

Lea County, New Mexico

DWI Process Report

DWI Arrest, Prosecution, Adjudication, and Follow-up

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Lea County DWI Program Coordinator, **Katrina Weiss**
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Lea County DWI Advisory Council

Forward

The Lea County DWI Program contracted with the DWI Resource Center, a private non-profit agency based in Albuquerque, New Mexico, to review and issue this report on the DWI process in Lea County.

The Lea County DWI Process Review Report analyzes and discusses data, as well as the results of meetings with law enforcement, court personnel, prosecutors, DWI compliance monitors and other city and county officials.

The compilation of the data and report content was prepared by Linda Atkinson, Executive Director of the DWI Resource Center, Albuquerque, New Mexico. The interpretations, conclusions and recommendations contained herein are those of the author and do not reflect the interpretations, opinions or recommendations of Lea County.

Executive Summary

Impaired driving in New Mexico continues to be a major threat on our roadways. Although travel on rural roads accounts for 49% of roadway travel statewide, it accounts for 75% of all fatal crashes and the majority (61%) of those involve alcohol. Lea County is considered primarily a rural area, with the major concentration of its population located in the city of Hobbs.

Since 2005, New Mexico has seen a steady decline in DWI deaths and injuries, however, in Lea County, DWI crash involved deaths and injuries have remained relatively constant over the past five years.

Lea County has a high percentage of drivers under the age of 21 involved in alcohol-related crashes, when compared to the rest of the state.¹ As a result, Lea County could benefit by reviewing its programs and policies regarding enforcement of underage drinking laws. Young drivers who drink have the greatest risk of dying in an alcohol-impaired crash and at all levels of blood alcohol concentration (BAC), young drivers have a greater risk of dying in a crash than older drivers with the same BAC²

The law enforcement efforts to reduce the incidence of DWI appear to be lacking critical data such as DWI crash and arrest location. Sharing of this DWI data among all the Lea County law enforcement agencies can assist them in strategically planning DWI law enforcement activities. In addition, the collection of data on DWI arrests made as a result of a crash is of vital importance. When 20 percent³ or more of DWI arrests occur as a result of traffic collisions, it indicates that law enforcement is “reactive,” rather than “proactive” in confronting the DWI problem.

Currently, data pertaining to the DWI process - arrest thru adjudication (including sentencing), in Lea County - is not locally captured or analyzed. If the courts are sending DWI abstracts to MVD as required by law a majority of this data is captured ultimately (in the MVD, *Citation Tracking System* database), but at this time Lea County lacks access to the MVD DWI CTS which could be used as a foundation for Lea County's own DWI records system. They can also request the DWI case disposition information from the Judicial Information Division (JID) at the Administrative Office of the Courts (AOC).

Some other problematic issues include a lack of resources (as many agencies now face steeper budget cuts); the high number of post-crash arrests; the numerous inconsistencies among the different courts adjudicating DWI cases (4 municipal, 4 magistrate and 1 District court); the inability, through lack of jurisdiction, of Municipal Courts to conduct jury trials (making it impossible to prosecute repeat offenders in Municipal Court with full criminal jurisdiction, dramatically lowering sentencing possibilities); prosecutorial challenges in “proving priors” for purposes of enhanced

¹ In 2009, 14 percent of alcohol-involved drivers throughout New Mexico were under 21; in Lea County 21 percent were under the age of 21.

² Zador PL, Krawchuk SA, Voas RB. “Alcohol-related relative risk of driver fatalities and driver involvement in fatal crashes in relation to driver age and gender: an update using 1996 data.” *Journal of Studies on Alcohol* 2000, 61: 387-95.

³ In Hobbs, the number of DWI arrests after a crash have ranged from 21 percent in 2006 to 18 percent in 2009. The New Mexico State Police DWI arrests as a result of a crash are even higher – from 32 percent in 2006 to 19 percent in 2009.

sentencing; courts of limited jurisdiction constraints; and jail budget concerns including transport of offenders, among others.⁴

The cumulative effect of these problems is that many DWI offenders are able to elude significant punishment and many continue their drinking driving behavior. This does not just affect the offenders themselves — it affects everyone who learns directly or indirectly that drunk driving is not adequately punished. And, of course, the danger on the roadways remains extremely high for those traveling in Lea County.

The majority of DWI convictions in the Lea County courts are a result of a plea agreement; in fact, very few were adjudicated through trial (either bench or jury). That in itself is not a problem because plea agreements form an integral part of an efficient judicial system. The entry of a plea and disposition agreement pursuant to a DWI charge, however, should always meet two essential criteria. First, the final charge must be recorded properly as a DWI offense so if the driver is arrested again he or she will be charged as a repeat offender. Second, the penalty must be appropriately severe so the offender does not feel that he or she has escaped without significant consequences.

If intended sanctions are not applied regularly and consistently, the DWI laws are diluted, offenders soon learn that the consequences of driving drunk are not severe, and drunk driving continues.

In addressing the issue of driving on a revoked license, a strategy of impounding or immobilizing an unlicensed driver's vehicle or of taking the vehicle's license plate shows the greatest promise for attacking these problems. Vehicle impoundment is severe enough to deter many who may otherwise choose to drive unlicensed. When applied administratively, at the time of arrest, it is also swift. It has been well-established that "swift, certain and severe" consequences serves as an effective deterrent in dealing with DWI offenses. Voas and DeYoung (2001) reviewed evaluations of 10 different vehicle sanction programs and found strong evidence that vehicle seizure or immobilization reduces both driving with a suspended license and DWI. Several cities and counties in New Mexico have enacted a local ordinance which provides for a civil procedure to confiscate vehicles of repeat DWI offenders as well as those driving on revoked.

In Lea County, unfortunately, DWI sanctions have not been applied consistently. Sometimes, the courts have allowed offenders to plead to a lesser offense even when they tested above the legal limit; other times, the courts have inexplicably failed to impose the mandatory minimum sanctions, contrary to law. Such a sentence is an improper and illegal sentence. Consequently, offenders are more likely to continue their drinking while driving behavior. The solution is not to require even stiffer sanctions but, rather, to assure that current mandatory minimum sanctions are applied as consistently as possible and to use other penalties, such as vehicle sanctions, sufficiently severe to serve as a deterrent.

