offender accountability. It also allows the court to monitor the progress of the person on the order, to be more responsive to non-compliance and make variations where necessary. Principles of therapeutic jurisprudence and procedural justice suggest that judicial monitoring provides an opportunity for the magistrate to interact with the participant, engage them in their treatment plan, set goals for their recovery, listen to them and to encourage or motivate the person to comply with the order.¹⁰⁴ Rewards may be used to motivate offenders and sanctions may be used to respond to compliance issues. Possible sanctions and rewards are discussed below in Part 6 of this paper.

¹⁰¹ National Center for DWI Courts, above n 92, Guiding Principle # 3.

¹⁰² Hon. Peggy Fulton Hora, 'Drink Drive Courts' (Paper presented to Victorian Association of Drink & Drug Driver Services (VADDS), Melbourne, 30 November 2012).

¹⁰³ Hora, above n 81.

¹⁰⁴ See Michael King, *Solution-Focused Judging Bench Book*. (AIJA and Legal Services Board, 2009).

Consistency of the same magistrate for each offender is an additional feature of the list that will further increase accountability of the offender. It is intended that the Victorian DDDC List would involve a small cohort of 2-3 magistrates who have training and expertise in the therapeutic approach to judging and alcohol and/or drug addiction.

The Ten Guiding Principles suggest that the judicial officer would ideally have the following attributes or take the following approach to the role:

- The DWI Court judge serves as leader of the DWI Court team to fully engage participants and draw upon the expertise of all team members.
- The DWI Court judge has extensive experience handling DWI cases and understands the nature of addictive disorders and attendant behaviors.
- The DWI Court judge exercises judicial authority in a manner that encourages and facilitates effective teamwork.
- The DWI Court judge ensures that all members of the DWI Court team, including the judge, receive adequate, ongoing training.
- The DWI Court judge demonstrates a genuine interest in the well being of the participants, as well as a willingness and ability to enforce all program requirements.
- The DWI Court judge strives to develop trusting, cooperative and supportive relationships with various community and victim's groups. The DWI Court judge conducts appropriate community outreach, information sharing and education about the DWI Court operations and outcomes.¹⁰⁵

¹⁰⁵ National Center for DWI Courts, above n 92, Guiding Principle # 6.

6. Issues for consideration

The DWI Court Team

The Ten Guiding Principles recommends that the DWI Court team consist, as a minimum of a judicial officer, a prosecutor, a defence lawyer (legal aid), a DWI Court coordinator, a treatment provider, a probation officer, and a law enforcement officer. Other members may be added if considered necessary. A written memorandum of understanding signed by all team members may also be required. Many of the protocols already developed in the Drug Court may translate easily to a DWI Court. A DWI Court Procedural Manual would address the roles of the DWI Court team.

Dealing with compliance Issues and Sanctions

The Ten Guiding Principles, in accordance with practices developed in drug courts, suggest that:

- the DWI Court team provides positive and negative reinforcement of conduct as soon as practicable after it occurs.
- the DWI Court magistrate, in consultation with the DWI Court team, provides evidence based incentives and sanctions from the bench to respond to participant conduct as soon as practicable after it occurs.¹⁰⁶

The following are a list of rewards and sanctions used by the Drug Court of Victoria which could be used in the DDDC List to encourage compliance. These might include limited or restricted driving privileges in compliance with existing laws. It is not proposed that periods of incarceration would be used under the DDDC List as such a power does not exist under the community correction order. However, some of the other sanctions and rewards could be imposed by way of a variation of the judicial monitoring condition under s 48L or variation of the order under Part 3A Division 5.

Rewards	Sanctions
Verbal praise/encouragement	Verbal warning
Advancement to the next Program phase	Demotion to an earlier phase
Decreased supervision	Increased supervision
Decreased court appearances	Increased court appearances
Reduced drug or alcohol testing	Increased drug or alcohol testing
Gift/voucher given	Imposition of a curfew
Reduced unpaid community work	Unpaid community work
Reduced periods of incarceration	Periods of incarceration
Successful Program completion	Termination of participation in the Program

¹⁰⁶ National Center for DWI Courts, above n 92, Guiding Principle # 4

Evaluation

Consideration should be given at an early stage to how the prospective DDDC List might be evaluated. Randomised controlled trials are the gold standard if they can be achieved.¹⁰⁷ The Ten Guiding Principles recommend the following in relation to evaluation:

