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Continuous Alcohol Monitoring: Supporting Supervision, Screening, and Early Intervention

By: Kathleen Brown¹

The responsibilities of a prosecutor go far beyond obtaining a conviction and incarcerating an offender. Our primary duty is to seek justice, which means, in part, tailoring a sentence to achieve the dual goals of punishment and rehabilitation. In terms of DUI, this means finding methods to ensure that the offender receives meaningful treatment for his alcohol or drug problem to minimize recidivism and ultimately protect the community from impaired drivers. To this end, prosecutors, the courts and probation officers must be aware of emerging technologies that may be used to ensure compliance with probation orders and protect the public from repeat offenders. The following article describes one such technology. Watch for the results of a NHTSA sponsored study being conducted to examine the efficacy of this device.²

Since the 1980s, public service campaigns and community-based programs have dramatically decreased the number of alcohol-related traffic fatalities. Still, impaired drivers, particularly repeat offenders, continue to plague courts, fill correctional institutions, and put communities at risk. Following the rehabilitative approach pioneered by the Drug Court model, the DUI issue has begun to see a paradigm shift, from strictly sanctions and punishment to a therapeutic approach addressing addiction.

In 2003, a new approach to managing alcohol offenders, called a Continuous Alcohol Monitoring (CAM) program, was introduced in Michigan. Designed to reformulate the way the Michigan Department of Corrections assesses and monitors alcohol offenders for extended periods of time, CAM gained a loyal following as a reliable tool for enforcing sobriety. "When used in conjunction with treatment, continuous alcohol monitoring lets you intervene quickly when someone is in violation," says Georgia Felner, assistant district attorney of Williamson County, Tennessee. "It takes the guesswork out of the process of assessing and deterring offenders who, generally, will do whatever it takes to beat the system and take a drink."

The Science

The system used in Michigan, Tennessee, and 27 other states is known as SCRAM, Secure Continuous Remote Alcohol Monitor. The foundation of the program is an ankle bracelet/modem, similar to a GPS system. However, instead of monitoring an offender's location, the system samples the offender's

insensible perspiration³ to measure blood alcohol content. "Continuous" refers to the automated testing protocol, which programs the bracelet to take a sample as often as every 30 minutes. The offender does nothing, and testing is unsupervised. At least once a day, at a pre-determined time, the offender is required to be within 30 feet of a corresponding modem, which plugs into a conventional phone line at the offender's home or work. At this time, the bracelet "looks" for the modem and sends all test results to it via a wireless signal. The modem then sends the results to a secure, web-based network hosted and operated by Alcohol Monitoring Systems (AMS), which invented, manufactures, and markets the SCRAM System.

Assessment and Deterrence

According to Felner, the frequent testing combined with treatment shows the most promise for keeping chronic impaired drivers from repeating again. However, Tennessee and many other states target first-timers as well. "That's not their first drunk driving offense, it's just the first time they got caught," Felner says. In fact, published studies estimate that a DUI offender drives drunk at least 200 times before getting caught.⁴ MAXIMUS, Williamson County's service provider, does a full assessment on first-time offenders, and those testing above a pre-defined level of risk are immediately put on SCRAM for evaluation.

The frequent testing means the problem offenders don't slip through the cracks. That knowledge, according to Judge William Nelson of the Marion County, Indiana, Superior Court Criminal Division, enhances offender accountability and supports assessment and deterrence throughout the system, whether it's pretrial, offender reentry, or the adult supervision program. "Nonviolent alcohol offenders are often the first ones facing early release because of overcrowding, and they're the ones with the highest recidivism rates," says Nelson. "Now, we know we're keeping them from drinking, and we also know we've improved their chances for successful re-integration, for getting and maintaining employment, and for treatment outcomes." Marion County uses CAM on both first-time and repeat DUI offenders.

How Courts are Defining Compliance

Confirmed drinking events and confirmed tapers are considered violations of the SCRAM

system. Any attempt to tamper is usually a precursor to an attempt to drink, as well as a red flag that other issues, such as employment, residence, or family situation may also be in jeopardy. Statistics compiled by AMS show that 62 percent of the offenders sentenced to SCRAM in 2004 were fully compliant during their time on the program. "That's 62 percent of your offenders who you know are sober, so you don't have to spend your time tracking them down and trying to second-guess whether they're in compliance," says Don White, vice president of field operations for AMS. The remaining 38 percent violate either through drinking, tampering, or both. According to White, the statistics also show a marked increase in compliance the longer someone was on a CAM program, beginning at the 90-day mark and leveling off at 180 days.

Court Challenges to Continuous Alcohol Monitoring

Only 7 percent of the offenders found in violation of the terms of their SCRAM program in 2004 denied a violation and requested a hearing. Of those 95 offenders, 74 subsequently admitted non-compliance when confronted with the SCRAM. Of the remaining 21, 16 had their bonds revoked and were incarcerated. The final five offenders were kept in the community, but were required to remain on SCRAM for a longer period of time.

