



MARYLAND

MARYLAND ALCOHOL SAFETY ACTION PROGRAM COMMITTEE

*Task Force to Combat Driving Under the Influence
of Drugs and Alcohol*

FINAL REPORT



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final report

Maryland Alcohol Safety Action Program Committee

Task Force to Combat Driving Under the Influence of Drugs and Alcohol

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1.0 Making the Case for a Proactive Approach to Impaired Driving

1.1 BACKGROUND

The *Maryland Task Force on Driving Under the Influence of Drugs and Alcohol* Report (October 2008) recommended a committee be established to research a Task Force recommendation to explore the creation of an alcohol safety action program similar to what currently is in operation in Virginia. On December 8th, 2009, Maryland Governor Martin O'Malley issued an Executive Order establishing the Maryland Alcohol Safety Action Program Committee (the Committee). This Executive Order noted that although many excellent programs to reduce drinking and driving exist in Maryland, the State lacks a comprehensive, coordinated program that ties together all of the critical components to maximize the effectiveness of these programs. The Committee spent five months from June to November 2010 researching the issue and discussing possibilities for improving Maryland's postarrest and pretrial program for impaired drivers. This Final Report of the Maryland Alcohol Safety Action Program Committee proposes the enhancement, elevation, and streamlining of the State's work with impaired driving offenders. The recommendations in this report address the shortcomings in the current impaired driving system using research-based, cost-effective interventions that would reduce impaired driving recidivism in Maryland.

Up until now, Maryland's attempt to create a more coordinated, offender-focused process for impaired driving offenders centered on the creation of Driving Under the Influence (DUI) Courts. Recidivism rates for the three DUI Courts in Maryland are approximately 0-10 percent¹ and Maryland's overall recidivism rate is at 13.6 percent.² While the DUI Courts serve high-risk, repeat offenders, the difference in recidivism rates indicates that a comprehensive case management system significantly reduces the risk of reoffending. Because research shows a majority of impaired driving crashes are caused by high-risk,

¹ This data is an estimate based on Maryland Highway Safety Office annual final narrative reports from all three Maryland DUI Courts.

² The population served by the DUI courts is significantly lower than those in the traditional court system.

repeat offenders, reducing the recidivism rate is a critical performance measure. However, while an evaluation of the Anne Arundel County DUI Court Program did show a cost benefit compared to cases in the traditional court system, the DUI Court model is costly and resource intensive.

As part of their work, the Committee spent time with officials from the Virginia Alcohol Safety Action Program (VASAP), where staff from the VASAP State Commission offices and local Fairfax County Alcohol Safety Action Program (ASAP) offered a detailed account of how the program operates and the benefits derived by the local jurisdictions and the State. In Virginia, the overall recidivism rate is 10 percent, compared with Maryland's 13.6 percent. This is a good indication of the benefits of a large-scale offender case management system. The VASAP program consists of the following key elements that could be applied to benefit Maryland:

- Provides case management services that manage the whole offender from time of conviction until completion of a recovery process;
- Achieves buy-in and advisory support from the local law enforcement, judiciary, drug abuse agencies, and treatment councils; and
- Supports the program through user-fees.

According to Federal statistics in the Fatality Analysis Reporting System (FARS), the number of alcohol-related traffic deaths in Maryland increased by 12 percent from 2008 to 2009, and trend data has not shown any significant declines since 2006. The Committee strongly encourages consideration of its recommendations as a key next step in reversing these trends.

1.2 PROBLEM STATEMENT

In addition to Virginia, programs in several other states have shown the most effective solution to reducing impaired driving recidivism is to offer a case management approach that addresses the whole offender. Upon review of the entire impaired driving system in Maryland, the Committee discovered five main weaknesses:

1. Repeat Offenders;
2. Fragmented System;
3. Lack of Data Management;
4. Lack of Consistency; and
5. Cost.

The proposed program addresses current weaknesses in Maryland's impaired driving offender system by addressing the problems caused by the lack of case management in the current system.

Repeat Offenders

The purpose of a coordinated alcohol safety action concept is to save lives by reducing impaired driving recidivism, which also will ultimately result in substantial savings to state and local government in terms of court costs, jail expenses, health care, etc. Data from the National Study Center for Trauma/EMS at the University of Maryland-Baltimore showed that in 2003, the number of offenders who reoffended in subsequent years was 13.6 percent, or 3,315 of the total 24,241 cited for impaired driving. Virginia, which has an alcohol safety action program and serves a population of 7,400 offenders annually, had a recidivism rate³ of 10 percent.

Fragmented System

One of the reasons for Maryland's high-recidivism rate is the fragmented nature of the State's current system, which refers convicted offenders to the Drinking Driver Monitor Program (DDMP) in the Division of Parole and Probation. DDMP does what the title indicates – they monitor, not manage, offenders. There is no case management process that identifies an individual with a potential alcohol problem and then manages them through a recovery process that includes sanctions, education, and, where appropriate, treatment.

Lack of Data Management

Another shortcoming in Maryland's approach is the agencies and departments responsible for working with offenders rarely communicate with one another, making it difficult to manage the offenders. Data on impaired driving offenders comes from a myriad of places, including law enforcement, the Motor Vehicle Administration (MVA), the Alcohol and Drug Abuse Administration (ADAA), the courts, and the Division of Parole and Probation (DPP). An inability to track offenders throughout the process from arrest through completion of probation increases the likelihood individuals slip through the cracks.

Lack of Consistency

The lack of coordinated data also results in widely differing sanctions for impaired driving offenders. There is no consistency in terms of what sanctions should be applied, where individuals should be referred, and what programs show results. A key goal of the proposed program is to establish evidence-based models and to ensure people attend and are assessed by certified programs.

In the last 10 years research has been done on the effectiveness of alcohol dependency programs. According to the National Highway Traffic Safety Administration (NHTSA) publication "*Countermeasures That Work*," the use of

³ Virginia defines recidivism as a person who has a second alcohol-related conviction within five years of the first.

alcohol screening and brief interventions are highly effective in reducing both drinking and alcohol-related fatalities and serious injuries.⁴ The report explains “alcohol screening is a quick assessment that estimates the level and severity of alcohol use and also identifies the appropriate level of treatment,” and “brief interventions are short, one-time encounters with people who may be at risk of alcohol-related injuries or other health problems.”⁵

Cost

The fragmented nature of the current system makes it difficult to analyze the totality of the State’s current investment in dealing with impaired driving offenders. The costs of the current system include the DDMP supervision costs, potential criminal supervision costs, and incarceration costs where necessary. It costs the State \$351 a year to have an offender under supervision through DDMP, and \$1,567 for criminal supervision. The cost of incarceration at a *State of Maryland, Department of Corrections* prison varies by level of supervision, but an average cost between different levels of supervision is \$32,600 annually. This average for the Department of Corrections prisons is different than the cost of incarceration at a local level, which varies by jurisdiction. Virginia’s comprehensive impaired driving offender case management approach has reduced costs to the State over time, through reduced recidivism and streamlined service delivery.

1.3 PROPOSED PROGRAM

After extensive discussion among all parties, the Committee determined the creation of a new agency similar to Virginia’s VASAP was unnecessary. The Committee recommends a new Division, **the Division of Impaired Driver Case Management (IDCM)**, be created within the Department of Public Safety and Correctional Services (DPSCS). The Committee carefully examined the benefits and costs associated with the creation of a new agency; however it found many of the functions performed by VASAP currently are performed in Maryland across several existing agencies. The shortcoming was not that the functions did not exist, but that these agencies do not share information or work with the offender in a coordinated manner, limiting Maryland’s ability to work effectively with impaired driving offenders. The main benefit of Virginia’s program that does not currently exist in Maryland, true offender case management services, will be incorporated as the cornerstone of IDCM. Rather than recreating the State’s method for dealing with impaired driving offenders in a new agency, the

⁴ NHTSA, 2010. National Highway Traffic Safety Administration (2010). *Countermeasures That Work, A Highway Safety Countermeasure Guide for State Highway Safety Offices*, DOT HS 811 258, Washington, D.C.

⁵ Ibid, page 1-38.

modification, enhancement, and elevation of the current system accomplishes the same goals without incurring the same level of costs.

The creation of the DDMP in 1970s was a true advancement in how Maryland dealt with impaired driving offenders. Since that time, much has been learned about how to manage this population effectively and reduce recidivism. Impaired driving offenders are predominately prosocial and have very different characteristics from criminal offenders; however they need to be followed with the same level of precision. The Committee believes that using DDMP as a basis for a new division within the Department of Public Safety and Correctional Services presents the best option for serving these individuals. The transition of DDMP away from being a program within the DPP into its own division within the DPSCS, namely the Division of Impaired Driver Case Management (IDCM), would accomplish the following:

- Increase the level of professionalism, credibility, and awareness of the State's work in managing the impaired driving offender population;
- Build on the existing DDMP monitor infrastructure and workforce, thereby requiring no anticipated large additional infrastructure (i.e., space leasing) costs;
- Introduce new comprehensive offender assessment and case management capabilities that increase the effectiveness of State management of impaired driving offenders;
- Facilitate interagency communication and eventually data management giving the State a method for understanding the effectiveness of impaired driver interventions that currently does not exist;
- Serve as a training outreach resource for the State to provide the appropriate training for local treatment agencies, the judiciary, law enforcement, etc.; and
- Provide an option for pretrial intervention to eliminate the current practice of "pretrial assessment shopping."

Expanding on these general recommendations, Table 1.1 provides an overview of the proposed IDCM structure and summarizes all of the key components of the recommended program. Following Table 1.1 are the details behind each component of the recommended program.

Table 1.1 Program Summary for the Division of Impaired Driver Case Management (IDCM)

Program Element	Description
Host Agency	<ul style="list-style-type: none"> Department of Public Safety and Correctional Services – Division of Impaired Driver Case Management (IDCM) would replace DDMP.
Graduated Implementation Process	<ul style="list-style-type: none"> Phase-in of the program across Maryland, initially launching in four jurisdictions across the State, with one from each of these population tiers: <ul style="list-style-type: none"> Group 1: Over 500,000 residents; Group 2: 105,000 to 499,999 residents; Group 3: 72,000 to 104,000 residents; and Group 4: Under 72,000 residents. Implement the program over time based on available budgets.
Partners	<p>Department of Public Safety and Correctional Services – Division of Impaired Driver Case Management (DPSCS-IDCM)</p> <ul style="list-style-type: none"> Provides comprehensive case management services, including an Alcohol and Other Drug (AOD) screening to determine what services the offender needs; Assists the MVA and ADAA with the development of a basic impaired driver education course; Provides overall case management to ensure offenders complete treatment and advanced education if required by the their case plan; and Conducts ongoing outreach to all stakeholders, particularly the Judiciary (including the Office of Administrative Hearings), to ensure all capabilities and advantages of IDCM are utilized. <p>Department of Transportation – Motor Vehicle Administration (MDOT-MVA)</p> <ul style="list-style-type: none"> Retains authority over the license; Takes appropriate action if IDCM informs MVA that an offender fails to complete IDCM requirements; Manages Ignition Interlock Program; Refers individuals to IDCM; and Leads the development of a basic impaired driver education course in collaboration with the IDCM and ADAA.

Program Element	Description
Partners (continued)	<p>Department of Health and Mental Hygiene – Alcohol and Drug Abuse Administration (DHMH-ADAA)</p> <ul style="list-style-type: none"> • Certifies external assessment facilities for offenders referred by IDCM that determine additional education and treatment needs; • Certifies external advanced education and treatment programs; • Assists IDCM to identify and sanction an AOD screening tool; and • Assists the MVA and IDCM with the development of a basic impaired driver education course.
Stakeholders	<p>The following stakeholders would play a key role in ensuring that the whole offender is managed from the point of arrest through adjudication and treatment to ensure that there are no gaps and that no one falls through the cracks.</p> <ul style="list-style-type: none"> • Judiciary (District Courts, Circuit Courts, Office of Administrative Hearings); • Law enforcement; • Legislators; • Local governments; • Existing drug and alcohol abuse councils at the local jurisdiction and State levels; and • Public safety advocacy groups.
Funding	<ul style="list-style-type: none"> • The intent of the IDCM model is that the program be self-supporting from user fees. • Current DDMP fee structure would stay in place (\$100 per month (\$55 for program fee; \$45 for supervision fee)). <ul style="list-style-type: none"> – Existing special fund revenues will be used as a funding stream to support the new system. – Two options exist for long-term program funding to support the new division: <ul style="list-style-type: none"> » The supervision fee could be diverted from the General Fund to this new Division; OR » The program could follow the Virginia model and charge a range of different fees by type of service delivered.
Employees	<ul style="list-style-type: none"> • The intent is not to expand the number of employees; the new IDCM would use the same number of positions as the current DDMP, however the skill level of the employees would be raised. <ul style="list-style-type: none"> – New IDCM employees must have a Bachelor's degree in a relevant discipline. • Current DDMP employees would be grandfathered into the new division. <ul style="list-style-type: none"> – New IDCM case managers would be phased-in as natural attrition in the DDMP monitor workforce occurs; and – DDMP monitors will require additional training to prepare them for new case management responsibilities.

Program Element	Description
Data	<ul style="list-style-type: none"> The Traffic Records Coordinating Committee is researching a data management system that would allow IDCM to view information from the courts, ADAA, MVA, arrest information, including Blood Alcohol Content (BAC) levels, and criminal history.
Outreach	<ul style="list-style-type: none"> IDCM will conduct extensive outreach and education to the judges, local governments, prosecutors, defense attorneys, and others so they understand the enhanced capabilities and functions of IDCM. Particular focus will be given to outreach to the Judiciary.
Program Oversight	<ul style="list-style-type: none"> A statewide advisory council comprised of key stakeholders and all partners would provide independent program oversight. Local advisory councils, also comprised of key stakeholders, would provide local program oversight.
Evaluation of Performance Measures	<ul style="list-style-type: none"> Fatalities and serious injuries that are impaired driving-related. Recidivism. Effectiveness of education programs. Effectiveness of treatment.

1.4 PROPOSED PROGRAM DESCRIPTION

This section provides a description for all aspects of the proposed program and explains what recommendations were made by the Committee and why. This proposed program would enhance the offender's experience from arrest through adjudication and treatment; allowing them to voluntarily enroll pretrial with referral to the IDCM post-trial by the courts or administratively.