Sentences serve little purpose if they have no real effect, i.e., if compliance with sentencing requirements is not enforced. Violations of driver's license suspensions, mentioned herein, are but one example. DWI offenders often fail to complete their

⁴ The county operates the county jail, located in Lovington, and Hobbs runs a facility located within its city limits.

required treatment or community service obligations. Too often their only penalty is that they cannot reinstate their driver's license. So they continue to drive unlicensed, thereby compounding the problem. The solution is to monitor all DWI offenders for compliance and provide for appropriate and prompt consequences for non-compliance.

The young drivers found involved in alcohol-related crashes at a significant rate, needs to be addressed before they are able to continue on to become a 'career drinking driver' or worse seriously or fatally injuring themselves or others. Community participation is critical for creating comprehensive changes in institutional policies (e.g., of alcohol establishments, media outlets, and schools) and public policies aimed at reducing youth access to alcohol. Several community trials have included community-organizing components to mobilize and successfully change policies addressing public health issues⁵

Jim Hedlund, Ph.D., a renowned traffic safety researcher and former associate administrator for traffic safety programs at the National Highway Traffic Safety Administration writes in the December 2007 publication for the AAA Foundation⁶, "The deterrence system of traffic laws, enforcement, and sanctions is seriously weakened when enforcement is minimal and punishment is uncertain. The goal is a drunk driving control system, extending from detection to rehabilitation, that is open, effective, consistent, and accountable. The result will be further reductions in alcohol-related deaths and injuries and increasing recognition that drinking and driving is socially unacceptable".

⁵ Wagenaar et al. 2000; Holder et al. 1997

⁶ *Improving Traffic Safety Culture in the United States: The Journey Forward (Summary and Synthesis)*, AAA Foundation, December 2007

Recommendations

1 Revise Judgment and Sentencing forms to reflect all mandatory minimum sanctions ordered by the judge and required by statute. When the J & S record does not correctly reflect the mandatory minimum sanctions the judge has ordered, the prosecutor should request the court amend the J & S to correctly reflect all mandatory minimum sanctions imposed. The court could also on its own motion correct the J & S. Under the basic principles of judicial conduct, if the judge does not follow the law as required it could constitute bad faith in their specific role as a judge⁷. If needed, the Courts can find more direction and information in the DWI Benchbook⁸ which is provided by the Judicial Education Center (JEC).

#2 Create a DWI records management system. A record system could serve as a management information tool, enabling judges, prosecutors, legislators, and the public to learn how the overall system is performing and to evaluate its individual components. This means recording overall arrests, charges, convictions, plea bargains, sentences imposed, fines and fees collected, sentences completed, etc., as well as comparing the performance of different courts, judges, and prosecutors. Optimally, this information in the record system would be accurate, timely, and easily accessible to all who need to use it. The Advisory Council could choose to utilize the MVD's Citation Tracking System as well as the Judicial Information Division to create a Lea County records management system.

#3 Hold monthly meetings with key stakeholders and provide for prompt feedback. A monthly meeting of the court administrator/clerk, judges, prosecutors, law enforcement agencies, APPO and the DWI Program could aid in addressing the systemic issues faced by all in addressing DWI issues in Lea County, including developing a process to create a DWI data records management system. Using data-driven approaches can create great savings, not only of resources but also lives. These meetings could potentially be teleconferences, which would allow many of the stakeholders to attend without having to travel. Designate someone to take notes, include changes agreed to, timelines included and who is responsible for initiation through completion.

#4 Utilize training for law enforcement agencies and prosecutors regularly. Donna Bevacqua-Young at the Attorney General's Office is available to come to Lea County and provide comprehensive 1-2 day training on issues identified by the law enforcement agencies and prosecutors in this report.

#5 Formalize the relationship between the Courts (Municipal, Magistrate and District) and the Lea County DWI Program (Compliance Monitoring). The follow-up of the sentence imposed by the court is critical in efforts to reduce DWI recidivism. Having a Memorandum of Understanding (MOU) in place with each court can clarify the courts' expectations in regards to the Compliance Monitoring Program and the process for providing DWI compliance data to the court. It can streamline the communications

⁷ **4-500. Legal Error.** A judge's failure to follow the law may violate NMRA 21-200, which requires the judge to comply with the law and promote public confidence in the judiciary, or NMRA 21-300(B)(2), which requires the judge to be faithful to the law and maintain professional competence in it. In the most serious cases, the judge's actions may indicate bad faith, supporting a finding of willful misconduct.

⁸ <http://jec.unm.edu/manuals-resources/manuals/2010%20DWI%20Benchbook.pdf/view>

between the court and the Program for optimum oversight of DWI offenders completing their court-ordered sanctions.

#6 All City police departments cite only first-time offenders into City (Municipal) courts. Establish a policy with provisions for monitoring and enforcement for city police departments to cite only first-time DWI offenders into Municipal courts.

#7 Consider adopting a County vehicle confiscation ordinance similar to Albuquerque or Dona Ana or Santa Fe. This is a civil process that can serve as a deterrent to repeat DWI offenders as well as for those driving on revoked licenses.

#8 Discuss a joint city-county solution between Lea County and Hobbs concerning the jail issue. Consider utilizing the main facility in Lovington as the primary jail and diminish the use of the Hobbs facility, perhaps utilizing it as only a temporary holding facility. Consider a secure 'shuttle' investment to transport prisoners from Hobbs to Lovington. A cost-benefit analysis might be beneficial in determining a viable solution.

#9 Courts review past driving record of the DWI offender before imposing sentence. As stated in § 66-8-110(H), "*If a person is convicted of DWI, the trial judge shall inquire into the past driving record...before sentence is entered in the matter*". In the resources section of this report is the link to the most recent DWI Penalties chart as prepared by the UNM/ IPL also included in the Resources section is a DWI Sentencing Checklist produced by the National Center for State Courts and NHTSA.

#10 Review underage drinking issues in Lea County, including young driver involvement in DWI crashes. The community should consider a wide range of initiatives to deal with underage drinking including a social host ordinance and/or a minor in possession by consumption ordinance to curtail youth drinking; ultimately reducing underage drinking and driving crashes.

Other interventions that have proven effective include the following components:

- Involvement of the media to increase awareness.
- Training of alcohol-retail establishments, including information on preventing sales to underage customers.
- Compliance checks conducted by law enforcement to reduce illegal alcohol sales to the underage population.
- Increased enforcement of DWI laws.