Defense attorneys sometimes challenge SCRAM's admissibility. White says that the majority of judges who have heard these challenges required expert testimony that SCRAM meets the

standards set by *Frye*, *Daubert*, or a hybrid of the two, depending on the jurisdiction. The company typically provides scientific and technical experts who testify about the device's reliability. Challenges usually diminish once reliability is established in a given jurisdiction. There are no official appellate decisions regarding SCRAM's admissibility; however, a number of trial judges have admitted the evidence.

While the current focus of the company is limited to the criminal justice arena, they have been approached about applications of the technology in the private sector as well. "From supporting private alcohol treatment programs and underage drinking initiatives to assessing transplant candidates, the ability to monitor sobriety has applications we're only beginning to consider," says White.

For further information, please contact Lou Sugo, Marketing Director, AMS at lsugo@alcoholmonitoring.com.

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² Introduction by Elizabeth Earleywine, Senior Attorney, APRI's National Traffic Law Center

³ Insensible perspiration is defined as the vapor that escapes through the skin when the body sweats. The vapor cannot be seen or detected through the olfactory system.

⁴ Voas, R.B., & Hause, J.M. *Detering the drinking driver: The Stockton Experience*, Accident Analysis and Prevention 19(2):81-90, 1987.

DRIVING WHILE SUSPENDED OR REVOKED: THE OVERLOOKED EPIDEMIC

By Seldon Fritschner¹ with Elizabeth Earleywine²

For years, law enforcement officers have complained about the number of people driving with suspended or revoked (S/R) licenses. A significant number of S/R drivers are dangerous drivers; research indicates that one in five of all highway fatalities involves a driver whose license is suspended or revoked.³ However, others may not be. Many states permit or require judges or hearing officers to suspend or revoke people's driver's licenses for infractions having nothing to do with driving. For example, many states require that judges suspend or revoke people's licenses for failing to pay taxes or child support, poor performance in school or underage tobacco use. This dramatically increases the number of S/R violators. Research suggests that as many as 70 percent of S/R drivers continue to drive.⁴ Unfortunately, the system is so overburdened and understaffed that prosecutors and judges may have insufficient time or resources to differentiate between dangerous and non-dangerous S/R drivers.

President Bush has challenged the Department of Transportation (DOT) to develop creative ways to reduce the number of fatalities on the nation's highways. Secretary Mineta and Dr. Jeffrey Runge, administrator of DOT's National Highway Traffic Safety Administration (NHTSA), established a goal to reduce the highway fatality rate to not more than 1.0 person per 100 million vehicle miles traveled by 2008, down from 1.7 persons per 100 million vehicle miles traveled in 1996. They have reached out to all organizations involved in promoting highway safety to support this goal. The American Association of Motor Vehicle Administrators (AAMVA) Board of Directors backs this initiative. To this end, AAMVA's Law Enforcement Committee assembled a working group to review the S/R drivers problem. This working group includes representatives of many communities: law enforcement, the judiciary, prosecutors, motor vehicle administrators, and researchers. The group's goals are to define the scope of the problem and formulate cre-

ative ways to reduce the number of S/R drivers.

The working group intends to answer several questions: (1) What percentage of serious injury/fatal crashes involve drivers whose licenses are suspended or revoked due to bad driving (i.e. DUI convictions, accumulation of points or too many moving violations) as opposed to other reasons? (2) What is the likelihood of S/R drivers becoming a greater danger because they flee law enforcement upon seeing the red and blue lights signaling them to pull over? (3) How does the criminal justice system handle these offenders at the present time?

In answering this last question, the group will address issues such as:

Do judges and prosecutors have adequate information as to the basis of suspension or revocation and the defendant's prior driving history?

Why are charges dismissed in court? Is it proof problems, such as notification to the driver of his or her S/R status, or are courts employing alternative strategies that result in dismissals?

By answering these and other questions, we can identify possible solutions. Until that time, we (justice system professions, law enforcement officer, motor vehicle administrators and legislators) must continue to take appropriate steps to keep the truly dangerous S/R driver from operating a motor vehicle. Together, we can achieve our ultimate goal: true highway safety accomplished by having only legal and safe drivers on the roads.

¹ Seldon Fritschner is Senior Director of the Law Enforcement Division of the American Association of Motor Vehicle Administrators.

² Elizabeth Earleywine is Senior Attorney with APRI's National Traffic Law Center.

³ Id.

⁴ Lindsay I. Griffin, III and Sandra DeLaZerda, *Unlicensed to Kill*, Prepared for AAA Foundation for Traffic Safety, June 2000.

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