Host Agency

The advantage of utilizing DDMP's existing staff and infrastructure as a basis for IDCM is that doing so eliminates the need for additional State investment that would have been required for the creation of an entirely new agency.

Graduated Implementation Process

A graduated implementation process will allow for improvements in the IDCM program as it is deployed across Maryland. The Committee believes it is important to begin the implementation process in a diverse set of counties across Maryland in order to understand how the IDCM system works in communities with different public capacity levels and different needs. The Program Committee recommends initially launching IDCM in four jurisdictions, one in each of the following population tiers:

1. Group 1: Over 500,000 residents;
2. Group 2: 105,000 to 499,999 residents;
3. Group 3: 72,000 to 104,000 residents; and
4. Group 4: Under 72,000 residents.

Graduated implementation also will allow IDCM to be implemented around the State as funding becomes available and as attrition occurs in the existing DDMP staff.

Partners

While the proposed enhanced impaired driver case management system is centered on the creation of IDCM, the new system will require three departments to work closely together to coordinate the management of impaired driving offenders. This is a key difference between the existing process and the proposed new system. In the current process, an impaired driving offender may interact with multiple State agencies, but these interactions are not linked, and therefore no information regarding the offender is shared between agencies. Because the current process is incident focused and not offender focused, what happens with an offender in one agency or in one jurisdiction may not cross over to another. In the new system, the following three agencies will work collaboratively to ensure that the State's work with impaired driving offenders is coordinated and effective. The following three agencies are the *partners* that will form the core of the new system:

- **Department of Public Safety and Correctional Services (DPSCS)** – Division of Impaired Driver Case Management (IDCM);
- **Department of Transportation (MDOT)** – Motor Vehicle Administration (MVA); and
- **Department of Health and Mental Hygiene (DHMH)** – Alcohol and Drug Abuse Administration (ADAA).

These agencies must act in close coordination to ensure IDCM operates per its intended design. IDCM will rely heavily on the expertise of its partners, MVA and ADAA, to make the coordinated system work.

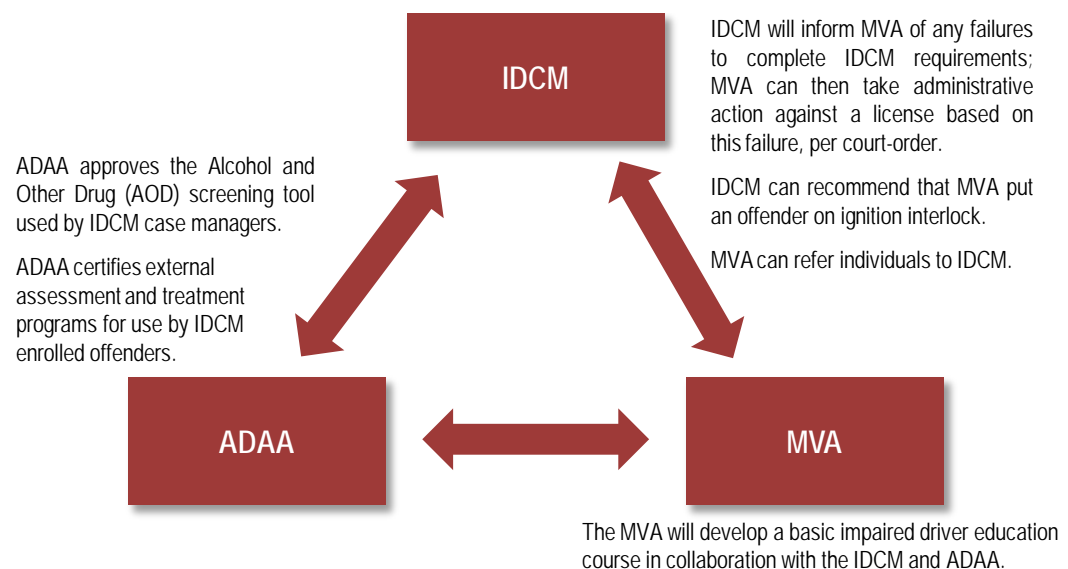
The MVA currently deals with impaired driving offenders at several different junctures: it is responsible for the State's ignition interlock program and it has jurisdiction over the driver's license, including the review of reinstatement cases for individuals involved in impaired driving offenses. Under IDCM, the MVA could require that offenders enroll in IDCM, and IDCM would be able to recommend countermeasures such as ignition interlock. MVA's jurisdiction over the driver's license could be used to increase compliance with IDCM, just as driver's license privileges are linked to the completion of the VASAP program in Virginia. IDCM could notify MVA in the event an offender fails to complete

IDCM requirements, and MVA could then take administrative action against a license based on this failure.

ADAA brings to the partnership its expertise in dealing with individuals with substance abuse disorders. It will ensure that IDCM enrolled offenders receive quality Alcohol and Other Drug (AOD) screenings, and, when necessary, assessments and treatment by selecting the screening tool and certifying assessment and treatment programs. ADAA and IDCM also will assist the MVA with identifying the curriculum for a basic impaired driver education course.

Additionally, MDOT's State Highway Administration's (SHA) Maryland Highway Safety Office (MHSO) will remain engaged in coordinating the development of the new program, and providing analysis and program evaluation capabilities for the IDCM system. MSHO currently is investigating the feasibility, development, and proposed implementation of a DUI tracking system, and currently is working with the University of Maryland to study all of the systems and provide recommendations on how to move forward. Figure 1.1 provides a graphical overview of the responsibilities of each partner.

Figure 1.1 Impaired Driver Management
Partner Relationships



Stakeholders

Judiciary

In addition to the partner agencies, there are several important stakeholders in the new system. First and foremost, the District Courts, Circuit Courts, and Office of Administrative Hearings are critical stakeholders in ensuring that IDCM is successful; however, the new system will in no way alter the independence of the courts, their responsibilities, or jurisdiction. A court will

have to order an offender to IDCM for those convicted of an impaired driving offense, or those that receive probation before judgment (PBJ); in other words, all actions taken by IDCM will be implementing a court order. A defendant also may elect to opt-in to IDCM pretrial, on a fee-for-service basis. IDCM will develop a case plan for each offender based on court-ordered controls. If an offender is noncompliant with the court order, then violation proceedings would be initiated.

In order to ensure that IDCM is utilized by the courts, the Division will need to conduct significant ongoing outreach to the courts to help them understand the resources, capabilities, and advantages of the IDCM system. For example, currently, an individual arrested for impaired driving may go out and seek their own pretrial evaluation to present to the judge at trial, but the quality of these evaluations are often inadequate. In some instances, individuals arrested for impaired driving even “shop around” for a more favorable evaluation. A judge may then order a level of control that does not adequately address the offender’s true needs. This situation may occur several times before the offender’s problems are adequately addressed. In the IDCM system, case managers would administer a quality Alcohol and Other Drugs (AOD) screening to offenders using a tool certified by ADAA. The courts also may wish to order IDCM for offenders that receive unsupervised probation. In IDCM, the Judiciary also will have access to information on recidivism and research on what types of controls are effective for different types of impaired driving offenders. These recommendations regarding the Judiciary are largely based on the VASAP model. In Virginia, local ASAP programs and the State-level VASAP Commission both conduct ongoing education and outreach to the courts, which has proven extremely helpful in ensuring that offenders receive adequate treatment.

In addition to the Judiciary, each one of the following stakeholders would play a key role in ensuring that the whole offender is managed from the point of arrest through adjudication and treatment so that there are no gaps and that no one falls through the cracks.

Legislators

IDCM would seek the support and advice of legislators through the local and statewide advisory councils. IDCM will keep legislators informed about the program’s results and implementation status.

Drug and Alcohol Abuse Councils (State and Local)

Ideally, IDCM staff would be members of the existing local Drug and Alcohol Abuse Councils. Members of the local Drug and Alcohol Abuse Councils also could lend their expertise and advice to IDCM as members of IDCM’s own local advisory councils. At the State level, the IDCM Advisory Council should maintain open and frequent communication with the Maryland State Drug and Alcohol Abuse Council.

Law Enforcement Public Safety Advocacy Groups and Local Governments

The stakeholders could advise and provide program oversight on both the statewide and local IDCM Advisory Councils. It will be critical to IDCM's success to leverage the expertise found in a wide range of organizations that deal with impaired driving offenders.

Funding

While the DDMP user fee provides adequate funding to support the current program, personnel costs are expected to increase with the creation of IDCM and the use of higher-skilled employees. The Committee recommends the current fee structure remain in place, but that the additional costs of the new system be addressed in one of the following ways: either the supervision fee be diverted from the General Fund to IDCM or a range of different use-based fees could be charged by type of service delivered, similar to the Virginia program. If the funds collected through the user fees exceed the costs of the program in a given year, the Committee recommends these additional monies be placed in a reserve fund for times when the user fees do not cover the program expenses.

Employees

The intent is not to expand the number of employees as the impaired driving system is transitioned to IDCM; the new division would use the same number of positions as the current DDMP, however the skill level of the employees would be raised. A higher-level of skilled and trained employees will be necessary to perform a true case management function for impaired driving offenders. However, in the transition to IDCM, the current DDMP monitors will only be replaced with higher-level skilled case managers at the jurisdiction level over time, as natural attrition and retirements occur and as budgets allow. DDMP monitors are only required to have High School Diplomas, while the new IDCM Case Managers will be required to have Bachelor's degrees in a related field. All of DDMP's current employees will be grandfathered into the new IDCM system, but it is essential that they receive additional training to prepare them to perform case management functions.

Table 1.2 provides an overview of the duties of DDMP monitors in the current system and the duties of IDCM case managers in the proposed system.

Table 1.2 Employee Roles – Comparison of DDMP Monitors and ICDM Case Managers

	Current DDMP Monitors	Proposed ICDM Case Managers
Duties	<p>Determine whether the offender is meeting conditions of probation/referral:</p> <ul style="list-style-type: none"> • Refer to treatment/evaluation of substance abuse conditions; • Instruct offenders to install ignition interlock; and • Refer to MVA on licensing privileges. 	<p>Develop a case plan that addresses risk factors and individual needs in order to reduce likelihood of further drunk/drugged driving behavior that includes:</p> <ul style="list-style-type: none"> • Alcohol and Other Drug (AOD) screening at intake; • Basic impaired driver education course; • Court-ordered controls, i.e., ignition interlock; reporting schedule; treatment if needed and as determined by the AOD screening and health professional; additional testing; and any other special conditions; and • Accept pretrial referrals on a fee-for-service basis.
	Keep records – maintain file records of all instructions/contracts, etc.	Implement the conditions of probation/referral and ensure compliance with case plan
	Report noncompliance issues to the court or MVA.	<p>Provide:</p> <ul style="list-style-type: none"> • AOD screening at intake; • Referral to the basic impaired driver education course; • Education for stakeholders to ensure they understand the advantages of the systematic case management approach; and • Pre-sentence investigations (PSI) for the courts, when requested.
Types of Referrals	<ul style="list-style-type: none"> • Probation. • MVA. • Pretrial as a condition of bail/release. 	<ul style="list-style-type: none"> • Probation. • MVA. • Pretrial as a condition of bail/release. • Self-referral.
Employee Minimum Qualifications	<ul style="list-style-type: none"> • High School Diploma. • Complete the Entry Level Training Program and maintain Maryland Correctional Training Commission certification. 	<ul style="list-style-type: none"> • Bachelor's Degree. • Complete the Entry Level Training Program and maintain Maryland Correctional Training Commission certification.
Structure of the Program	Assigned to a discreet unit of DPP at the mid-manager level.	Division of DPSCS, current DDMP staff, and offices will be transitioned.

	Current DDMP Monitors	Proposed IDCM Case Managers
Program Overview	<ul style="list-style-type: none"> • Monitor offender compliance. • Report noncompliance. 	<ul style="list-style-type: none"> • Work with Judiciary to increase/decrease levels of controls and interventions based on offender compliance with the case plan. • Refer offender to the appropriate level of treatment based on an AOD Screening. • Refer offender to outside community resources as needed. • Manage offender.

Data

A centerpiece of the IDCM system is enhanced data collection and management practices, an element that is completely absent in the current system. Today, each agency has its own database, data collection, and data management systems. Through efforts of the Traffic Records Coordinating Committee (TRCC), the State anticipates soon being able to link these systems and share information – an important element in managing offenders through their interactions with State government. The lack of data management capability currently prevents Maryland from ascertaining simple program performance measures, such as recidivism, and makes it impossible to precisely gauge the effectiveness of the current system vis-à-vis the more comprehensive impaired driver case management programs in other states. However both the Maryland Task Force on Driving Under the Influence of Drugs and Alcohol and this subsequently formed Committee strongly believe there is enough qualitative evidence to support the recommendation for a new, more comprehensive approach.

Maryland Highway Safety Office (MHSO), in close coordination with the TRCC, has been investigating the feasibility, development, and proposed implementation of a DUI Tracking System, and currently is working with the University of Maryland to study all of the systems and provide recommendations on how to move forward. A final report with the recommendations and costs related to a DUI tracking system is expected within a year, and could provide a basis for IDCM's data management system. The ability to comprehensively track and share information on an offender seamlessly across State agencies will aid the State in managing the offender effectively and provide IDCM data of sufficient quality for use in program evaluation and academic research.

Outreach

A key component to the success of IDCM and the new coordinated system will be conducting extensive outreach and education to the judges, local governments, prosecutors, defense attorneys, and others so they understand the

enhanced capabilities and functions of IDCM. A particular focus of the outreach program will be to educate the Judiciary so that they make optimum use of the new program.

Program Oversight

In Virginia, the expertise and resources of stakeholder organization are tapped through a local and state-level advisory council system which provides independent program oversight and quality assurance. The Committee recommends that IDCM also establish independent advisory councils to ensure the system's overall quality and success. A statewide advisory council comprised of key stakeholders and all partners will be created to provide independent program oversight. Local advisory councils, also comprised of key stakeholders, will provide local program oversight. At the local level, these advisory councils could be combined with existing local alcohol and drug abuse councils to prevent overlap. The advisory council would include a variety of stakeholders, including the Judiciary, existing drug and alcohol abuse councils, law enforcement, legislators, local governments, and public safety advocacy groups, such as Mothers Against Drunk Driving (MADD).