Introduction

In 2009 Lea County's population was 60,232, of which there were 42,179 licensed drivers⁹. The number of DWI injuries statewide has shown a downward trend; however in Lea County, injuries as a result of DWI have shown no such trend. The chart below includes the cost associated with these crashes, for Lea County, in 2008; it is estimated at \$36.7 million dollars. The legal cost of DWI is not included in the chart below. A cost breakdown of adjudicating DWI offenders in New Mexico has not been done, in fact, the author only found a 1995 California study indicating a median cost of about \$360 per case for trial and punishment of drunk drivers, exclusive of law enforcement costs.

New Mexico, Lea County Non-Alcohol, Alcohol fatalities, Injuries, Annual Cost

Year	New Mexico			Lea County		
	Total Non-A/R fatalities/injuries	Total A/R fatalities/injuries	Cost ¹⁰ A/R crashes	Total Non-A/R fatalities/injuries	Total A/R fatalities/injuries	Cost A/R crashes
2005	294/22,038	194/1963	920.5 million	10/565	4/60	25 million
2006	293/20,261	191/1956	1.2 billion	20/534	6/46	25.8 million
2007	236/18,766	177/1789	1 billion	10/531	3/51	31.1 million
2008	223/17,726	143/1704	925 million	13/525	5/60	36.7 million
2009*		140/		9/506	4/60	

*Note: Most recent crash data available

Lea County Alcohol-Related Crashes¹¹, Fatalities, Injuries by Year, Location

Location	2006	F	I	2007	F	I	2008	F	I	2009	F	I
Lea County	65	6	46	78	5	53	123	3	64	88	4	60
Hobbs	44	2	32	39	1	26	86	1	36	56	3	37
Lovington	4	0	1	11	1	3	12	1	3	10	0	3

Discussion:

The total number of DWI crashes in Lea County shows an increase of approximately 30% since 2006; fatalities are down but injuries are up. The number of alcohol-related deaths and injuries has remained relatively the same in the county as well as in Hobbs, with a slight increase seen in Lovington.

⁹ Licensed drivers Counts are as of July 2008 from the Driver History file maintained by the Motor Vehicle Division.

¹⁰ Impact is the cost of DWI related crashes in New Mexico based on Federal Highway Administration estimation formulae (*The Costs of Highway Crashes*, FHWA-RD-91-055, Federal Highway Administration, 1991). The figures are based on 1988 dollars, adjusted for inflation to current year dollars. **These are estimates, not actual dollar amounts.** Included are direct costs such as lost wages and medical expenses, and indirect "willingness to pay" estimates of lost quality of life.

¹¹ Data is drawn from [NM Department of Transportation](#) records, as reprocessed by the [UNM Division of Government Research](#) on August 19, 2010 for the [New Mexico Traffic Safety Bureau](#)

Review

Law enforcement agency DWI arrests¹² by year

AGENCY	2006	% crash	2007	% crash	2008	% crash	2009	% crash	2010	% crash
Hobbs PD	175	21%	205	18%	269	26%	237	19%	231	**
NM State Police	74	32%	194	26%	53	31%	108	19%	66	**
Lea County S.O.	55	0	81	4%	101	2%	62	8%	44	**
Lovington PD	32	6%	54	8%	65	10%	94	9%	69	**
Jal PD	14	14%	25	8%	24	4%	21	5%	17	**
Eunice PD	8	0	11	0	10	9%	11	0	14	**
Tatum PD	3	0	3	33%	4	0	3	0	2	**
Grand Total	347		573		516		536		443	

** No data available for 2010

Discussion:

The DWI arrests in Lea County (in the chart above) indicate the majority of DWI arrests are made by the Hobbs Police Department. The arrests can vary from year to year with most of the agencies in Lea County. A couple of explanations for this variance can be attributed to staffing levels within the agency as well as funding and resources allocated for specific DWI enforcement. The % *crash* column in the chart above indicates the percent of DWI arrests as a result of a crash. The Hobbs Police Department and the NMSP appear to have an elevated number of arrests as a result of a crash. When 20% or more of DWI arrests are the result of traffic collisions, it is indicative of the police department being reactive (as opposed to proactive) to the DWI problem.

Tracking DWI Arrests

DWI logs are a good system for tracking DWI arrests. The log is basically a spreadsheet that has rows for arrested subjects and columns for date, time, arrest location, name of subject, arresting officer ID, BAC, and whether a collision was involved. In addition, to providing accurate data on DWI arrests, the log can also be used to help identify officers in need of additional training. Tracking of prosecution can also be added to the log if deemed necessary. This spreadsheet can be maintained manually by arresting officers at end of shift or kept on a computer by a person who reviews DWI arrest reports.

A more detailed analysis involves the police department analyzing only those collisions within the city where a driver is DWI by using local DWI arrest data to determine the percent of collisions (by type) that are caused by DWI drivers. Ideally this percent should be kept under 5%. Another number that should also be examined is the percent of DWI driver arrests that result from collisions. These arrests should be kept under 10% of the total.

The Institute of Transportation Studies at the University of California, Berkeley, reports that the national benchmark for DUI arrests is 2.0 percent of licensed drivers, a figure

¹² Data is drawn from February 2011 [NM Motor Vehicle Division](#) records, as reprocessed by the [UNM Division of Government Research](#) for the [New Mexico Traffic Safety Bureau](#)

commonly used in police traffic services planning and assessment nationally for decades¹³

To plan and deploy effective enforcement against DWI, the National Commission Against Drunk Driving (NCADD) urges local police departments to begin by asking themselves the following questions:

- How does the agency know whether their local collision records are accurate?
- How does the agency track DWI arrests?
- How does the agency determine whether appropriate priority is being given to traffic safety issues, including DWI enforcement?
- What methods does the agency have to help determine whether officers need additional training to enhance their ability to identify and arrest DUI motorists.

