
DWI Court - SCRAM!

(This article was prepared by Glenn Edward Murray, Cornell Mansion, 484 Delaware Avenue, Buffalo, NY 14202, telephone number: 716-884-0139, and is reprinted with his permission. Mr. Murray has been a DUI criminal defense attorney in Western New York for over 20 years and is a general member of the National College for DUI Defense. He is the author of *Collateral Consequences of Criminal Conduct* (NYSBA, 1992) and *Criminal Law Slangage of New York 3d* (LexisNexis Publications, 2006). New York attorney Michael Dwan, who also defends DUI defendants, contributed to this article with his insightful comments)

June of 2007 marks the opening a new "DWI Court" for Erie and Niagara Counties. In this article, Western New York criminal defense attorney Glenn Murray, Esq., provides answers regarding what this court is for and how it will operate.

1. What is the purpose of DWI Court (DWIC)?

To judicially supervise Felony DWI offenders found to suffer from chemical dependency in a specialized and separate treatment court.

2. What is the model of DWIC?

Post-conviction by referral from a superior court judge upon sentencing a DWIC eligible defendant to a term of probation. This is not a pretrial diversion program, as it only applies to defendants already convicted of felony DWI. This program is based on the "Ten Guiding Principles of DWI Courts, promulgated by the National Drug Court Institute. http://www.ndci.org/pdf/Guiding_Principles_of_DWI_Court.pdf

3. What defendants are eligible for DWIC and when does the Program Start?

DUI felony offenders without any prior or pending violent offenses (including vehicular assault), and only if age 18 or older (or consent of parent or guardian). This program is expected to start on or about June 1, 2007.

4. Who is responsible for implementing and supervising DWIC?

A "DWI Team" of judges, attorneys, probation officers, project directors, case managers, treatment staff and commercial treatment providers. The Erie County DWIC Judge is The Honorable Patrick Carney. The Niagara County DWIC Judge is The Honorable Mark Anthony Violante. Both will serve as DWIC judges as acting County Court judges. Central to this concept are the treatment providers, which must be established drug treatment agencies licensed by the state, providing summary progress reports to the court. A probation officer will be dedicated to this program, pursuant to the state funding.

5. Who pays for DWIC treatment?

The defendant must access any and all forms of insurance and from public assistance to pay treatment providers, or pay directly out-of-pocket on a sliding scale fee.

D.W.I. LINK

6. What records are utilized for supervision in the DWIC?

Case Management Documentation, including the PSI/initial assessment, summary progress reports and any and all test results.

7. What drug/alcohol testing is utilized in the DWIC?

Testing must meet minimum standards of federal agencies. A urinalysis and/or a “SCRAM monitor” is mandated.

8. What the heck is a SCRAM?

Secure Continuous Remote Alcohol Monitor™. It uses Transdermal Alcohol Testing, a technology that continually measures the alcohol migrating through the skin, using an ankle bracelet to estimate Transdermal Alcohol Concentration™ (TAC™). New York State is buying 60 SCRAMs for the Erie and Niagara County DWICs.

More information can be obtained at:

<http://www.sens-o-lock.com/scram.html>

http://www.sens-o-lock.com/Mini_Brch.pdf

9. What is the sequence of events for DWIC?

- a) PSI requested by defense counsel, to be completed within 7 days of request and prior to referral.
- b) Risk/treatment assessment (suitability/potential for success).
- c) Recommendation and referral to OASAS-approved provider.
- d) Assessment by DWIC program.
- e) Contract signed by probationer and defense counsel.
- f) Progress reports, with urinalysis (drug) and SCRAM (alcohol) test results.
- g) Review hearings (weekly for 1st 90 days and bi-weekly til 6 months), for at least one-year.
- h) If probationer is non-compliant, “DWIC will impose graduated sanctions, such as: jail, community service, in-court admonishment/reprimand, DWIC removal, probation revocation.
- i) If compliant, graduation from DWIC.

10. Is this a good idea?

For some it is - for others NOT! For some defendants who otherwise might be sentenced to state prison, it may provide an “alternative to incarceration;” which is better than warehousing DUI defendants for years in state prison until release without adequate treatment. The judges chosen for DWIC are both experienced and respected jurists. DWIC reflects a social trend that certain kinds of cases should be sent to specialized and separate so-called “alphabet courts.” For treatment providers DWIC creates a “captive customer” base to bill insurance companies and public assistance funding. For example, I have often said that it is a “curse” to be a postal worker engaged in treatment because the cost has no limit, and such defendants will be viewed as a “golden goose” for profit-driven treatment providers, which can bill for as long as the defendant is deemed to require treatment. Overall, it is unfortunate that the concept is based on MADD-type extreme penalties rather than rewards. In other counties, DWI reward-based diversion programs have been successful, but have been discouraged by victim advocacy groups, like MADD, which abhor any favorable treatment by the courts toward DUI defendants. Thus, the Draft DWIC policy manual expressly states that the DWIC should not allow any penalty avoidance. I expect challenges to the jurisdiction of DWIC and the utilization of SCRAM.

Additional information about DWIC may be obtained from Jeff Smith, the DWIC Project Director (716-845-2509).