Evaluation

The Committee recommends the development of a robust evaluation component for the IDCM system at its inception, possibly, but not necessarily, by an external organization. The four basic metrics that the Committee believes should be used to evaluate the IDCM system are:

- Fatalities and serious injuries caused by impaired driving offenders;
- Recidivism rates;
- Effectiveness of education programs; and
- Effectiveness of treatment.

The number of fatalities and serious injuries caused by impaired driving offenders already is tracked by the MHSO and is a good measure for tracking the overall success of the IDCM system. Effectiveness of the education and treatment programs will need to be defined in order to be able to track those performance measures.

Recidivism as it relates to alcohol-related driving generally refers to a rearrest or conviction within a defined period of time. During its research for this report, the Committee actively sought to understand the current level of impaired driving recidivism in Maryland, but found that different organizations across the State operate under different recidivism definitions. After a review of recidivism definitions in other states and national best practice standards, the Committee found that for most states and the Federal government, a rearrest, rather than conviction, is used for the definition and the most common timeframe is within three years, although that time can be longer. During the first phase of the IDCM

implementation, it would be advisable to establish a baseline level of recidivism for future program evaluations.

1.5 LEGISLATIVE CHANGES

Creation of a New Division within the Department of Public Safety and Correctional Services

Current statutes should be reviewed to determine whether a legislative change is needed to expand the Department of Public Safety and Correctional Services' (DPSCS) purview to include a new Division of Impaired Driving Case Management (IDCM).

Linking Participation in IDCM to Licensure

One of the central tenets of implementing the new IDCM system is to capture impaired driving offenders who currently are not receiving accurate assessments and levels of intervention and to ensure the completion of all IDCM education and/or treatment assigned to the offender. In Virginia, this is accomplished by tying the completion of an ASAP program with license privileges. The restoration of license privileges has proved to be a powerful incentive for ensuring offenders complete the ASAP program, thus increasing the program's effectiveness and resulting in reduced recidivism. In Maryland, the MVA has jurisdiction over the license, and MVA's statute will need to be reviewed to explore tying license privileges to completion of IDCM. Currently, MVA's statute allows the agency to suspend licenses if an individual fails to meet other agency compliance requirements. For example, if an individual fails to pay child support, then the Maryland Child Support Enforcement Program notifies MVA, and MVA will suspend the license of that individual until they meet all compliance requirements.

During the Committee's discussions, an additional change was recommended to the MVA statute that would allow pretrial opt-in for ignition interlock for those arrested with a 0.08 BAC, instead of that option only being available to offenders with a ≥ 0.15 BAC. Currently, the statute allows individuals arrested for high-level BAC to opt into ignition interlock in lieu of a license suspension. While this suggestion is beyond the scope of this committee's work, if such a change were to occur it would enable IDCM to enroll and assess many more individuals arrested for impaired driving in the pretrial period.

1.6 CONCLUSION

The Maryland Alcohol Safety Action Program Committee believes implementing IDCM will accomplish the following:

- Improve outcomes for impaired driving offenders.
- Ensure adequate education and treatment recommendations.
- Create accountability for the offender and all participating partners.
- Eliminate system gaps that allow offenders to beat the system.
- Reduce state expenditures through decreased recidivism.
- Increase the ability of the partner agencies to share data and effectively work together toward decreasing the incidence of impaired driving. Reduced recidivism will ultimately save lives on the road, as fewer impaired driving-related crashes occur.

DDMP has monitored Maryland's impaired driving offenders using the same procedures for more than 30 years. The Committee strongly agrees that it is now time to move towards a research-based, cost-effective intervention system that would reduce impaired driving recidivism in Maryland and ensure a comprehensive case management model that serves the needs of impaired driving offenders from education through treatment. The replacement of DDMP with the Division of Impaired Driver Case Management would address the shortcomings of the State of Maryland's current work with impaired driving offenders. IDCM will track offenders through all of their interactions with the State to ensure they receive the appropriate level of care. IDCM will use professional, certified screening tools, and assessment and treatment programs, an element absent in the current system, thereby reducing the incidence of *repeat offenders* and *increasing consistency* in offender experiences.

IDCM will establish a reliable baseline level of recidivism and reduce that rate, which will result in a decrease of the *costs* that the State incurs in the management of this population. IDCM will tie together a currently *fragmented system* of agencies working with impaired driving offenders, the Alcohol and Drug Abuse Administration and the Motor Vehicle Administration, and allow them to work in coordination through an innovative interagency partnership. This partnership, for the first time, will enable all of the pieces of data relating to an impaired driving offender to be shared, fostering an advanced *data management* capability that will give the State the ability to evaluate the effectiveness of its work with impaired drivers.

Following full implementation of the first phase of IDCM, a report evaluating the program's efficacy and providing guidance on subsequent implementation phases will be submitted to the legislature for review.

A. Maryland Alcohol Safety Action Program Committee Members

The following table presents a complete list of Maryland Alcohol Safety Action Program Committee members. The Committee is very grateful to a number of individuals not listed in this table that regularly attended the Committee's meetings and whose contributions were instrumental to the work of the Committee. Maryland State Highway Administration Administrator Neil J. Pedersen co-chaired the Committee with Drinking Driver Monitor Program Director Patrick McGee. Ms. Liza Aguila-Lemaster, Chief Program Advisory Section, Maryland Highway Safety Office, served as lead staff for the Committee.

Table A.1 Maryland Alcohol Safety Action Program Committee Members

Maryland House of Delegates	Delegate	Kathleen	Dumais
Maryland Senate	Senator	Jennie	Forehand
Maryland Alcohol and Drug Abuse Administration	Mr.	David	Ennis
Drinking Driver Monitor Program	Director	Patrick	McGee
Maryland State Police	Lieutenant	Tom	Woodward
Maryland District Court	Mr.	Joseph	Rosenthal
Chief's of Police Association	Chief	William	McMahon
Sheriff's Association	Captain	Michael F.	McGuigan, Jr.
Maryland Association of Justice	Mr.	Larry	Greenberg
State's Attorney Association	Mr.	Joeday	Newsom
Maryland Public Defender's Office	Mr.	Darren	Douglas
State Highway Administration	Administrator	Neil J.	Pedersen
Motor Vehicle Administration	Administrator	John	Kuo
Dorchester County Health Department	County Health Officer	Roger	Harrell
Prince George's County Health Department	Health Officer	Donald	Shell
Baltimore Substance Abuse Systems, Inc.	Health Officer	Arnold	Ross
Prince George's County Health Department	Assessment Case Manager	Gregory	Bearstop
Maryland Alcohol and Drug Abuse Administration	Director	Thomas	Cargiulo

B. Glossary of Terms

Alcohol and Other Drug (AOD) Screening: A formal process to determine whether an individual warrants further attention to address their AOD use. The purpose of the screening process does not necessarily identify the type or seriousness of the problem, nor does it identify an involved diagnosis. The purpose is to determine whether further AOD assessment is warranted.

Blood Alcohol Concentration (BAC): A measure of intoxication determined by a chemical test of an individual's blood, breath, or urine.

Presentence investigation (PSI): A collection, reporting, and analysis of relevant information concerning an offense and the offender. The PSI assists the judge at sentencing procedure.

Department of Health and Mental Hygiene (DHMH) – Alcohol and Drug Abuse Administration (ADAA): The ADAA provides planning, regulation, fiscal management, and technical assistance to programs providing substance abuse services with technical assistance teams comprised of members of its four major divisions.

Department of Public Safety and Correction Services (DPSCS) – Division of Impaired Driver Case Management (IDCM): A new *Division* within the Department of Public Safety and Correctional Services (DPSCS), replacing DDMP, recommended by this report. This new Division would introduce new comprehensive offender screening, assessment, and case management capabilities that will increase the State's effectiveness in the management of impaired driving offenders.

Department of Public Safety and Correction Services (DPSCS) – Division of Parole and Probation (DPP)-Drinking Driver Monitor Program (DDMP): The Division of Parole and Probation administers two distinct supervision/monitoring entities – criminal supervision and the Drinking Driver Monitor Program (DDMP). Offenders are referred to DDMP by the courts (96.4 percent), or by MVA's Medical Advisory Board. The program monitors offender attendance at community treatment programs as well as compliance with the terms of probation.

Driving Under the Influence (DUI) Courts:⁶ An accountability court dedicated to changing the behavior of the hardcore offenders arrested for Driving Under the Influence of Intoxicants. The goal of DUI Court is to protect public safety by using the highly successful Drug Court model that uses intensive supervision

⁶ Definition source: *Anne Arundel County DUI Court Program Outcome and Cost Evaluation*, NPC Research, December 2009.

and long-term treatment to address the root cause of impaired driving: alcohol and other substance abuse. These court programs offer postconviction intervention that involves coordination of multiple agencies and professional practitioners applying a variety of areas of expertise, intensive case management and supervision, and frequent judicial reviews. In the typical DUI court program, participants are closely supervised by a judge who is supported by a team of agency representatives that operate outside of their traditional and sometimes adversarial roles.

Driving Under the Influence (DUI): Defined in Maryland as driving with a blood alcohol concentration of 0.08 or higher.

Driving While Intoxicated (DWI): Defined in Maryland as driving with a blood alcohol concentration of 0.07 or lower.

Fatality Analysis Reporting System (FARS): A nationwide census that provides the public with annual data regarding fatal injuries suffered in motor vehicle traffic crashes.

Maryland Department of Transportation (MDOT) – Motor Vehicle Administration (MVA): A modal administration in the MDOT, the MVA is responsible for the licensing of all commercial and noncommercial vehicles, registering and titling vehicles, and issuing photo identification for nondrivers.

Maryland Department of Transportation (MDOT) – State Highway Administration (SHA) – Maryland Highway Safety Office (MHSO): The program office at SHA dedicated to saving lives and preventing injuries by reducing the number and severity of motor vehicle crashes through the administration of a comprehensive and effective network of traffic safety programs.

Mothers Against Drunk Driving (MADD): An advocacy organization whose mission is to stop drunk driving, support the victims of this violent crime, and prevent underage drinking.

Probation before Judgment (PBJ): The defendant is found guilty or pleads guilty. However, the final entry of judgment is technically suspended. This gives the defendant an opportunity to request expungement of his record upon successful completion of the conditions or probation.

Virginia Alcohol Safety Action Program (VASAP): Virginia’s “systems approach” to combating the alcohol and drug-related public safety problem in which 24 local offices provide comprehensive case management and education for all impaired driving offenders and treatment referrals as warranted.

C. Executive Order



EXECUTIVE ORDER
01.01.2009.18

Maryland Alcohol Safety Action Program Committee

- WHEREAS, On an annual basis, impaired driving crashes in Maryland are responsible for more than 150 deaths and more than 4,200 injuries;
- WHEREAS, In Maryland over the past two years, more than 48,000 drivers have been arrested for Driving Under the Influence/Driving While Impaired (DUI/DWI);
- WHEREAS, Three in every ten Americans will be involved in an alcohol-related crash at some time in their lives;
- WHEREAS, The annual socio-economic cost of alcohol-related crashes exceeds \$266 million in Maryland and \$114.3 billion nationally;
- WHEREAS, Drunk driving is the nation's and Maryland's most frequently committed crime resulting in injury and death; large numbers of persons arrested for and convicted of driving while impaired by drugs and alcohol are multiple offenders;
- WHEREAS, Reducing the level and impact of impaired driving requires a coordinated and collaborative approach that addresses the whole offender from the point of arrest through adjudication, including screening, intervention, treatment, and education;
- WHEREAS, Successful drug and/or alcohol abuse treatment reduces recidivism; the Maryland Drug and Alcohol Abuse Administration estimates that approximately 280,000 Marylanders need some level of drug and/or alcohol abuse treatment;
- WHEREAS, Although many excellent programs to reduce impaired driving exist in Maryland, a comprehensive, coordinated program that ties together all of the critical components to maximize the effectiveness of State and local efforts is missing;

- WHEREAS, Alcohol Safety Action Programs (ASAPs) have been demonstrated to be successful in reducing impaired driving recidivism in other states; and
- WHEREAS, The Task Force to Combat Driving Under the Influence Of Drugs and Alcohol recommended a Maryland Alcohol Safety Action Program that provides a network of probationary, administrative, case management, and client services that are readily adaptable and expandable to meet local and State needs.
- NOW, THEREFORE I, MARTIN O'MALLEY, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND THE LAWS OF MARYLAND, HEREBY PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:
- A. Established. There is a Maryland Alcohol Safety Action Program Committee. The Committee's mission is to develop a Maryland Alcohol Safety Action Program (MASAP).
- B. Membership.
- (1) The Committee shall consist of the following members:
- (a) One member of the House of Delegates, appointed by the Speaker of the House;
- (b) One member of the Senate of Maryland, appointed by the President of the Senate;
- (c) Two members of the Department of Transportation, one from the Motor Vehicle Administration and one from the State Highway Administration, both appointed by the Secretary of the Department of Transportation;
- (d) A representative of the Department of Health and Mental Hygiene, appointed by the Secretary of the Department of Health and Mental Hygiene;
- (e) A representative of the Division of Parole and Probation, appointed by the Secretary of the Department of Public Safety and Correctional Services;
- (f) A representative from the Maryland District Court, appointed by the Chief Judge of the Court of Appeals of Maryland;

(g) A representative of the Department of State Police, appointed by the Superintendent of State Police;

(h) Two local health department officers, one from a rural jurisdiction and one from an urban jurisdiction, to be appointed by the Maryland Association of County Health Officers;

(i) A representative from the Maryland Chiefs of Police Association;

(j) A representative from the Maryland Sheriffs' Association;

(k) Two experts in the treatment of individuals with alcohol-abuse problems, appointed by the Governor;

(l) A representative of the Maryland State's Attorneys' Association; and

(m) A representative of the Maryland Office of the Public Defender.

(2) The Governor shall designate the Chair and/or Co-chairs from among the Committee membership.