¹³ See, for example, "A Blueprint for Police Traffic Services", California Office of Traffic Safety, July 2002, http://www.ots.ca.gov/grants/files/blueprint_pdf/poltraf.pdf

Lea County Municipal Court Adjudication by year of arrest

Court		Hobbs		Lovington		Jal		Eunice		Tatum
Year		Conv.	Dism.	Conv.	Dism.	Conv.	Dism.	Conv.	Dism.	Municipal court in Tatum
2006	1 st	76	8	14	0	6	0	1	1	handled one case in 2006, none for the remaining years
	2 nd	19	6	2	0	4	0	1	0	
	3 rd	6	2	0	0	2	0	0	0	
	4 th	0	0	0	1	0	0	0	0	
	5 th	0	1	0	0	0	0	0	0	
2007	1 st	82	12	20	4	8	4	3	1	As such they are omitted from this chart.
	2 nd	21	0	7	1	1	0	0	0	
	3 rd	4	1	1	1	1	0	0	0	
	4 th	3	0	2	0	0	0	0	0	
	5 th	2	0	0	0	0	0	0	0	
2008	1 st	144	6	15	3	16	2	2	2	
	2 nd	16	3	6	2	2	0	1	1	
	3 rd	6	0	3	0	0	0	0	0	
	4 th	2	0	0	0	0	0	1	0	
	5 th	1	0	0	0	0	1	0	0	
2009	1 st	121	9	26	9	6	3	2	0	
	2 nd	32	1	6	0	2	0	3	2	
	3 rd	1	0	1	2	0	1	0	0	
	4 th	0	0	0	1	0	0	1	0	
	5 th	1	0	0	0	0	1	0	0	
2010	1 st	90	5	21	1	3	2	3	1	
	2 nd	17	0	7	0	2	0	0	1	
	3 rd	4	0	1	0	0	1	1	0	
	4 th	2	0	0	0	0	0	0	0	
	5 th	0	0	0	0	0	0	0	0	

Data is drawn from February 2011 [NM Motor Vehicle Division](#) records, as reprocessed by the [UNM Division of Government Research](#) for the [New Mexico Traffic Safety Bureau](#)

Discussion on Municipal Courts

The majority of DWI cases in the municipal courts¹⁴ were first offense DWI cases. Some of the priors seen in the table above either had issues with proving the priors or the police departments cited into the municipal court regardless of the number of priors and the court made the decision to handle these cases, even though their jurisdiction is limited.

¹⁴ These are courts of limited jurisdiction. No jury trials.

Issues commonly found with municipal courts in regard to DWI cases include: non-attorney judges, the City attorneys who prosecute these cases may also handle other city legal matters, Municipal courts are 'courts of limited jurisdiction' which limits the amount of jail time (jurisdiction) the court can impose, the *limited* jurisdiction is 179 days (jail), and no jury trials are allowed. This will preclude any DWI offenses other than a first DWI offense (where the maximum jail time is 90 days) to be filed in a municipal court, unless the municipality has adopted an ordinance allowing up to 364 days imprisonment and \$1000 fine (see below: Municipal Court quoted from the 2010 DWI Benchbook). A second offense DWI has a maximum 364 days jail time which puts it out of the jurisdiction of a municipal court. The other issue of note is when a defendant has the possibility of jail exceeding 179 days; they have the right to a jury trial.

Another concern with DWI prosecution in the municipal courts is there is no recording method of the proceedings (other than the hard copy (file) of the paperwork related to the case). Without a formal record of these municipal court DWI case proceedings it creates some difficulty in future prosecution of repeat offenders. As was found in Lea County there are certain legal hurdles the prosecutors must overcome in order to properly charge and prosecute repeat DWI offenders. The problem of prosecutors providing proof of priors will be discussed at length in the District Court adjudication section of this report.

The numerous issues (outlined above) with DWI cases in the Municipal courts goes to the argument of why all courts that hear DWI should be courts of record – record what transpires in the hearing so it is preserved and has potential of being available electronically in addition to the hard copy of the paperwork necessary for pursuing subsequent DWI charges (repeat offenders). Currently, prosecutors spend extensive time locating the J & S and 'Waiver of Counsel' forms from the courts that had jurisdiction on previous DWI offenses (which could be anywhere in the state). Waiver of Counsel issues in these courts of limited jurisdiction, where there is no recording, can raise questions if defendant argues the waiver was not valid as stated below (from the DWI Benchbook:

To be valid, a waiver of the right to counsel must be knowing, intelligent and voluntary. State v. Gonzales, 1997-NMSC-050. See Criminal Forms 9-401, 9-401A (Waiver of Counsel). The waiver must be "voluntary," meaning done by the defendant of his or her own free will, rather than being forced or pressured to do so by anyone. The waiver must be "intelligent," meaning that the defendant was advised by the court of the right to counsel, the right to legal representation at no cost to them if the defendant cannot afford to hire an attorney, and what it means for the defendant to be waiving legal counsel. Finally, the waiver must be "knowing," meaning that after being advised of the right to counsel, the defendant is aware of what they are agreeing (and signing, if a written waiver) to when he or she waives legal counsel. At a minimum, a written and signed waiver of counsel, witnessed and countersigned by a judge, is prima facie (i.e., initially valid) evidence of a valid waiver. Gonzales at ¶ 17. However, the defendant can argue and present evidence to the court on the reason(s) that such a written and signed waiver is not valid.

In addition, from the DWI Benchbook¹⁵, published by the Judicial Education Center (JEC) regarding Municipal Courts, Chapter 5. Sentencing, Section 5.6 DWI Sentences

Municipal Court: Provisions similar to §66-8-102 are contained in UTO 12-6-12.2, Operating a Motor Vehicle Under the Influence of Intoxicating Liquor or Drugs; Penalties; Sentencing; Fees. Although municipalities are authorized under §3-17-1(C)(2) to adopt a DWI ordinance with up to 364 days of imprisonment and a \$1000 fine, in practice municipal courts are limited to 179 days and a \$999 fine as their maximum sentence for DWI. To exceed 179 days would require providing defendants with the opportunity for a trial by jury, which municipal courts have no statutory authority to conduct. Note that under UTO 12-6-12.2(C), the possible sentence for a first DWI conviction is 90 days of jail and a \$999 fine. For a second or third DWI conviction under UTO 12-6-12.2(D), the possible sentence is 179 days of jail and a \$999 fine. Mandatory consecutive hours or days in jail must be imposed for second and third convictions, and for all aggravated DWI convictions. UTO 12-6-12.2 also has provisions similar to §66-8-102 for community service, DWI school, alcohol and drug screening and treatment, and installation of ignition interlock devices.

Be sure to check the wording of your local ordinance.

Drivers with previous DWI convictions pose a substantial risk of offending again. Data show that legally impaired drivers involved in fatal crashes were eight times more likely to have a prior DWI conviction than drivers who had not been drinking¹⁶

- There were 86 cases of repeat offenders between the years 2008-2010 adjudicated in the municipal court in Hobbs.
- There were 29 cases of repeat offenders (2008-2010) adjudicated in the Lovington municipal court.
- There were 21 repeat offender cases adjudicated between the Jal and Eunice municipal court during 2008-2010.