- If possible, the evaluation randomly assigns DWI offenders to DWI Court or a suitable comparison condition, such as DWI probation.
- If randomization is not feasible, acceptable alternative comparison groups include DWI offenders who would have been eligible for the DWI Court but could not enter because: (a) there were no available slots (“wait-list”), (b) they were arrested in the same jurisdiction before the DWI Court was established, or (c) they were arrested in an adjacent community with comparable demographics that does not have a DWI Court.
- If a non-randomized group of DWI offenders is used for comparison, the evaluation identifies client characteristics that correlate significantly with outcomes, such as age, gender, criminal history and treatment history. If the DWI Court and comparison group differ on any of these variables, the evaluation statistically adjusts for the variables in the outcome analyses.
- The evaluation examines outcomes for all participants regardless of whether or not they graduated from the DWI Court.
- The evaluation reports both short term (during program)¹⁰⁸ and long term (post program)¹⁰⁹ outcomes.
- The evaluation reports what proportion of participants completed all or part of the standard regimen and graduated from the program.
- The evaluation reports how many sessions of each intervention (e.g., status hearings, treatment sessions, drug testing) the participants attended or received.
- The evaluation indicates how participants’ conduct was assessed in DWI Court and describes how consequences were imposed for compliance or non compliance.
- The evaluation reports on the fidelity with which negative sanctions were imposed for infractions and positive reinforcements were imposed for accomplishments.
- The evaluation reports on the type(s) and dosage of adjunctive services, if any, that were delivered (e.g., mental health or employment services).
- The evaluation reports the proportion of clients referred for pharmaceutical interventions who were determined by an assessment to be in need of medication.

The National Center for DWI Courts has also published an ‘Introductory Handbook for DWI Court Program Evaluations’ which discusses these issues, and those discussed

¹⁰⁷ Marlowe et al, above n 85.

¹⁰⁸ Short term outcomes may include counseling attendance, attendance at court hearings, weekly urine drug screen and breathalyzer results, attainment of treatment plan goals, and program graduation: National Center for DWI Courts, above n 92.

¹⁰⁹ Long term outcomes may include DWI recidivism, other recidivism, alcohol relapse and realized cost savings from such sources as reduced jail sentences or more efficient administration of court dockets: National Center for DWI Courts, above n 92.

above in Section 5 of this paper, in more detail which would usefully inform a discussion of the appropriate approach to evaluation. Further, the Drug Court of Victoria will have past experience of evaluation which will also inform this discussion.

Resourcing and funding issues

Consideration is required of the existing resources that would be available to the DDDC List through Community Corrections Service, any geographical constraints for service provision and availability, and the associated costs of resources. Extensive consultation with Corrections Victoria at an early stage will be vital to ascertain the availability of resources and any associated costs that may arise. The Ten Guiding Principles recommends:

- The DWI Court has a strategic plan which includes identifying potential resources and works to strengthen its partnerships with community stakeholders including: the legal community, law enforcement and corrections, advocates, treatment and other human services, business and elected officials.
- The DWI Court has written agreements with its key stakeholders which provide operational stability, clear agreements, and interagency commitments to the collaborative efforts.
- The DWI Court has clearly identified all program costs.
- The DWI Court has a diversified funding plan and regularly evaluates the effectiveness of this plan.¹¹⁰

¹¹⁰ National Center for DWI Courts, above n 92, Guiding Principle # 10.

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APPENDIX A - National Center for DWI Courts - Ignition Interlock Device Guidelines for DWI Courts

For the full version of these guidelines click [here](#).

Guideline number 1: Participants must follow the law. When legally allowed, participants should drive in an ignition interlock equipped vehicle.

Guideline number 2: DWI court team members need to understand state drivers license administrative law and procedure.

Guideline number 3: DWI court team members need to understand the devices available in their state.

Guideline number 4: ignition interlock devices can be used to help monitor a participant's alcohol use.

Guideline number 5: use photo identification ignition interlock devices to provide proof positive of who provided the breath sample.

Guideline number 6: DWI court teams need to understand the use of data loggers/early recall.

Guideline number 7: incentives and sanctions are important in a DWI court ignition interlock program.

Guideline number 8: indigence and program costs should be reviewed when using ignition interlocks.

Guideline number 9: repeat DWI offenders are a dangerous target population keeping the community informed of this program is crucial.

Guideline number 10: DWI courts must provide clear written policy/procedures for the ignition interlock program.