C. Procedures. The following procedures apply to the Committee:

(1) Members of the Committee may not receive any compensation for their services but may be reimbursed for reasonable expenses incurred in the performance of their duties, in accordance with the Standard State Travel Regulations, and as provided in the State budget.

(2) The majority of the members of the Committee shall constitute a quorum for the transaction of any business.

(3) The Committee may adopt such other procedures as may be necessary to ensure the orderly transaction of business, including the creation of subcommittees.

(4) The Chair, with the consent of the Committee members, may designate individuals, including interested citizens, elected officials, educators, or specialists with relevant expertise, to serve on any subcommittee.

(5) The Committee may consult with State and local agencies, other states, and others to obtain such technical assistance and advice as it deems necessary to complete its duties.

(6) The Committee shall meet at least four times per year and subcommittees shall meet as necessary to complete their duties.

D. Purpose. The Committee shall have the following objectives:

(1) Identify, study, and recommend an organizational framework for a MASAP, including consideration of whether it should be organized within a commission that would report directly to the Governor or through an existing department.

(2) Develop an implementation plan inclusive of implementation methods for a comprehensive program to track Driving Under the Influence/Driving While Impaired (DUI/DWI) offenders across agencies from the time of arrest through a sufficient period of time following completion of sentence and treatment to assess the effectiveness of those measures.

E. Duties. The Committee shall have the following duties:

(1) Recommend resources to operate a MASAP as a no-cost program to the State, funded by offender fees rather than tax dollars.

(2) Develop a business plan for establishing a MASAP, including a proposal for coordinating existing programs and establishing needed additional program components, such as a statewide network of Alcohol Safety Action Programs that can:

(a) Provide judges with knowledge and services which enhance their ability to dispose of DUI/DWI offenders and other cases in a manner appropriate to community and offender needs;

(b) Establish effective treatment referral criteria and processes;

(c) Identify existing education and treatment programs and /or develop additional programs, both public and private, in areas where such services are unavailable or deficient; and

(d) Identify funding sources available for local law enforcement training and assistance.

(3) Develop a short-term and a long-term MASAP implementation plan, including local pilot sites and regular evaluations and recommendations for phasing in a one-year, two-year, and five to ten-year schedule of implementation.

(4) Develop proposed legislation, as necessary, that may be needed to affect the implementation plan for a MASAP.

(5) Perform additional duties as assigned or deemed necessary.

F. Staffing. The Department of Transportation shall provide staff efforts for the Committee and all Executive Department agencies shall cooperate with and assist the Committee in carrying out its responsibilities.

G. Reports. The Maryland Alcohol Safety Action Program Committee shall report its findings and recommendations to the Governor and the General Assembly by December 1, 2010 in accordance with Section 2-1246 of the State Government Article of the Annotated Code of Maryland.

Given Under my Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 8th Day of December, 2009.



Martin O'Malley
Governor



ATTEST:



John P. McDonough
Secretary of State

D. Program Committee Meeting Notes

Included in this Appendix are the notes from the Committee's meetings. The meetings were held on:

- June 1, 2010;
- July 8, 2010;
- September 9, 2010; and
- October 20, 2010.

D.1 TUESDAY, JUNE 1, 2010 – MEETING MINUTES

Meeting Attendees

Bill McMahon, Howard County Police Department, Maryland Chief of Police Assn.
David Ennis, Anne Arundel County Police
Darren Douglas, Office of the Public Defender
Joeday Newsom, Prince George's State's Attorney
Roger L. Harrell, Dorchester County Health, MACHO
Mike McGuigan, Charles County Sheriff's Office
Larry Greenberg, Maryland Association for Justice
Lieutenant Tom Woodward, Maryland State Police
Ron Engle, The Century Council
Neil Pedersen, Maryland SHA
Pat McGee, Maryland Division of Parole and Probation
Liza Lemaster, MHSO
Pam Beer, Cambridge Systematics
Shana Johnson, Foursquare ITP

Welcome and Overview

Neil Pederson opened the meeting and welcomed everyone. He noted the Task Force to Combat Driving Under the Influence of Drugs and Alcohol final report included 42 recommendations, most of them administrative and some of them legislative. The establishment of Maryland Alcohol Safety Action Program (MASAP) was the centerpiece of the report recommendations. MASAP is to be modeled after the program in Virginia, but should be tailored to fit Maryland's unique circumstances.

The final report, he noted, was presented to Governor and Speaker of House in October 2008. In January 2009 the Governor issued an executive order to create the MASAP Program Committee, which is tasked with fleshing out the details and implementation issues of setting up MASAP. Pat McGee is chairing the MASAP Program Committee, and we thank him for his service. He said, Governor O'Malley and Secretary Swim-Staley are very anxious to see the result of this group. It is hoped that the MASAP program will result in reduced recidivism.

Background

Pat McGee noted Virginia has a comprehensive system that manages the offender through the criminal justice system and treatment. In Maryland there is presently a court-driven system, resulting in offenders with the same problems or types of offenses having different experiences.

Each year, statewide 16,000 drunk drivers are arrested. The reality is that Maryland does not use an evidence-based system for treating these offenders.

Creating a detailed plan to deal with drunk drivers, from referral to treatment, is the main duty of this committee. Some of the key questions we need to answer, McGee said, are the following:

- How do we identify drunk drivers?
- What are the treatment resources available?
- How can we generate the funds to support this?

Currently the State of Maryland has the drunk driving monitor program (DDMP). DDMP originated in Baltimore County decades ago. It had three elements: assessment, treatment, and monitoring. The level of assessment varies across Maryland jurisdictions; some jurisdictions still have court screeners that evaluate the type of drinking problem. A social drinker will get six weeks of education while a problem drinker will get six months of treatment. The program monitors compliance with a court order but that is all it does. The monitoring program does not intervene. It is not true case management, and cannot address the current need for case management services. DDMP has huge caseloads; at any given time the program has 300 to 400 offenders that it is monitoring.

In 2006 the state legislature determined that DDMP must be self-supporting. DDMP subsequently instituted a \$55 per month user fee that offenders pay to be under supervision. With 16,000 annual offenders paying into this fund about \$7.5 million is generated annually. This is the first year that the fund is now self-supporting. Under MASAP there would be a larger number of offenders participating in the program, so larger revenues could be generated.

There are a number of offenders serving probation before judgment (PBJ) participating in DDMP. However, offenders with a significant prior criminal history (i.e., those with assault or other serious crime convictions) do not participate in DDMP. Committee members requested that Pat provide the number of PBJs in DDMP and the number of offenders with serious criminal convictions that have committed DUIs and do not participate in DDMP.

DDMP is staffed by approximately 90 monitors located throughout the State distributed among the jurisdictions based on population levels. Baltimore County and Prince George's County both generate large caseloads for DDMP, reflecting not only the population concentration in these jurisdictions but the impact of their policing policy.

An issue for DDMP is its lack of overall management. Formerly DDMP and Criminal Supervision (CS) both reported to the Maryland Division of Parole and Probation (DPP). This structure was modified in an effort to streamline management infrastructure so that DDMP now reports to CS. It is the percentage of DDMP's presence in CS that is funded by the special funding fee.

Under the state law, a judge can order a supervision fee of \$40 per month for probation. Currently 45 percent of judges waive the supervision probation fee. Since the fee is a condition of probation it can be ordered or waived by the court.

This means that for offenders on probation and entering DDMP many will pay \$95 per month, \$45 probation supervision fee and the \$55 DDMP monitoring user fee. DDMP has the best payment rate among the probation offices. The court cannot waive the \$55 DDMP user fee since it is not a condition of probation. Only individuals that have a permanent disability that prevents them from working can have the DDMP user fee waived.

Question: What if people cannot pay the three fees (including the interlock)?

Answer: There is no other exemption from the \$55 DDMP fee, other than disability.

One gap in our current knowledge, McGee noted, is that we cannot determine the recidivism rate for drunk driving, how many offenders will come back and get the same dose of everything all over again? We do not know, he said. We are willing to spend a lot of redundant dollars on sending people through the same systems over again.

Much of the current model is based on treatment, but the treatment provided is not differentiated between social and problem drinkers and those that also abuse other chemicals. We need a system, McGee said, where a proper assessment of an offender is conducted and offenders enter an appropriate treatment path based on that assessment.

Question: Is the actual courthouse assessment an issue?

Answer: It happens just in two categories and in five minutes. By contrast, the substance abuse division uses nine indices of substance abuse to classify offenders and it takes about an hour, or longer to do this well.

When performing an assessment of an offender other risk factors must be taken into account. For example, from the research we know that young men are more apt to engage in risk taking behavior. The system that we design should be able to tailor intervention to address all possible risk factors, he said.

McGee went on to note there is a lot of talk around interlock and technology in general, but he asked what about behavior? DDMP only monitors the order postadjudication, no one identifies offenders preadjudication. There is a two-tiered adjudication system, and sometimes the tiers mesh and sometimes they don't. You can be on interlock right at arrest, but we do not know how many people have interlock at arrest but do not enter DDMP.

The plan for this program committee is to identify evidence-based practices, identify funds, figure out the best phasing (one, three, and five years) for implementing MASAP, and determine how it should be administered.

He went onto indicate there is no clear line of authority for people on probation within Maryland. This is a paradoxical point, the court can order almost anything because there is no clear line when someone is on probation. DDMP by contrast cannot affect an offender's liberty, but the court can order anything with this population. DDMP can supervise, but the authority lies with the court. We

must train the court and help them to revise their processes when dealing with offenders on probation. The law, he said, around interlock deals with MVA, and is not something that DDMP deals with, it is all based on court-order.

Committee members requested Pat provide the number of PBJs in DDMP and the number of offenders with serious criminal convictions that have committed DUIs and do not participate in DDMP. He indicated the following:

- 7,115 out of 16,000 offenders are under DDMP as PBJ – that is 46 percent; and
- There are 3,800 out of 58,000 serious criminals not in DDMP.

For a DDMP drunk driving monitor the requirements are just a high school degree and some training. By contrast, a probation officer is required to have Bachelor's degree and other intensive case management training. Tom Woodward with the Maryland State Police indicated that 56 percent of DUI officers that are not acquitted are given PBJ so this number could be higher.

Background on ASAP

Ron Engle, The Century Council

To assist the Committee with their deliberations, Ron Engle agreed to provide background information on the establishment of the original ASAP program which NHTSA pilot tested in 35 communities back in the 1970s. Ron was at the Fairfax County ASAP in the 1970s, and also worked on the ASAP at NHTSA. Following is the information he provided to the committee.

- The idea for ASAP originated in the 1960s and was first implemented in the 1970s. By the late 1970s public attention to the drunk driving issue subsided and most of the original ASAP programs were discontinued when Federal funding for the pilot programs ran out. In 1976 NHTSA began to focus on speed enforcement. It wasn't until the 1980s when MADD came on the scene and once again increased the awareness of the drunk driving issue among the public and policy-makers.
- In the original ASAP pilot programs funded by NHTSA each program office had a project management staff that included *at a minimum* a director, PR person, and a coordinator. Fairfax County is one of the few of these original pilot programs that are still operational, and it was one of the top programs from its inception. In those days DUIs took just four hours to process and most DUIs were charged with reckless driving.
- The Fairfax County ASAP office had a robust staff during the 1970s. With additional funding from the Virginia Governor's Highway Safety Office the Fairfax County ASAP was able to maintain a probation office with a director and full staff, a treatment office with a director and full staff, an enforcement division with a director and full staff, a full-time dedicated commonwealth attorney, and a traffic court judge.

- When the establishment of ASAP was initially proposed to Fairfax County it was not completely accepted. To provide this with the synergy needed to make the program work those establishing ASAP identified one of the most active county court judges to create the advisory panel to get political buy-in from all stakeholders.
- At Fairfax County ASAP they developed an orientation program for police officers to get their buy-in for the establishment of ASAP. The orientation was designed to help police officers understand what would happen with the offenders under the ASAP model, and it made it clear that ASAP would be approved. A similar orientation program was created for judges and prosecutors.
- When ASAP was implemented in Fairfax County there were several unexpected program impacts. During the first year of the program, DUI arrests soared from a previous average annual total of 75 to 3,000 DUI arrests the first year and then 5,000 the second year. As Fairfax County police officers became more experienced in identifying and dealing with DUI arrests, the number of successful DUI arrests increased. Nationally, DUI convictions ballooned when ASAP was implemented.
- Dealing with the large increase in DUI arrests was an administrative burden for the Fairfax County ASAP office. Each Monday the Fairfax County ASAP office received the arrest forms from the previous week and processes them through the program's probation and treatment office. The probation officers brought the offenders in immediately to start probation and treatment. The Fairfax County ASAP office began to identify repeat DUI offenders, and developed different treatment paths for these individuals. If a DUI offender "looked like they had some promise" they would be given the chance to enter VASAP, receive education and treatment, and upon the successful completion of VASAP have their DUI charge reduced to reckless driving. This protocol was in place from 1976 to 1982.
- An evaluation of the NHTSA ASAP pilot programs performed in 1976 has lots of important information that will be relevant to the work of this committee, and a copy of this report can be provided. Of the 35 national pilot programs that NHTSA funded in the early 1970s, seven are still functional. There are only three programs that are still close to their original form, Alaska, South Carolina and Virginia. There are a number of other local jurisdictions nationwide that have adopted an ASAP-like integrated program, but these are limited to single-jurisdiction programs. For example, Hennepin County, Minnesota has an ASAP-like program, but it is unique in the State of Minnesota.
- Many of the local programs funded by the NHTSA ASAP pilot program were discontinued when Federal pilot funding ceased. VASAP is self-funded, and therefore has been able to continue operating.

- Problems associated with startups/pilots are to be expected, what is critical for the success of MASAP is to have the law enforcement, judicial and other key stakeholder communities involved and contributing to the formation of the program from its inception. This will generate the needed political buy-in from all groups to make this integrated effort successful.
- The Century Council also is available to provide support to this committee. The Century Council has done programs on dealing with drunk driving for judges and prosecutors. More information on these programs can be found on the web site: <http://www.centurycouncil.org>.
- There are many jurisdictions that utilize DUI courts, a model that is similar to VASAP, and may be something that the program committee should explore further. Ron can arrange getting the committee in touch with someone from the DWI Courts Councils to provide further background.