It is also important to note that the judges are required to review the past driving record of the person before imposing a sentence (§66-8-110(H)). In reviewing sentences imposed and the potential sentence which could be imposed, it appears the courts do not 'sentence upward' from the mandatory minimums even for repeat offenders who have pled to a lesser offense than what was charged.

A helpful tool for judges could be to review the DWI Sentencing Checklist prepared by the National Center for State Courts (NCSC) and the National Highway Safety Administration (NHTSA) found in the Resource section of this report.

¹⁵ <http://jec.unm.edu/manuals-resources/manuals/2010%20DWI%20Benchbook.pdf>

¹⁶ Dept of Transportation (US), National Highway Traffic Safety Administration (NHTSA). *Traffic Safety Facts 2009: Alcohol-Impaired Driving*. Washington (DC): NHTSA; 2009. Available at URL: <http://www-nrd.nhtsa.dot.gov/Pubs/811385.pdf>

Lea County Magistrate Court Adjudication by year of arrest

Court		Hobbs		Lovington		Jal		Eunice		Magistrate Court in Tatum was closed February 25, 2010 per AOC/Legislation
Year		Conv.	Dism.	Conv.	Dism.	Conv.	Dism.	Conv.	Dism.	
2006	1 st	45	4	34	7	0	0	8	4	
	2 nd	14	1	12	2	0	0	2	0	
	3 rd	6	1	7	2	0	0	3	0	
	4 th	4	1	3	1	0	0	1	0	
	5 th	2	1	1	2	0	0	0	0	
2007	1 st	61	8	42	21	4	0	9	3	
	2 nd	13	0	20	5	1	0	5	1	
	3 rd	10	1	11	1	2	0	2	0	
	4 th	1	1	4	0	0	0	0	0	
	5 th	0	0	3	0	0	0	0	0	
2008	1 st	49	14	30	3	1	1	4	1	
	2 nd	18	3	10	3	1	0	2	0	
	3 rd	7	1	6	0	0	0	0	1	
	4 th	7	4	5	0	0	0	0	0	
	5 th	1	1	0	0	0	0	0	0	
2009	1 st	38	5	25	9	5	9	10	5	
	2 nd	14	1	8	0	3	2	3	2	
	3 rd	6	1	6	2	3	0	0	1	
	4 th	5	1	3	0	1	1	1	0	
	5 th	1	0	3	1	1	0	1	0	
2010	1 st	25	5	15	5	3	2	1	1	
	2 nd	11	0	8	0	2	0	0	1	
	3 rd	6	1	3	0	0	1	0	0	
	4 th	1	0	2	0	1	1	0	0	
	5 th	0	0	0	0	0	0	0	0	

Data is drawn from February 2011 [NM Motor Vehicle Division](#) records, as reprocessed by the [UNM Division of Government Research](#) for the [New Mexico Traffic Safety Bureau](#)

Discussion on the Magistrate Courts

Some of the same issues that we see in the Municipal Court are also evident in the Magistrate courts¹⁷. The jurisdiction here is 364 days jail and they can hold jury trials. However, these courts are also considered 'courts of no record' and do not record the proceedings and again are dependent on the paper files being intact for purposes of producing needed documents when prosecutors are pursuing repeat offenses. The judges in these courts also are not required to be attorneys. Discussion on the proof of

¹⁷ These are courts of limited jurisdiction. Jury trials are allowed.

priors is detailed in the District court section of this report. Refer to previous discussion in the Municipal court section regarding §66-8-110(H) which states the judge are required to review the driving record prior to sentencing. In discussion with the Hobbs Magistrate court clerk, she indicated the judges have access to the DWI penalties checklist produced by the UNM, Institute of Public Law (IPL) (found in the Resource section of this report).

Further discussion of the these courts of limited jurisdiction is the appeal process called trial de novo – which means that anyone convicted in a lower jurisdiction court upon appeal would start the process all over in a higher court (District Court) rather than an appeal ‘on the record’. This essentially gives offenders “two bites of the apple”, which can be a resource problem for all parties involved.

In DWI cases, courts can have a much broader role than in many other types of cases. Through its interaction with law enforcement, prosecutors, defense attorneys, defendants, the public, and the press, the court establishes a tone toward DWI cases in the community. This is evident when the court addresses a defendant at sentencing to stress the severity of a DWI offense, invites school groups to attend DWI trials or dockets, or explains to law enforcement procedural shortcomings following unsuccessfully prosecuted cases. Judges, through their roles on the bench and in their personal lives, are leaders in the community and the attitudes they express are critical in shaping public attitude toward DWI prevention and enforcement.¹⁸

A meta-analysis of 200 evaluations revealed that education alone can be effective with first-time offenders with low-blood-alcohol content. For first-time offenders with high-blood-alcohol content, education combined with counseling is effective¹⁹. Community service and incarceration do not reduce recidivism for repeat offenders, unless combined with intensive supervision probation²⁰. Administrative seizure of driver's license plates, ignition interlocks, and vehicle impoundment have had the potential to reduce recidivism by half, while those sanctions are in effect.²¹ Driver's license suspension and treatment together seems to be more effective than either used alone²². Overall, a combination of treatment and sanctions appear to be the most effective way of dealing with repeat offenders²³. Availability of the latest research on the effectiveness of sanctions would greatly benefit sentencing decisions and lead to greater consistency in sentencing and lower recidivism rates.

As mentioned above, a helpful tool for judges could be the *DWI Sentencing Checklist* prepared by the National Center for State Courts (NCSC) and the National Highway Safety Administration (NHTSA) found in the Resources section of this report.

¹⁸ What is the Role of Courts in DWI cases? NCSC & NHTSA

¹⁹ Wells-Parker, R. Bangert-Drowns, J. Allegrezza, R. McMillen, and M. Williams, "Final Results from a Meta-analysis of Remedial Interventions with Drink/Drive Offenders," *Addictions* 90 (1995): 907-26

²⁰ G. R. Wheeler and R. V. Hissong, "Effects of Criminal Sanctions on Drunk Drivers: Beyond Incarceration," *Crime and Delinquency* 34 (1988): 29-42; R. K. Jones, C. Wiliszowski, and J. H. Lacey, *Evaluation of Alternative Programs for Repeat DWI Offenders* (Washington, DC: National Highway Traffic Safety Administration, 1996).

²¹ . H. Beck, W. J. Rauch, and E. A. Baker, *The Effects of Alcohol Ignition Interlock License Restrictions on Multiple Alcohol Offenders: A Randomized Trial in Maryland* (Arlington, VA: Insurance Institute for Highway Safety, 1997); National Highway Traffic Safety Administration, *State Legislative Fact Sheet* (Washington, DC: National Highway Traffic Safety Administration, 1996)

²² R. B. Voas and D. A. Fisher, "Court Procedures for Handling Intoxicated Drivers," *Alcohol, Drugs, and Driving* 25 (2001): 32-42

²³ Research by D. B. LeClair, L. Felici, and E. Klozbier (1987), reported in M. L. Breer, A. Schwartz, and B. A. Schillo, "How Judges Respond to Drunk Drivers," *Judicature* 87 (2003): 73

District Court (5th Judicial District, Lovington) Adjudication by year of arrest

5 th Judicial District			
Year		Conviction.	Dismissal.
2006	1 st	0	1
	2 nd	2	0
	3 rd	0	0
	4 th	0	0
	5 th	1	0
2007	1 st	8	2
	2 nd	2	0
	3 rd	0	0
	4 th	3	0
	5 th	7	0
2008	1 st	10	1
	2 nd	6	1
	3 rd	2	0
	4 th	5	0
	5 th	4	0
2009	1 st	4	2
	2 nd	3	1
	3 rd	0	0
	4 th	1	0
	5 th	3	1
2010	1 st	3	1
	2 nd	1	0
	3 rd	0	0
	4 th	2	0
	5 th	1	0

Data is drawn from February 2011 [NM Motor Vehicle Division](#) records, as reprocessed by the [UNM Division of Government Research](#) for the [New Mexico Traffic Safety Bureau](#)

Discussion on the District Court²⁴

The issue of multiple offenders continues to be a major problem and a hot topic of discussion among the general public. Every county in the state has its share of 'career drinking drivers' and Lea County is no exception. Unfortunately, often, it takes a tragic crash that wipes a family out before communities are galvanized to commit to increased efforts to curtail DWI. An analysis of repeat offenders shows that interventions that could have potentially prevented the offenses were clearly lacking.

Some of the common problems identified include DWI offenses heard in limited jurisdiction courts (Municipal and Magistrate), contributing to poor record-keeping, the correct and complete J & S retained by the court and the DWI abstract sent to MVD as required by law (§66-8-135), the Waiver of Counsel form, the appropriate and correct

²⁴ These are courts of general jurisdiction which hold jury trials.

(statutorily required mandatory minimums) sanctions imposed, inconsistent follow-up that sanctions imposed are actually completed and consistency in application of correctly charging of offenders by law enforcement and prosecutors alike.

As we know, DWI offenders don't get too concerned about which jurisdiction they decide to drink and drive in and as such the issue of the 'limited jurisdiction' courts (Municipal and Magistrate) is a statewide concern.

The 5th Judicial District Attorney's office has adopted a process to address the "proof of priors" issue, which is not foolproof, as it depends on other courts having the necessary paperwork available. This issue is common with most if not all District Attorney Offices. Again, if all courts that hear DWI were 'courts of record', and all paperwork were available electronically in a central database, these proof of prior issues could be greatly diminished. District Attorney staffing and resources become an concern when they have to spend time gathering all the necessary paperwork to prove the priors in order to fully prosecute a repeat offender.

Proving prior DWI convictions²⁵ from the DWI Benchbook (**Judicial Education Center at UNM**):

Chapter 5. Section 5.8 Sentencing Considerations

It is important for the court to distinguish between mandatory sentencing and discretionary in imposing its sentences, and the proof needed for each. In order for a mandatory DWI sentence to be imposed, proof beyond a reasonable doubt of each and every prior conviction is necessary. For example, if a defendant is to be sentenced as a third DWI offender, and the judge plans to impose the mandatory sentence of 30 consecutive days in jail, the prosecution must first produce certified copies of each of the prior convictions, showing the defendant was represented by, or waived, counsel in order to prove both of those prior convictions. Only then may the judge sentence the defendant to the mandatory 30 days in jail.

However, the prosecution not being able to prove the prior DWI offenses beyond a reasonable doubt does not preclude the judge from sentencing the defendant to that 30 days in jail discussed in the above example. This may be done as part of the judge's discretionary sentencing as long as the sentence given is within what is allowed by statute. For example, for a first offense DWI the jail sentence may be up to 90 days. §66-8-102(E). This means that the judge can sentence the defendant anywhere from 0 days to 90 days.

From the DWI Benchbook, Chapter 1 DWI Offenses and Statutory Elements,
Note on Felony DWI:

A fourth or fifth DWI conviction is a fourth degree felony. §66-8-102(G)-(H). A sixth and subsequent DWI conviction is a third degree felony. §66-8-102(I)-(J). Jurisdiction over felony DWI lies exclusively with the district courts. The crime of felony DWI does not have different elements from the crime of misdemeanor DWI. Proof of a minimum of three prior convictions is not a statutory element of felony DWI, but proof of those prior convictions is required in order to sentence a defendant for felony DWI. The felony designation is intended to enhance the sentence for offenders with multiple DWI convictions, and not to create a new offense with discreet elements other than those already provided in §66-8-102(A)-(D). State v. Anaya, 1997-NMSC-010, ¶ 18.

The prosecution must provide formal notice in order to enhance a misdemeanor DWI to

²⁵ <http://jec.unm.edu/manuals-resources/manuals/2010%20DWI%20Benchbook.pdf>

a felony. This requirement was satisfied in Anaya by the prosecution filing a criminal information alleging the defendant committed a felony in violation of §66-8-102(G) and by the trial court holding a hearing to determine whether the defendant had in fact been previously convicted of three or more DWI offenses. A probable cause finding by the court on the existence of those prior DWI convictions is not required to support jurisdiction in the district court for a felony DWI. Anaya at ¶¶ 24, 25. If the charge is brought by a grand jury indictment, the statute number will reflect the felony nature of the DWI offense.