Question: Why hasn't NHTSA focused on the ASAP model again? Why has this work only been taking place in the DUI courts, which is just with the judiciary? Screening and interventions of DUI offenders are important.

Answer: NHTSA does promote some prescreening, but the agency is in the midst of changing terminology/focus areas – they are going to be doing something about high-risk driving and several other things.

DUI Courts are seen as problem solving, the DUI court movement started along with the drug courts movement as a way to managed offenders with a specific issue. However, with DUI courts, the main driver of the court's focus is the judge's interest in the issue. Since DUI courts are very personality driven, if a DUI court judge retires that may end that DUI court.

Liza Lemaster from the Maryland Highway Safety Office indicated that screening and intervention is a component issue in setting up MASAP. We have three DWI courts in Maryland, she said, but you need a champion judge to create one. DUI courts are very expensive because you have to have many experts from multiple agencies working with individual offenders. DUI courts are comparable and familiar to us and they can be used as a model, but we need to have user fee and a self-supporting funding mechanism.

Pam Beer indicated VASAP is a mandatory program for all DUI offenders. The case management function is critical to its success. VASAP does screening, not assessments, but the screening programs are done by a sizable number of employees. After screening offenders are then assigned to one of three VASAP tracks: education, intensive education, or treatment.

VASAP is an independent agency, not in DMV or VDOT. The Virginia DMV has a highway safety office and this office gets 402 funding from agencies to do various drunk driving related programs. The VASAP administration office in Richmond periodically evaluates and certifies all local VASAP programs in the State. The VASAP administration office employees are state employees, members of an independent commission that is part of the legislative branch.

In Maryland the DUI courts only serve repeat DUI offenders and are only optional, reaching just a small segment of potential MASAP clients. There are some carrots for offenders to enter a DUI court, some penalties may be reduced, but the driver's license points are not taken away. Offenders must be referred to DUI courts. DUI courts are able to mandate things like offender assessment and education. If an offender does not complete the assigned education or treatment offenders must complete their original penalties. The DUI courts cannot take away jail time if that was a component of the offender's original sentence.

Liza Lemaster indicated that creating MASAP will give Maryland the opportunity to identify multiple offenders and specific problem areas. She also noted there is a lack of access to reliable recidivism data. Pat McGee indicated that in 2009 within DDMP 0.5 of 1 percent cases were closed due to a license revocation because of a new DUI offense. He indicated it would be important for the Committee to find out the national recidivism rate which he believed is around 21 percent and also define recidivism – is it rearrest or reconviction?

Angela Coleman, VASAP Acting Director – Joined via teleconference

Debora Gardner was VASAP director for 22 years and she recently moved on to a new position just a few weeks ago. VASAP currently is undergoing a transition which prevented the current acting director Angela Coleman from joining the committee in-person, but she was willing to provide information and answer questions via telephone. Following is the information she provided to the Committee about the VASAP program.

- In 1972 the VASAP program was established as one of 35 ASAP pilot projects funded by NHTSA.
- In 1986 the General Assembly formed the Commission on VASAP, which provides regulatory oversight for the 24 local programs. Only the seven Richmond-based commission employees are state employees. Employees of the local jurisdictions staff the 24 local programs, and each local program is governed by its own VASAP policy board. The Commission was established to ensure all programs across the State were equal.
- Completion of VASAP required for all offenders.
- A unique feature of VASAP is that it is completely funded by user fees; the program receives no appropriations of state tax dollars. The commission office receives three percent of all of the funds from the local programs to support its work. VASAP is very proud of the fact that they do not use any state dollars.
- The VASAP commission office has a joint exercise of program agreement with the local VASAP offices. The local jurisdictions need to provide VASAP services to their citizens as VASAP is required for all offenders, hence the willingness of local jurisdictions to support VASAP. Having a state commission with independent local offices seems to work out better,

particularly as the local programs are not state funded. The local government appoints local ASAP policy board members.

- The State designates where the ASAPs will be located based on population and the location of offenders. Currently, there are 24 local ASAP programs and the number of local programs has not fluctuated very much. The localities work with the State to decide which ASAP offices will serve individual jurisdictions. The commission office often get questions from jurisdictions wanting to establish their own ASAP program. Only the commission can establish a VASAP.
- Local jurisdictions are not *mandated* to participate in the program, but if they participate in ASAP then they must have the local resolutions on file. If a locality agrees to participate then they need to execute and sign this resolution. Every county in Virginia participates.

Question: What is the incentive for local jurisdictions to participate?

Answer: It is not a financial incentive, none of the ASAP money goes into local coffers. The incentive the services must be provided to their residents. According to state code if you want your license back you must complete the ASAP program, so local jurisdictions like to have an ASAP program in their area.

- VASAP has five component areas: enforcement, adjudication, case management, evaluation and certification, public information and education. These target areas keep them in compliance with the overall mission.
- Enforcement activities include efforts aimed at enhancing law enforcement efforts, training police to detect and apprehend DUI offenders. Some local programs also provide in-service training at the police academy that helps officers understand what happens to DUI offenders. VASAP has a speaker's bureau that is trained in teaching police officers how to detect DUIs.
- Adjudication activities include working with the court to ensure efficient processing of those arrested for DUI and working with the court in amending and monitoring compliance for those with restricted driving privileges.
- VASAP's relationship with the DMV is strictly electronic. Once an offender is in court and the judge orders ASAP and restricted driving, then court notifies the DMV of the offender's driving status. If an offender wishes to have restricted driving privileges they must report to ASAP with 15 days for in-processing. At ASAP, the offender will then sign a green form that they are required to keep with them whenever they drive under restrictions. However, even if they have the green form, the ASAP office will notify DMV electronically to let them know that the offender has entered the ASAP process. After this process is complete, the offender is able to go to the DMV and receive a restricted driving license.
- Administrative license revocation lasts seven days; it is an automatic suspension by the court and ASAP doesn't deal with this. The period of

license suspension is one year. The court determines if an offender with a suspend licensees' should be eligible for restricted driving privileges.

- ASAP provides intensive case management services for all DUI offenders. Every offender must go through an intake process conducted by case manager. Most offenders are subjected to a baseline urine screening and ASAP staff administer a simple screening instrument to determine the level of treatment needed for the individual offender.
- If the offender needs education, they will attend education classes or intensive education classes (20 hours long, in 2 hours sessions, across 10 weeks). VASAP has its own curriculum, copyrighted by the Change Company, specifically designed to meet state requirements.
- If the offender requires treatment then they are sent to a licensed treatment provider for a clinical evaluation, but VASAP still provides the education component.
- If the offender does not complete the treatment then the case will return to the courts.
- VASAP is required to submit regular compliance reports to the court, and notify the court of any missed treatment sessions or education classes. Even though driving outside of their restriction period is a criminal offense, the police let VASAP know if a DUI offender is found driving outside of their restriction period.
- Approximately 65 to 70 percent of current VASAP participants receive treatment services, the proportion of VASAP participants receiving treatment as opposed to only education or intensive education has increased in recent years. While there has been a reduction in DUIs related to social drinking there has been an increase DUI offenders who abuse alcohol in conjunction with other chemical substances. If a DUI offender is found to abuse other chemical substances they must be sent to treatment.
- Case manager is responsible for following the case throughout the entire period of suspension, even through treatment.

Question: Can you voluntary enroll?

Answer: Yes, there is pre-enrollment. The Virginia Code allows for people arrested but not convicted for DUI to enroll, the process is still the same for those that enroll and those that pre-enroll. In some jurisdictions defense attorneys encourage offenders to pre-enroll. If pre-enrollees are later not convicted, the fees are not returned.

- Some people enter ASAP that have had some previous treatment, or they may already have been involved in treatment on their own. If this is case then ASAP will work with offender's current treatment provider as long as they are properly certified.

- Elements on the screening are there to just detect individual's use of alcohol and pattern of drinking.
- There are mandatory DUI jail sentences even on the first DUI offense.
- Virginia uses ignition interlock technology, and while this is a judicial sentence VASAP monitors ignition interlock compliance. VASAP has four ignition interlock vendors that alert VASAP of any violations on an ignition interlock device. VASAP will report violations on ignition interlock device to the court.

Question: Are there questions on the intake form about the incident that led to the DUI arrest? If yes, then why would defense attorneys encourage offenders to pre-enroll?

Answer: At intake the evaluation includes questions about the incident that lead to the arrest. For those that are pre-enrolled, the only information that VASAP provides to the court is that the individual is pre-enrolled. Most defense attorneys advise clients to pre-enroll. To-date VASAP has not been required to turn over any pre-enrollment information to the court.

- Intake screening is performed for alcohol and other drugs, including prescription drugs, via urine samples. VASAP has a random urine screening schedule, everyone upon enrollment gets a base nine urine sample. Even offenders in the education program may be subject to aggressive screening. If a VASAP instructor determines that an individual may be having an issue with alcohol or other substance abuse they will alert the case manager.

Question: Are breathalyzers evidentiary?

Answer: Yes, that is part of the noncompliance, show-cause hearing. They don't send any documentation into the court with the person; the case manager goes into court and reports directly to the judge.

- Abstinence from alcohol is not required by all Virginia courts; about 50 percent courts across the State require it.
- VASAP can make recommendations to the court after adjudication.
- Ignition interlock is entirely VASAP's responsibility; the DMV is not involved in it. VASAP notifies the DMV electronically when ignition interlock is installed in an offender's vehicle, otherwise the offender will not be able to receive a restricted driving license from the DMV.
- There are a number of other programs that local VASAP offices develop and implement, in the conjunction with the courts, which are approved by Commission. Many of these programs were created as a result of needs identified by communication between the courts and local ASAP offices. Not all of these programs are available in every ASAP office.
 - *Victim Impact Panel.* A local program, not a requirement as far as completion of state requirements. There are some local programs that

require these panels, but these are cleared with the court, and judges are aware when an offender has completed this panel.

- *Habitual Offence and Restoration Reviews.* These were developed locally, but are now statewide and mandated by code.
 - *Driver Improvement.* Local ASAP offices cannot meet the demand for this program.
 - *Young Offender Program.* This program was developed primarily by college towns to meet the needs of jurisdictions that have a high incidence of drinking under age. In recent years even jurisdictions without a large college-age population have been interested in implementing this program. The curriculum was developed by the Change Company specifically for individuals ages 18 to 21.
- An offender typically will meet with their VASAP case manager once a quarter. The probation term for a first offense is one year; it is three years for repeat offenders.
 - When dealing with offenders that are out of state residents VASAP will accept out of state transfers through the interstate. For first time DUI offenders VASAP has an agreement with the compact that they go through, prior to this agreement going through the interstate compact was sometimes a lengthy process.
 - The ASAP commission office is responsible for the evaluation and certification of local ASAP programs. The ASAP commission office conducts a periodic evaluation of each ASAP program and provides annual local program audits to ensure program quality.
 - Every three years the commission office assembles a team that will evaluate and recertify all of the local program offices. This team physically visits each local ASAP office and reviews their case loads, operations, and finances. If a local ASAP program is found not in compliance, the team will report this information to the commission itself which will in turn give the local ASAP office 30 days to respond to the deficiencies noted by the commission recertification team. The commission then will typically allow 90 days for the local ASAP program to correct the identified deficiencies. If the deficiencies are not corrected then the commission can revoke a certification and that local program will no longer be able to receive cases from the court system.
 - The VASAP Commission has never had to revoke a local program's certification. Usually members of the local ASAP policy boards and staff are able to rectify all deficiencies identified in recertification reports. The VASAP commission staff also have the ability to conduct a management review and make management changes at the local programs should that be necessary, but this level of intervention is rare.

- The Virginia recidivism rate is around 10 percent. The Center for State Courts defines recidivism as a person that commits a second alcohol related conviction within five years.
- VASAP provides services to 7,400 citizens annually.
- In recent years Virginia began to require mandatory jail time for even first time DUI offenses. When this requirement was instituted defense attorneys and the Commonwealth's Attorney began making new types of deals that have harmed VASAP's ability to fulfill its mission. For example, in deals between the attorneys the BAC may be removed from an offender's record, or a DUI offender may be convicted of a lesser offense. In a case where the BAC is removed from the record VASAP is left without a critical piece of information needed to treat the offender. When a DUI charge is reduced to a reckless driving charge although the offender may still be required to enroll in VASAP (since the incident is alcohol-related), they will not be required to complete it.

Question: What would be the best way to launch a program like VASAP? Should we try pilots in a select number of jurisdictions or try to launch the entire program across the State at once?

Answer: Pilots would be better than going statewide. In Virginia they have different stakeholders in each locality and it was better to the programs established in certain areas and then standardize the state program.

- Even with standardization at the state level the local programs still have some autonomy. Some level of local autonomy allows local ASAP offices to meet local court needs. Building a close relationship local judges is critical component of VASAP success. Ultimately VASAP wants to ensure that judges to feel confident that the offenders in VASAP are getting their needs met.
- In trainings that the commission office provides for local ASAP offices they put a high level of emphasis on the relationship with the judiciary. VASAP presents at the judges conference every year. VASAP will shape their presentation at the judges' conference based on the information that judges submit to state Supreme Court and local DMV to meet immediate needs/issues. The topic this year is 'VASAP revisited', because they are many new judges this year.
- From the commission's standpoint local programs are successfully if they are meeting the commission guidelines and the laws that are mandated in the state code. There are no other VASAP evaluation metrics or effectiveness measures. Success is primarily measured through adherence to process, not by outcome.
- Commonwealth's attorneys are very active on the local ASAP policy boards. No private defenders currently serve on the local policy boards.

- The 15 members of the commission are appointed by the Virginia General Assembly. The commission includes six members of the General Assembly. VASAP is actually part of the legislative branch. At some point in the past the program was an executive branch agency, the reason for the change to the legislative branch is unknown.
- VASAP reports to the legislative members of the commission, but they implement with the courts and interact strongly with the judicial branch. The judicial branch does not provide any program oversight.
- The commission office has a seven-member staff:
 1. Executive Director.
 2. IT Administration – To provide oversight of the data processing system and communication system between local programs.
 3. Instructor – Helps facilitate all local office and staff training and any of the law enforcement training.
 4. Fiscal (2).
 5. Payroll.
 6. Liaison between the commission and local programs. Certification and management review lead, capable of amending the certification process.