Case Study of a ‘Career Drinking Driver’

Let’s examine the case of Frank Quintana. Who, according to his driver’s license was a Hobbs resident for all the DWI incidents researched and listed below:

- 1st arrest, Santa Fe, April 28, 1989 Municipal Court
 - No disposition info.
- 2nd arrest, Santa Fe, December 24, 1998 Municipal Court
 - Conviction, (Sentence unknown – assume 1st offender program)
- 3rd arrest, Santa Fe, February 26, 2000²⁶ Municipal Court
 - No disposition info
- 4th arrest, Grants, January 6, 2004 Magistrate Court
 - Pled to DWI 1st conviction, BAC .19, mandatory minimum sanctions imposed, did not complete 24 hrs. CS or install ignition interlock, court lost jurisdiction; no penalties for non-compliance.
- 5th arrest, Grants, December 26, 2007 Magistrate Court
 - Pled to non-aggravated DWI 3rd conviction, BAC .27, Mandatory minimum sanctions imposed
- 6th arrest, Grants, January 12, 2008 Municipal Court
 - Pled to DWI conviction, sentence to be served concurrent with his conviction on the non-agg 3rd DWI (see above DWI 5th)
- 7th arrest, Hobbs, October 17, 2009 Municipal Court
 - Pled to DWI (unknown to which level) sentence (unknown)
- 8th arrest, Hobbs, November 30, 2009 District Court
 - Pled to DWI 4th conviction, BAC .32, sentenced to 18 months in DOC.

Prior to his 5th DWI arrest and conviction, it appears no significant sanctions were imposed (4 days jail and \$500 fine on his 4th arrest, yet non-compliant on two of the other sanctions imposed). In his 6th DWI arrest, the court basically ‘combined’ the sentence with the 5th DWI arrest judgment and the sentence was to run concurrent. On March 10, 2009 he “met all obligations” (as noted in the (nmcourts.gov) website case look up). Mr. Quintana evidently could not curtail his drinking and driving. He again is arrested on October 17, 2009 in Hobbs and cited into the Municipal court and convicted on November 16, 2009. This author could not ascertain the sentence, but it is very clear that he was out drinking and driving, yet again, as he was arrested on November 30, 2009 by a Lea county Sheriff’s deputy. He is charged with his DWI 6th offense and pleads guilty to a 4th offense DWI on April 15, 2010 in District Court.

²⁶ Data is drawn from February 2011 [NM Motor Vehicle Division](#) records, as reprocessed by the [UNM Division of Government Research](#) for the [New Mexico Traffic Safety Bureau](#)

Quintana is sentenced to 18 months confinement (given 130 days credit for time served prior to sentencing), one year of parole after release, pay various fees, ignition interlock for life (the mandatory minimums of screening and treatment did not appear to be ordered). As of this report date, Mr. Quintana had served his incarceration (in the Department of Corrections(DOC) – inmates earn meritorious deductions – approx. one day served is equal to one day off sentence) and is currently under the supervision of the DOC, Parole division in Hobbs, where he presumably is residing.

The prosecutors in District Court did a relatively good job getting the proof of priors but it appears that one of the convictions posed a problem, resulting in the plea to a 4th offense DWI. The ‘weak links’ become evident in this case-study relating to problems with DWI cases in Municipal Court - lack of streamlined record keeping, court of no record, and lack of meaningful sanctions early in Mr. Quintana’s drinking driving career which could have potentially prevented further offenses. Of note, is the fact that Mr. Quintana was cited into the Hobbs Municipal court on his 7th arrest and review of the CTS database indicate at that time he had three prior convictions; 1990, 2004 and 2007, yet was adjudicated in that court of limited jurisdiction.

As demonstrated in many of the repeat offender cases, the gaps in the system which inadvertently foster the ability of offenders to continue their drinking driving careers. It becomes evident very quickly that contributing factors include poor record keeping, lack of communication among the courts, lack of meaningful sanctions and follow-up to assure the sentencing requirements have been completed as ordered by the court.

In our review of the Lea County data, there were 44 repeat offenders with four or more prior convictions on their records. They show up in the database reviewed if they were arrested between the years 2006-2010. The case-study of Frank Quintana is just an example of the varied problems involved with stopping the repeat offender.

Re-arrest rates (recidivism) by court from those arrested in 2006

Court	Rate
Hobbs Municipal	17%
Lovington Municipal	12%
Jal Municipal	9%
Eunice Municipal	0%
Hobbs Magistrate	19%
Lovington Magistrate	17%
Jal Magistrate	0
Eunice Magistrate	0

Note: this chart shows the re-arrest rate for people who were arrested in Lea County during 2006 and then were arrested again over the following three years.

The DWI re-arrest rates are from data in the DWI Citation Tracking System (CTS) database, which is a central depository of all DWI citations in the new Mexico dating back to 1984. It is considered the official database where all DWI arrest information is recorded including the results of court action on DWI citations (as per §66-8-135). Recidivism has been shown to be more or less likely as a function of the sanctions resulting from arrest (Delaney et al., 2005; National Highway Traffic Safety Administration, 2008; Nichols and Ross, 1990), which can include license withdrawal, fine, jail, alcohol education or treatment, alcohol ignition interlock, probation, or other sanctions. Recidivism rates also depend upon the level of enforcement in the community.

As mentioned in the Magistrate Court discussion, research indicates a combination of treatment and sanctions appear to be the most effective way of dealing with repeat offenders²⁷. Availability of the latest research on the effectiveness of sanctions would greatly benefit sentencing decisions and lead to greater consistency and lower recidivism rates.

In a recent NHTSA evaluation of the New Mexico interlock program, high-BAC first offenders who installed an interlock under court mandate, were compared with similar high-BAC first offenders without interlocks. First offenders who had interlocks installed had an overall 39% lower recidivism rate during the study period (both during and after interlocks, (2003-2005)) than the first offenders who did not install interlocks.

The use of the Lea County DWI program to monitor offenders for compliance, ensuring sanctions are followed through is more than likely a major contributing factor to the relatively low recidivism rate in Lea County. To achieve an even lower recidivism rate all courts handling DWI cases should utilize the Program for compliance monitoring, adding to consistency in compliance of DWI offender's sentences and follow up.

DWI Arrests with missing court disposition information by arresting agency and year.

Agency	2006	2007	2008	2009	2010	Total
Hobbs PD	5	21	28	32	87	173
NM State Police	4	7	7	22	35	75
Lovington PD	2	3	8	17	20	50
Lea County S.O.	2	4	16	9	13	44
Jal PD	1	2	1	3	6	13
Eunice PD	1	1	0	2	7	11
Tatum PD	1	1	0	2	2	6

Discussion

We know which law enforcement agency made the DWI arrest; we do not know which court had jurisdiction. Once a DWI case is adjudicated, the court is required to send the abstract to MVD as stated by law (§66-8-135).