Neil Pedersen indicated there may be some Constitutional issues in Maryland with having an agency that reports to the Legislature. Pam Beer indicated that it would be ideal to invite someone from the Fairfax County ASAP office to the next meeting. Fairfax County is similar to Montgomery County, and its ASAP office has an exemplary program.

Current Process Outline

To help the committee identify where gaps exist in the DUI process, the members outlined the current process.

Enforcement Process

- Enforcement Officer Education.
- Traffic stop – there office must have a reasonable cause to stop, not necessarily alcohol related but normally this is the case. There are three phases of officer observation: driving observation, personal contact, and field sobriety test.
- Breath testing/blood/chemical testing.
- Standard Field Sobriety Test (SFST).
- Arrest – transported to the police station. At the time of arrest some local agencies impound the suspect's car, even if a sober person is in the car.

Other local agencies, including state police, have the option to leave the car legally parked, let someone sober drive it, or to impound it.

- At police station – the suspect must be advised of their rights. This is not their Miranda rights but the ER 15 Maryland implied consent form. Currently this form is available in English only, but a Spanish translation is being prepared.
 - If the suspect agrees to take the breath test they are kept for 20 minutes, if not the observation period is two hours;
 - ER 15A – For Maryland residents the police will take the driver's license of the suspect if they have a test result of a BAC of 0.08 or more, for out-of-state residents they do not take the license; and
 - If they refuse to take the test, the ER 15A is completed but it is checked off that they refused to take a test for chemical substances.

Question: How do we track individuals arrested for other criminal offenses, for which the DUI is dropped?

Answer: Information on the number of arrests goes into MVA and JIS.

- In some jurisdictions there is the option for discretionary release, but this is not standardized statewide.

For MD residents only, not out-of-state residents:

- For a BAC below 0.08 the suspect will not get the ER 15, but they can be arrested and charged for DWI, a lesser offense. In MD DUI is 0.08 and above and DWI is 0.07 and below.
- For a test below 0.07 the arresting officer can compare the level of observed impairment with the test result, and if the officer feels that these are inconsistent they can request the Drug Recognition Expert (DRE) officer. There are 134 DREs statewide. The DRE will then evaluate the suspect and if they feel that the suspect is under the influence of one or more category of drugs they will ask for a blood test.
- Arrest data goes to JIS and MVA. Traffic citation goes to courts, some sent electronically, some sent to court by mail or hand delivered by courier. Breath test results, DR 15 and DR 15A usually travels by U.S. mail to MVA.
- A defendant has 10 to 30 days to elect an MVA hearing.
- They can elect to get the interlock in 30 days but they need to go MVA to fill out a form, and then they must have it installed within 15 days (ballpark).
- If they fail to do either one of these things, the license will be suspended within 45 days.
- The length of suspension is determined by prior offenses, refusal, or BAC level.

Prosecution

- At an MVA Hearing the DR 15 and DR 15A, breath test or refusal, and driving record will be examined.
- The defendant must notify the MVA within 10 to 15 days that an MVA hearing is requested. If the defendant does nothing then their license will be suspended on the 45th day, the length of suspension depends on the BAC, prior arrests, driving record, test refusal, and other factors. The period of suspension can range from 45 to 120 days.
- An MVA hearing costs \$125; the check needs to be sent via certified mail to MVA prior to the hearing. If one pays it within 30 days they will stay the suspension on the license until the day of the hearing. That is important because scheduling the hearings doesn't always happen quickly, it can take months.
- There are limited grounds, only seven, that defendants can raise in an MVA hearing.
- The burden falls on the defendant. The defendant must have a legitimate reason as to why a police officer's presence should be requested for the MVA hearing and this reasoning must be shared with the defense in writing well in advance of the hearing.
- The judge can do a "no action" if something of the process was violated, the license is not taken and the money also is returned.
- The MVA judge can send defendants to a medical advisory board, which can then put defendants into DDMP.

Criminal Prosecution

- A DUI can be referred to one of two courts – most are in the district court, but if fatality occurs or if there are other charges, then the case goes to circuit court.
- The State's Attorney should have the DR 15A, arrest report/statement of probable cause, criminal and traffic record, test results, but sometimes they don't have all of this information and it creates a problem. If a police officer doesn't fill out the forms correctly that also can lead to technicalities. The State must be prepared with the witnesses.
- The discovery process refers to gathering all of the information pertaining to the incident. Some police officers are too busy to respond to these requests individually and maintain an "open file" policy that allows others to examine all of their files.
- Not every single person arrested for DUI goes to trial.
- If all of the information regarding upcoming DUI cases and hearings were somehow consolidated that would be a better process. Currently, officers are sometimes scheduled to be at multiple hearings at one time.

- In Circuit Court the defendant has the right to a jury trial. The possible penalty needs to exceed 90 days in jail for the option of a jury trial to be available for defendants.
- In a plea agreement the State examines the entirety of the evidence; most first time offenders have their cases resolved through plea agreements. For DWI it is likely that over 90 percent of cases are resolved through plea agreements.
- The plea is entered into JIS, but not the plea bargain. A plea from drunk to reckless driving would be recorded, but most of pleas bargains are offenders trying to arrange only weekend jail time, no PBJ or something along these lines.
- Unlike Virginia, Maryland has a two-tiered system of drunk driving offenses, so defendants can plea down to DWI from DUI. However, there is no data on this that we can easily access.
- If someone has two drunk driving offenses with a relatively short period of time sometimes they plead guilty to one and the other will be dropped.
- Generally, if you don't take a plea you either have a great case or are not smart.

Adjudication

Criminal Process

- Plea agreements go through the adjudication process.
- A guilty plea will result in a sentence, anything from PBJ to statutory maximum. It was suggested that a PBJ also should result in enrollment in MASAP.
- The judge, which can be an administrative judge or a criminal court judge, has all types of options: interlock is a condition of discharge, and a condition of probation, work release, split sentences, weekend detention, home detention, or unsupervised probation.
- In cases adjudicated in District Courts in FY 09 out of 11,839 PBJs for DWI/DUI – 58.4 percent or 8,439 were found guilty.
- There are approximately 24,000 DWI/DUI arrests annually in Maryland, so it could be that a percentage much higher than 50 percent gets PBJ.
- The judge doesn't know who is a repeat offender during trial, but at sentencing they have this information.
- There will typically be two hearings, a presentence investigation (PSI); it is done in district court very rarely.
- There are 24 different ways to get a clinical assessment in Maryland, but they are all under pressure now with high caseloads. Only in Baltimore City is this process quick.
- The longer the person goes through from arrest to sentence, the greater likelihood of recidivism.

MVA

- MVA hearings are usually held at 12 MVA locations throughout the State.
- Offenders can be referred to Medical Advisory Board (MAB) if they have a certain amount of DUIs within a certain timeframe.

Probation and Parole

- Source of probation cases:
 - Seventy-eight percent of cases come from district court, or 12,100 cases.
 - Twenty percent of cases from circuit court, or 3,100 cases.
 - Out of state, 130 cases, MVA, 94 cases.
- DDMP has a static population of 16,000. Not every convicted drunk driver goes to the DDMP. A judge has to order someone to DDMP as a condition of probation.
- We don't know how many people are never referred to these programs. There is no one that tracks if the nonreferrals ever went to treatment, but usually the judge will order DDMP unless treatment is close to completion.
- If the judge orders an evaluation the individual will report to the health department. The health department determines the offenders' type of drinking problem and refers them to appropriate educational services. For a social drinker there is a six-week education program, for a problem drinker there is a six-month education program. There is no standardized education curriculum.
- Offenders ordered to treatment undergo a state classification process to evaluate their alcohol and other substance abuse issues. The Alcohol and Drug Use Administration (ADA) rates individuals on nine 'spheres' in life (legal, relationships, etc.).
- If the individual is a problem drinker the health department can provide treatment or the individual can find a treatment that is certified, by the health department; probation doesn't certify treatment facilities.
- The current process is adjudication driven. There is a checkoff box on the adjudication order for alcohol abstinence, but there are offenders that are ordered to treatment and not ordered to abstain from alcohol, or offenders that are ordered to abstain from alcohol or have interlock but not ordered to treatment. A comprehensive case management system via MASAP would be able to address gaps in the current system such as these.
- What type of consequences should there be for offenders that do not comply with MASAP? There needs to be some discussion of the consequences of failure to comply with the probation, which is often given in lieu of a conviction. We need a carrot and a stick that will be consistent.

Next meeting invites will include Fairfax County ASAP and the National Study Center.

D.2 TUESDAY, JULY 8, 2010 – MEETING MINUTES

Meeting Attendees

Thomas P. Cargiulo, Maryland Alcohol and Drug Abuse Administration
David Ennis, Maryland Department of Health and Mental Hygiene
Darren Douglas, Office of the Public Defender
Roger L. Harrell, Dorchester County Health, MACHO
Captain Mike McGuigan, Charles County Sheriff's Office
Mandeep Chhabra, Maryland Association for Justice
Lieutenant Tom Woodward, Maryland State Police
Gregory Bearstop, Prince George's County Health Department
Kathleen Dumais, Delegate, District 15
Chrissy Nizer, MVA
Neil Pedersen, Maryland SHA
Pat McGee, Maryland Division of Parole and Probation
Liza Lemaster, MHSO
Pam Beer, Cambridge Systematics
Shana Johnson, Foursquare ITP

Welcome

Neil Pederson opened the meeting and welcomed everyone. He noted that the purpose of this meeting was to identify gaps in the current system and to begin to create a framework for the MASAP Program. Neil and Pat McGee are cochairing the MASAP Program Committee.

First Meeting Review

Liza Lemaster led the review of the MASAP Program Committee's accomplishments at the first meeting, held on June 1, 2010. The origin of the MASAP concept was in the Task Force to Combat Driving Under the Influence of Drugs and Alcohol, a high-level group that was tasked with examining drunk driving in Maryland and how the State handles DUI/DWI offenders. The cornerstone recommendation of the Task Force's final report was the establishment of Maryland Alcohol Safety Action Program (MASAP). In January 2009 the Governor issued an executive order to create the MASAP Program Committee, which is tasked with understanding how the current system works and identifying the gaps and how best to fill them. If this group decides that a new agency needs to be created, we need to identify how that agency would interact with the current stakeholders that deal with DUI/DWI offenders.

At the first meeting the Program Committee was presented with detailed information on the history of the ASAP concept and what ASAP was initially intended to do. ASAP originated as a NHTSA pilot program in the early 1970s, and was initially piloted at 35 sites around the country. Today, there are only three states that still maintain an ASAP program: Virginia (our model), South

Carolina, and Alaska. Many pilot programs are believed to have been discontinued when Federal funding was no longer available to support them. At the first meeting the program committee was briefed via telephone on the Virginia ASAP model by Angela Coleman, Acting Director of VASAP.

At the first meeting the Program Committee went over the current framework for dealing with DUI/DWI offenders in Maryland, mapping what happens to an offender from arrest to adjudication and treatment. The challenge for the Program Committee is connect the dots in a programmatic and strategic way, close the identified gaps where offenders are “falling through the cracks” and not receiving treatment or education when they should be. The purpose of this second meeting is to discuss ways to close these gaps in an ideal system, and what type of agency or operational framework needs to be in place to make this happen. There is a lot of work ahead of this committee. At the final meeting we will need to be reviewing a draft final report.

Fairfax County ASAP

At the first meeting the Program Committee expressed a desire to meet with the Fairfax County ASAP office. Fairfax County shares many characteristics with Montgomery County, Maryland, a county that has many DUIs/DWIs and is a possible site for a MASAP pilot program. After contact was made with Fairfax County ASAP, Director Elwood Jones extended an invitation to the MASAP Program Committee to visit the Fairfax County ASAP offices and hold the committee’s next meeting there.

Mr. Jones, Angela Coleman, Acting Director of VASAP, and other local office staff would be available to brief the committee at the site visit, and the committee would be able to sit in on a court hearing that is public if that is of interest. In extending the invitation Mr. Jones noted that a site visit may be the best way to help the committee understand how offenders are dealt with at the local level, and how many offenders are processed in a given day. There also is a strong possibility that the volunteer director of the local policy board (which provides local oversight), an individual whose day job is working on drug issues for the Coast Guard, will be able to attend the meeting and brief the committee on the role of the policy boards and how local oversight functions occur. Mr. Jones proposed that the presentations and other site visit activities occur in the morning, and the committee could then use one of the Fairfax County ASAP conference or training rooms to hold the remainder of the third meeting on-site there.

The MASAP Program Committee was enthusiastic about the invitation from Fairfax County ASAP, but concerned about the logistics of getting to Fairfax County during rush hour on a weekday. After some discussion, it was decided that the third meeting be moved from Thursday, September 2 to Thursday, September 9, to avoid Labor Day related traffic, to enable the third meeting to be held at Fairfax County ASAP. It also was recommended that the meeting be moved to a later start time, tentatively 10:00 a.m., and that the briefings be held

from 10:00 a.m. to 1:30 p.m., followed by the committee meeting. Staff also will look into obtaining a bus to transport committee members from SHA offices in Hanover, Maryland to Fairfax County ASAP.

Gap Analysis

Pat McGee opened the meeting's gap analysis discussion. The Governor's Executive Order that created the MASAP Program Committee is very broad; it asks the committee to reorganize state government in a way that improves how we deal with offenders but at no cost to the State. This is a challenge, but a positive challenge. To meet this challenge Pat asked the committee to consider two key questions:

- What are the key components that we want in the program?
- What are the best practices for managing DUI/DWI offender assessment, data management, and data analysis?

Pat also identified several core issues that the committee must address in setting up MASAP:

- Each agency and stakeholder that deals with DUI/DWI offenders has their own data, and these data sets are not shared. The result of this lack of data sharing is that no single individual stakeholder can understand the totality of the problem. Where the information falls out is where we have gaps.
- The committee needs to examine the best ways to incorporate technologies. Streamlined and effective technology use will work well with this very targeted population. We know that this population is pretty responsive under supervision.
- The task force was developed to rationalize what we currently do. Today, we monitor the population but we don't provide case management or connect them with everything that the need. The current system is instead designed merely to process people and gather information.
- The current DDMP workforce is not qualified to provide case management services. DDMP monitors today only need a high school diploma and are merely following up with offenders to ensure that they meet the terms of their probation. However, increasingly the employees in these positions are being expected to do case management functions, and this is not working well. In a true case management model a MASAP employee would need a Bachelor's Degree and would need specialized training in case management.
- The mission from the court isn't clear. Many times the court does not monitor abstinence, the only concern is to ensure that individuals don't drink and drive. This is another question for the committee, some DUI/DWI offenders need to stop drinking entirely, and we need to understand how treatment of this behavior would connect with the current Maryland system.

Pam Beer noted that in the minutes from the previous meeting that we've captured Pat's discussion about the absence of case management in Maryland. We also talked a lot about the ASAP model, and the clear difference between the ASAP model and the current Maryland system is the absence of case management. ASAP is focused on dealing with the addictive behavior. While DDMP does not look at other causes of the behavior or addiction issues, but rather focuses on stopping the offender from drinking and driving. These are two completely different programs. We may want to look at the VASAP program statistics to discern differences between the VASAP models and Maryland's, particularly in the recidivism rates. Another important aspect to note is that VASAP does not cost any tax dollars, and neither does DDMP.

Pat confirmed that DDMP currently does not cost taxpayer dollars. The Maryland General Assembly increased the DDMP fee to \$55 per month starting in June 1, 2009. Prior to this past fiscal year the State had to allocate \$1 to \$1.5 million for DDMP for the three previous years via appropriation. For this fiscal year the program is self-supporting and will have a surplus. The \$55 per month DDMP fees were originally scheduled to sunset after the first year, but the sunset was removed. Offenders must pay \$55 per month for every month they are enrolled in DDMP. This is a program fee, so there is no court sanction if the fee is not paid. However, if an offender does not pay the fee then it becomes an ongoing debt to the State, and can impact other areas of their life, such as their state income taxes and ability to purchase property.

DDMP does not know the exact percentage of offenders that pay the user fee, as their accounting system will not allow them to get at this data. However, they do know that the percentage of offenders that pay the fee is high. Compared with the criminal population, the DUI/DWI offender is much more prosocial and much more likely to be employed and more motivated to successfully complete their probation. For this past fiscal year DDMP collected close to \$80 million in program fees.

This committee needs to look at what all aspects of what functions will be in the MASAP program and their associated costs. Does MASAP provide assessment, or do we outsource this? All of these decisions will affect staffing and the ultimate cost and user fees that this program will charge. Our hope is to include PBJ as a conviction; you would have to include PBJ because it is just such a large portion of the target population.

David Ennis noted that the other hole that need to be plugged is the proliferation of private firms and individuals that are closely linked with defense attorney's that provide assessments to those arrested for DUI/DWI. These assessments need to be done by professionals, staff that are a part of MASAP or certified by MASAP. There is an industry developed around providing favorable, and not always accurate, assessments to individuals arrested for DUI/DWI prior to their court hearing. The judge is then presented with this assessment that may or may not be accurate, and may be basing some of their decisions on this information.

Pat indicated that this is something that we need to know more about so we can develop how the assessment process should take place. We should know how this private assessment industry interfaces better with the existing treatment system.

David responded that interfacing treatment with the criminal justice system will be the easy part; the hard part will be sidestepping the assessment providers that are private and work in concert with defense attorneys, as these people make a lot of money. Pretrial assessments are a big part of the treatment.

Pam noted that in Virginia offenders can only go to approved treatment programs. Liza asked if the offender is able to shop around to get the program they want.

Pat responded that yes, offenders in Virginia do have an option to choose among different treatment programs, but this is a separate issue. The start of this issue goes back to the pretrial assessment. The pretrial assessment happens differently from the assessment provided by DDMP program, which happens post adjudication. The post-trial and pretrial assessment can be very different, night and day.

David noted that while judges normally will not recognize an assessment unless it comes from a firm or an individual with some type of relevant license to practice social work, psychiatry, psychology, medicine or another related field. However, a license to practice in one of these fields does not make the person qualified or certified to provide an alcohol-related assessment. The assessment process is very subjective, but qualified, good assessors can recognize an alcoholic, while other individuals may just believe whatever the offender is saying resulting in an inaccurate assessment. The individual arrested for DUI is socially connected and can afford the right attorney that will connect them with a sympathetic assessor, that person will then typically get a lighter sentence.

Caesar did a report on this about five years ago that might provide data on how many people go through the pretrial process.

Darren noted that in his experience, when individuals come to court not even a third of people show up having been assessed prior to trial. This is a very select group.

Chrissy informed the committee that there also are individuals that opt for ignition interlock prior to trial to demonstrate their desire to comply. The MVA doesn't monitor the individuals that voluntarily opt for ignition interlock in the same way that they do to people that are referred for ignition interlock.

The issue of certification of the providers of assessment, education, and treatment of DUI/DWI offenders is something that is ongoing. Dave noted that up until recently the alcohol education programs provided to offenders could have been done by anyone, and were provided by a wide variety of organizations, including driving schools. About a year or two ago the

regulations changed to require those doing education be certified. The Office of Health Care Quality (OHCQ) at DHMH now certifies these programs.

In Darren's experience, whether or not someone arrested for DUI/DWI takes an educational class prior to trial seems to make a difference in whether that individual will get supervised or unsupervised probation, it does not make a difference between PBJ and guilty for first time offenders. For those arrested for DUI/DWI for the first time that do not have the money to get a private pretrial assessment or take education classes, the likely result from the court will be PBJ. The individuals with PBJs are then going to DDMP for referral to assessment and treatment. In many jurisdictions, assessment occurs at the county health department, where there is a sliding scale fee for assessment. Sometimes treatment also will occur at the county health department. Pat noted that DDMP does not provide an assessment services, it merely monitors offenders for compliance with probation.

Tom C. indicated that this is often the stage when people come through the local health departments, and that these are the people that cannot afford private services. He will be able to make data available on the number of people that go through these services at local health departments for the committee.

David noted that while all of the county health departments are offering assessment services, not all of them offer the six-week education courses in-house. In some counties this has become another small industry, with private providers making a lot of money off providing alcohol education courses. These private education providers do not want the county health departments to offer education classes where they do not currently, as the county health departments offer these courses for a much lower fee and on a sliding scale of fees. We do not know how many jurisdictions currently offer alcohol education programs, but a reasonable estimate is half of them currently do.

Pam brought up the issue of post-trial treatment. At the trial the, if the judge determines the sentence, then are punishment and treatment separate? David and Pat both indicated that treatment is a condition of probation.

Judges can ask for an assessment prior to sentence but after the verdict, but this happens very rarely in Maryland. Many local health departments still have assessors in the courthouse. Pat noted that the typical model is that assessment and treatment all occur postadjudication, after DDMP has referred an offender to these resources. As a result, many times the judge is giving a sentence without much information on the true state of the individual offender's needs and issues. The probation order that DDMP receives may include any number of possibilities for assessment and treatment of the offender, it may order abstinence, or not, and may or may not order any treatment or assessment. Often, the court will order neither assessment nor treatment.

The underlying issue that this gap analysis highlighted is the lack of a real system. There is no clear order in how every part of this process should occur. Assessment can be performed preconviction, postconviction, or never. Most

assessments occur postconviction, and treatment normally occurs because it is the individual is assessed as needing it. A judge can order an assessment, or not order it, to be done at the county health department.

Treatment occurs because the individual has a health condition that affects their behavior. One can get treatment without the judge ordering it, but the treatment provider must be certified. Where and whether an individual gets treatment is determined by their ability to pay. The practice of DDMP is to simply provide a list of places to get treatment. The role of DDMP in this entire process is just to make sure the offender complies with the probation order, if something is not a condition of probation, then it does not involve DDMP.

Gregory confirmed the accuracy of the current assessment/treatment paradigm as discussed. In his experience the Prince George's County Health Department performs assessments of individuals referred from DDMP, and it does not see people that are not referred from DDMP.

- The County uses the State-approved screening tool, which can determine who needs treatment.
- The County also uses SMART.
- Urine tests and Breathalyzer tests are a part of every screening. The assessors do not just rely on the offender's statements about their alcohol and drug use.
- The Prince George's County Health Department does not offer education or treatment, and not all of the current treatment programs are certified yet (they are still making it through the new certification process as described earlier by David).
- The current practice of the Prince George's County Health Department is to make an appointment for education or treatment for an offender at the assessment. After an offender leaves the assessment unit, they don't follow up with them on their treatment, although they would like to be able to do this.
- After assessment, then the individual can go to private treatment provider but many cannot afford private treatment services and prefer to access treatment through the health department.
- The Prince George's County Health Department provides monthly reports to the DDMP.

Pat notes that we do not have a handle on how many people are arrested for DUI/DWI but are not captured in the current system. Presently, if they are not assigned to probation, then there is no one following up with them in the postconviction cycle. We also know that not all of those on probation are required to get treatment.

Mandeep and Darren asserted that those that are not convicted or that are on unsupervised probation are a small number. David noted that for those offenders that are in jail (which typically happens only when a drunk driving

incident results in a death) that every local detention center has a treatment center. Pat added that DDMP does the period of supervision for these offenders when they get out of jail.

Tom C. provided some background data on the number of people that the health departments treat:

- In Calendar 2009 – 2,900 individuals came into funded treatment programs; these are admissions (new cases) in Maryland, after having a DWI.
- We don't know the people that are in privately certified programs.

The number of offenders that were treated through state-funded treatment programs contrasts greatly with the number of arrests and the number of PBJs.

- In 2008, DUI/DWI arrests 27,000
- DDMP Offenders 16,000
- DDMP PBJ 7,100

In the experience of Tom W. in circumstances when the arresting officer does not show up for court, most cases will be thrown out. This could be one reason behind the discrepancy in these numbers. He also cautioned everyone that we need to use 2008 and 2007 data out of the National Study Center in our work, as the 2009 data is only 80 percent complete.

Chrissy noted that some of the individuals that slip through the cracks in the judicial process may still be captured in the MVA administrative hearing process.

There is a major issue with getting all of the data sets together. MASAP needs to have the courts, DHMH, law enforcement, DDMP, treatment and education providers, and MVA all on the same system. The individual needs to have a record that can be tracked from beginning to end. We need to completely review all of the current data systems and databases that are available and assess how MASAP could integrate with them:

- State of Maryland Automated Record Tracking System (SMART) may be one option.
- The Law Enforcement Dashboard may be a model to look at as it allows a user to find out where individuals are in different data sets.
- The Department of Public Safety is putting a web-based offender management system together, which may link to SMART.
- The legislature has been very active in saying that public safety and courts must be linked via a computer-based management system. A person should be tracked by a tracking number, ensuring that all data tracking will be seamless.

Chrissy proposed that the committees needs to first look at how the process should ideally work and then backtrack and determine how it would fit that into the current system, how to integrate the data. The committee agreed that this is a

good approach to addressing some of these issues. The MVA will receive a copy of the DR15/DR15A, but nothing goes on an individual's driving record unless they've been arrested for multiple violations. Individuals with multiple DUIs are referred to the Medical Review Board (MAB), which consists of doctors, for assessment of the ability to drive.

The discussion then turned to what records would be useful to have in the SMART system for MASAP:

- Arrest, court, and probation records. (Individuals arrested for DUI are not fingerprinted or photographed.)
- BAC Levels.
- Assessment. (Although this would be an electronic medical record, and currently they cannot look at this type of information until after someone is admitted to treatment. Informed consent of the individual would be required to share this more widely.)
- Criminal record.

Tom C. noted that if they had this information on arrest, instead of at conviction, that clinically it would make a tremendous difference.

David emphasized that these are actually two separate areas that the committee is discussing:

1. How the person is going through the system; and
2. How we manage the data about the person going through the system

MASAP should funnel all arrests information into one database, and we would need ASAP to go through and be the overarching monitor of all the activities related to a DUI arrest.

Pat agreed that the committee is thinking on the right track. Currently, an individual can self-report that they have never been arrested, that this is a first offense, and that they have no criminal record, but there is no way for the assessors to verify this information. Pat added two key considerations to this discussion:

- We need to look at structural boundaries in this model – for example, a treatment agency doesn't have criminal information – and we need to have all of these to work together to create an integrated treatment case management plan for an offender.
- A MASAP system needs to be postured so that we can all get all of the information together, that there are no statutory boundaries preventing data sharing.

A related issue is the current treatment framework. David brought up the fact that MVA regulations now say that someone is a problem drinker that they will receive 26 weeks of treatment, but this may not be sufficient. Chrissy responded

that these regulations are now being updated to eliminate any reference to a time period.

Pat states that the current education and treatment system that is based on a 6/26 week model has been in place for decades and needs updating. The ability to deal with the behavior or illness is really critical to being able to reduce drunk driving. We know that drunk drivers are not all part of the same population, that these are individuals whose issues will require different combinations of education and treatment and different time period of education and treatment. Tom C. adds that most people assigned to treatment will truly need to be there for years, not months, and that we need to get away from systems that force people to be in treatment for such a limited period of time. The data from MASAP, being able to examine outcomes for this entire population will give us the ability to understand how the effectiveness of current treatment programs.

Darren added that legally speaking; when probation ends we cannot force people to continue treatment. In Gregory's experience, even when a court orders treatment, sometimes when the offender is assessed the ordered treatment and the assessment don't match. When the judge does not have an assessment, he or she can sometimes not order the appropriate level of treatment or care. There is a significant issue that Tom C. sees as well, as the State should not be paying for treatment that someone doesn't need or providing an inappropriate level of care.

Roger brought up the issue of how MASAP will educate and interact with the judiciary. It will be critical for MASAP to work with the judiciary but at the same time respect their independence. A number of challenges and benefits related to MASAP-judiciary interaction were then discussed.

Working with the Judiciary to Manage an Offender

- There are cases where attorneys are telling clients to tell judges that they have a problem when they don't, in order to get a lesser charge. By establishing a working relationship with the judiciary MASAP could stop this from happening.
- Graduated probation orders are one possible option for allowing MASAP some control to manage the offender's behavior, while respecting the independence of the judiciary. Pat noted that without some authority to manage the offender, MASAP will have to repeatedly return to the courts for new hearings, and often times it takes months for a new hearing to be scheduled. In the gap time between when a hearing is requested and scheduled the offender will often return to their self-destructive behavior(s). A MASAP agency would need to have some statutory authority to manage the offender, to decrease controls as the offender complies with the probation order and increase controls if they are not meeting the conditions of probation.