When DWI court disposition information is missing in the CTS database, it can be problematic for prosecution of repeat offenders. Being able to review a driver's DWI history can be a critical first step for prosecutors to have access to the full DWI history of an individual.

These citations could be researched locally, either by the law enforcement agency that issued the citation or by the DWI Program to locate the abstract most likely in the court file and have it sent in to MVD to be entered in the CTS database.

²⁷ Research by D. B. LeClair, L. Felici, and E. Klozbier (1987), reported in M. L. Breer, A. Schwartz, and B. A. Schillo, "How Judges Respond to Drunk Drivers," *Judicature* 87 (2003): 73

DWI Benchbook²⁸ Chapter 5. Section 5.11 DWI Conviction Records

Within 10 days of a DWI judgment and sentence, the court must send an abstract of the court case to the Motor Vehicle Division, unless the conviction is appealed to a higher court. According to §66-8-135(B), the abstract must contain the following information:

- Name and address of the defendant.*
- Specific section number and common name of the state statute or local law, ordinance or regulation under which the defendant was tried.*
- The plea, finding of the court and disposition of the charge, including any fine, jail sentence, forfeiture of bail or dismissal of the charge.*
- Itemization of costs assessed to the defendant.*
- Date of the hearing.*
- Court's name and address.*
- Whether the defendant was a first or subsequent offender.*
- Whether the defendant was represented by counsel or waived the right to counsel and, if represented, the name and address of counsel.*

*This information is usually entered on the court abstract form from the DWI citation provided by the Motor Vehicle Division. **Failure or refusal of any judicial officer to comply with the requirements of §66-8-135 is misconduct in office and grounds for removal. §66-8-135(F).***

A prior DWI conviction will be counted for the purpose of determining subsequent convictions, for charging and sentencing decisions, even if the sentence is deferred. Therefore, it is important for court abstract information to reach the Motor Vehicle Division in a timely manner.

A DWI conviction stays on a motorist's driving record for 25 years, unlike other traffic convictions, which drop off after three years. Although a deferred sentence for other Motor Vehicle Code violations means the offense drops off a motorist's driving record entirely, that is not the case for DWI convictions that result in deferred sentences.

²⁸ <http://jec.unm.edu/manuals-resources/manuals/2010%20DWI%20Benchbook.pdf>

Resources

Training for Law Enforcement and Prosecutors

Donna Bevacqua-Young

Traffic Safety Resource Prosecutor
New Mexico Attorney General's Office
Special Prosecutions Division
408 Galisteo Street
Santa Fe, NM 87504
phone: 505-827-6000-main
505-827-6939-direct
505-827-6081-fax
505-469-0480-cell

Information for Courts

National Center for State Courts

300 Newport Avenue
Williamsburg, VA 23185-4147
Phone (800) 616-6164
<http://www.ncsc.org/>

Judicial Education Center

MSC11 6060
1 University of New Mexico
Albuquerque, NM 87131-0001
505-277-5006
<http://jec.unm.edu/>

DWI Penalty Chart Produced by the Institute of Public

<http://transportation.unm.edu/pubs/HighCost11x17.pdf>

DWI Sentencing Checklist²⁹

The table below summarizes the evidence concerning various DWI sentencing options

Offender	Sanction	Effectiveness	Comment
First Conviction	Licensing		
	Suspension/revocation (≥90 days; 30 days hard)	Reduces alcohol-related fatalities 6%-19% (administrative license revocation)	One study showed it does not cause employment problems.
	Vehicle Actions (For Very High BAC's)		
	Impoundment/immobilization	Reduces recidivism by 40%-70%.	Immobilization may be more cost-effective.
	Alcohol ignition interlocks	Effective while on vehicle.	Breath test failures in first few weeks are best predictor of recidivism.
	License plate impoundment	Shown to be effective in MN.	More cost-efficient than impoundment
	Assessment and Rehabilitation		
	Treatment as appropriate to problem	Reduces recidivism by 7%-9%.	Should be paid by the offender when possible
	Sentencing Options		
	Electronic monitoring home confinement	Effective alternative to jail. Reduces recidivism by 33%.	Can be self-sufficient if paid by the offender
Fines	No studies of effectiveness found.	Sometimes used to pay for programs.	
Licensing			
MULTIPLE CONVICTIONS (Repeat Offender)	Suspension/revocation (≥ 1 year) 30-90 days hard Remaining days on restricted license/work permit.	No studies found on the effects of license suspension on repeat offenders. General deterrent effect of 6%-19%.	Studies indicate 50%-70% of offenders continue to drive to some extent
	Vehicle Actions		
	Impoundment/immobilization	Reduces recidivism by 40%-70%.	Immobilization may be more cost-effective.
	Alcohol ignition interlocks	Reduces recidivism while on vehicle.	Breath test failures in first few weeks are best predictor of recidivism.
License plate impoundment	Shown to reduce recidivism in MN.	More cost-efficient than impoundment.	

²⁹ *The Courts' Role in Reducing the Incidence of impaired Driving, a resource for general jurisdiction court judges*, National Center for State Courts and National Highway Safety Traffic Safety Administration.

MULTIPLE CONVICTIONS (Repeat Offender)	Assessment and Rehabilitation		
	Mandatory assessment of drinking problem and mandatory treatment	Reduces recidivism by 7%-9%.	Should be paid by the offender when possible.
	Sentencing Options		
	Electronic monitoring and home confinement	Reduces recidivism by 33%.	Can be self-sufficient if paid by the offender
	Intensive supervision probation	Reduces recidivism by 50%.	Should be at least partially funded by the offender
	Special DWI facilities	Reduces recidivism by 75%.	
	Day reporting center	Integrates offender back into society.	More cost-effective than jail.
	Fines, reinstatement fees	No studies on effectiveness found	Helps pay for costs of other sanctions.
	DWI court (e.g., frequent contact with judge; intensive supervision probation; treatment; random alcohol/drug testing; lifestyle changes; positive reinforcement)	Some courts reporting reductions in recidivism by 50% or greater.	Multiple funding sources available. NHTSA and the Bureau of Justice Assistance have a joint evaluation underway.