- DDMP does not establish the conditions of probation, nor does DDMP need or want this authority, yet, there is the issue of how to structure ASAP to best manage the offender without putting more burden on the courts.
- Liza noted that in VASAP the case managers have the ability to ratchet up or down the offender's sanctions based on their behavior, but they go back and coordinate this with the court, so as to respect the authority and role of the judiciary.

Providing Judges with Information Prior to Sentencing

- The case managers with the data available on each offender need to have some outlet for getting that information to the judiciary in a timely manner so that evidence-based decisions can be made.
- At the time of sentencing, the judge has very little information on the offender, merely their prior acts, and their driving record. There is not a system to get information to a judge between conviction and sentencing; often these two events happen within minutes of each other.
- Judges also are not familiar with the best practices in managing offenders and there is no consistency in the level of offense and the sentence across Maryland.
- Gregory noted that as a part of MASAP we may want to think about what criteria we want to use to have to evaluate how it works, we don't have good performance measures or data on outcomes, this is a true gap. Judge with this data in hand then judges will have a way to understand what sentences are most effective for offenders by the type of offense.

Pam then led the committee in a review of the identified gaps in the current system:

1. **No True Case Management System.** We have a very fragmented system for offenders. Offenders with similar issues may get different sentence and have different education and treatment experiences. No one is managing what happens to the offender from the time of arrest through treatment, so there is no way to gauge the effectiveness of
2. **Lack of Data Management.** We cannot effectively manage this population because we don't have the data to tell us what happens when a person gets arrested through completion of probation. Public safety/courts are going in this direction now, but as of today data is not integrated among the different agencies that deal with DUI/DWI offenders. MASAP needs to find a way to create a single file for each offender that contains all relevant information and that will aid the case manager in helping the offender resolve the issues that led to their arrest, and to prevent these issues from resulting in recidivism.
3. **Lack of Consistency.** There is no consistency in what happens to offenders at any stage of the process, in terms of what the judge does for referrals, how

offenders are treated, etc. A key goal of MASAP would be to establish evidence-based models for how each...

4. **Outdated Treatment Models.** We need to provide better guidelines for treatment, as opposed to these 6/26 static models that have been in use for years. We need to find out what is effective in treatment and design treatment and education models that are proven to work based on established research and MASAP experience documented via data. A MASAP program may be able to provide guidelines to the courts.

It is important to show people how ASAP is going to change and improve things, help them to understand how people are slipping through the cracks. This will require legislative change, so we need to show exactly the gaps and how best to fix them.

System Design

Following the discussion of the current process and gaps, the MASAP Program Committee moved on to discuss the characteristics of an ideal system. This discussion focused only on an *ideal* system, from enforcement and arrest to treatment and education. Future discussion will refine this ideal system to craft a proposal for a system that would be practical and cost effective to implement.

Enforcement

Documentation and Procedures relating to the arrest, providing arrest information to MASAP prior to trial:

- BAC levels currently go to State Police, Chemical Test Unit, but BAC levels need to be available to all the MASAP stakeholders, including those that do assessments, even those that occur pretrial.
- Currently, there is no requirement that BAC levels are provided for the assessment, and there is no requirement for assessor to request this. However, the offender does have this information via self-report. In most instances, the assessor does not have access to the BAC report, and the assessor can only base their assessment on what the offender *tells them*, which may or may not be accurate.
- In an ideal system, the assessor also should benefit from having a copy of the arresting officer's report. It would be useful to know the arresting officer's objective observations of this person's behavior, rather than basing understanding of how the arrest went on the offender's account.
- Darren noted that the BAC information is formally introduced at court via proper procedures. As a defense attorney, he would prefer a "wall" between the BAC information and the arresting officer's report in any computerized MASAP database that would prevent a judge from accessing this information pretrial.

- Often the arresting officer's reports would be released by the State's Attorney's office, it is preferred that they come through the State Attorney's office as a part of discovery process. If they are released them to someone else then there is always the chance that the defense could get the information before the prosecution that may be an issue.
- There also is the time issue of getting the reports through the agency and to that assessment agency. In many circumstances offenders are being referred to assessment very quickly, while it may takes approximately a week for the reports to go through the agency and then become available.
- Even if arresting officer's reports could be sent to MASAP instantaneously via e-mail or fax, they would still have to go through agency review, which would take time.
- We need to take into account that each of the 150 local police agencies in Maryland has their own system.
- Tom W. noted that the state police have what is reported to them under arrests, but there is no guarantee that this is completely accurate. They get information sent to them from the chemical testing unit. If the District Court can now count arrests and cases, then this is likely the best source for arrest data.
- Chrissy responded that the District Court isn't quite there yet, but they are working on establishing this capability.

Assessment and Control

Information/Data Needs for the Assessment

- If the assessor had access to the complete criminal history, including prior arrests, breath tests for DUI, etc., even if a person had been acquitted, that would help with the screening process. However, having access to this information may create real issues for the defense counsel. We'd have to make sure that this information is not accessible to anyone other than the assessors.
- When working with this population the assessor really needs to understand the individual's complete relationship to chemicals, and their relationship to the criminal justice system. The more information the judge has the more informed a decision the judge can make. This would be very different from the current paradigm, for DUI arrest currently the judge only receives the individual's traffic record, and not their complete arrest and criminal records.
- Any prior addiction treatment information should be included. This will require the individual's informed consent.
- In an ideal system, all of this information is available to MASAP prior to sentencing.

MASAP Assessors

- All individuals arrested for DUI, DWI, and DUID (Driving Under the Influence of Drugs) should be assessed.
- Is the MASAP assessor in-house or outsourced? It could be either at this point, as some assessments currently are provided at county health departments, but private firms or individuals provide others. However, all assessors need to be impartial and trained and licensed specifically in alcohol and drugs assessment.
- David envisions a system where an MOU between DHMH and MASAP couple be established, where DHMH could provide MASAP assessments through county health offices.
- The individual's assessment should be available to the judge at the time of trial. The judge should receive the assessment and a professional recommendation as to appropriate treatment options. This could provide a roadmap for the probation order.

Relationship between Assessment and Control

- David noted that substance abuse treatment professionals are not qualified to make recommendations around control, but that they should be making recommendations around appropriate treatment and education plans for individual offenders. An assessment coming from MASAP would take into account both the health assessment and a MASAP evidence-based model for what works for sanctions, and these are presented together to the judge.
- Pat added that MASAP should bridge the gap for controlling and managing the offender, that it should bring these two functions together.
- Darren indicated that if it is an order to a judge, that won't work, but if it is a recommendation that is different.
- The word control gets to the heart of it this issue. We want this person to treat their illness, but in order to do that we need to impose the controls that help them do this, and help them to treat their illness successfully.
- In a traditional presentence investigation, The Parole and Probation Department provides a full history for an offender (employment, military service, etc.)
- What we are talking about is case management capability. All the evidence shows that blending control and treatment together is the best way to reduce recidivism. In Maryland the court must make the decision on the control. MASAP should provide control recommendations, and then the court decides what to do. However, the assessment provide to the court must include two "menus" – the professional assessment and the control recommendation.

- Twenty years ago Montgomery County had a program that blended treatment and control recommendations with a graduated sanctions document that gave the probation officer the authority to change the treatment and control interventions based on the offender's behavior/response, "Treatment Alternatives to Street Crime" or TASC. This has since been superseded, but it is similar to what we are discussing.
- David stated his belief that the assessor should not be the one making the control recommendation. Although we need to find away to inform judges as to what sanctions are proven effective, having an assessor provide control recommendations would negatively impact the assessment and is in fact a separate skill set.
- Gregory seconded David's observation, stating that the assessor needs to remain clinical and that it will change the dynamic of the assessment if the assessor is involved in criminal sanctions, and that is not desirable. A prosecutor or someone working within MASAP they could have the assessment and then recommend sanctions.
- The judge already is receiving recommendations from the prosecutor in each case, so MASAP sanction recommendations may or may not be an issue for the judiciary. We need to run this issue by judges and some additional defense councils to elicit their input. It does appear that having the recommendations for sanctions from an outside source may cause some consternation.

MASAP Capabilities

- What are the capabilities of this program? Can it impose interlock, test for chemicals? Does the court know of all of its capabilities? Not all of the courts understand DDMP's technological capabilities. It is too technical, detailed to understand the technological capabilities? It would require a lot of effort for the courts to understand all of the technological capabilities
- The statute current allows someone with a high BAC to elect to have ignition interlock installed immediately.
- Neil suggested that for now we include that at least information be put together on what has been developed that is effective on how to assign sanctions, and then we need to continue this discussion when judges and defense attorneys can participate.

Judicial Education

- One of the gaps identified in this conversation is that judges do not have the information to help them understand what sanctions and effective and appropriate for each offender.
- VASAP educates judges on an ongoing basis, and this is a gap that needs to be addressed in MASAP as well. If after working with judges and defense

attorneys we cannot get them to accept recommended sanctions, we can at least get them to agree to education on sanctions, etc. as happens in the VASAP model.

- Pam noted that there are some lessons to be learned on their educational approach, and that this can be improved in Maryland. MASAP can become much more of an informed source for the judiciary in Maryland. VASAP functions more like a highway safety office, whereas MASAP may be more of a scholarly type of approach of judicial education. Judges may be much more receptive this type of educational approach.
- The ideal person to lead this effort would be a retired judge.

MASAP Organization

Envisioned Organization

- MASAP would be instead of, and not in addition to DDMP. It would not be cost effective to have two systems. MASAP must become the agency that manages the offender postadjudication. We don't know if this is a criminal justice system, or if this follows under probation and parole. These are huge questions. Probation offices across the country can be under the legislative, executive, or judicial branch, in Maryland it is in the executive branch.

MASAP and MVA

- Does MASAP do anything with my driving record information? Does MASAP get involved with MVA?
- Chrissy responded that the authority over the license should remain with MVA, but it must work with MASAP. It is an administrative control on the driver's license (this is not true in Virginia), so MVA must control the license. However, there are cases where they order people to treatment, so there is some synergy here. MVA has 8,300 people on ignition interlock, some on probation and some not. MVA has authority under statute and regulations to extend ignition interlock without going back to the courts, in the event of a violation. This is in the regulations, if you violate one month it goes on to the next month.
- Neil seconded the recommendation that the interlock program stay with MVA, but again there also could be recommendations that MASAP could give to MVA in terms of things they can ask MVA to do.
- This population is really expanding for MVA; it has increased in recent years from 4,000 people to nearly 9,000 people under monitoring.
- DDMP just finished their legislative audit, and they find they still have problems helping people to understand the different responsibilities of MVA and DDMP on ignition interlock.

MASAP, MAB, and DDMP

- Separate from ignition interlock MVA can mandate treatment. For example if you have multiple alcohol violations it goes to the Medical Advisory Board (MAB). However, you only have to go this treatment and the MAB *if one wants their license back*.
- Chrissy committed to provide the committee with the committee with MVA data on the number of MAB referrals. She estimates that there were maybe 1,000 alcohol-related cases in the MAB at any given time.
- Right now the MAB can place people into DDMP; they can impose requirements similar to what a judge can order.
- We have to be careful with health privacy issues when relating the MAB to MASAP. The MAB has an individual's medical records so we need to be more sensitive. The MAB could refer people to MASAP.
- There are a lot of folks recommending treatment – but we are not talking to each other.

MASAP Structure

Local Offices – Do we want a system like Virginia that has local programs?

- There are 24 local ASAP offices in Virginia. Every local office services several counties. It would be good to have central resources in rural counties.
- Law enforcement put things into different buckets around the State to organize data – 1 state 24 different systems. We have to decentralize but have a model that is consistent across the State.
- This has to be a locally administered program. The local area staff will best know the population.
- Some large counties, like Baltimore County and Montgomery County with many arrests may have their own office.

State versus Local Control, State's Role

- What is the difference, do we have a state program with local offices – or just a local program?
- There are only seven state employees of VASAP, and they contract with local programs that are locally administered. However, VASAP periodically certified the local programs.
- We need to understand who pays the local VASAP office employees. How do their benefits works? How does this relate to the program fees? These are questions that should be provided to Fairfax County ASAP prior to the site visit.

- DDMP currently people in local offices, but they are state employees, but they already are funded by the statutory mechanism. We need to consider the advantages and disadvantages in doing or undoing this arrangement
- We need to also ask Fairfax County ASAP about probation hours, how do they deal with this? Do we monitor people on probation then does this become a criminal justice agency and monitor these people on probation? This would be relevant to the graduated sanctioning.
- Virginia also must have some guidance and policy manuals that the state office provides to the local offices. We must really see these, if these exist, to understand how they do policy and oversight from the state level.

Certifying Education Programs

- MASAP should not have to certify alcohol education programs as DHMH already has and certifies education programs.
- There are no good sources that provide evidences as to the effectiveness of current education programs.
- MVA also has driver improvement programs, but we do not know if these are impaired driving prevention education programs. We need to assess what we have today.
- Tom C. advised against doing in-house education programs like VASAP uses, this would be too “cookie cutter,” and too much like the six-week standard education model currently in use. We need to really look at the whole person and provided appropriate individualized education.

Certifying Treatment Programs

- MASAP should be an assessment and case management organization. Treatment should happen at certified locations.
- We must have treatment be certified. The big issue would be asking treatment providers to input data into the SMART system, as they will not want to do this. Certified treatment programs that are not touching public dollars that are making a lot of money out of their operations and will not want input data into SMART.
- In 2008, only 10 percent of DUI arrests went into a publically funded treatment program.
- The Office of Health Care Quality (OHCQ) currently certifies treatment and education programs.

Program Fees

- We need to find out if a large amount of the program fee in VASAP comes through the education component, and if so we need to structure the MASAP fee accordingly.

- Liza's understanding is that all individuals arrested for DUI in Virginia get an assessment from VASAP, and they have to pay for this. However, if the individual is not convicted in court then VASAP has to reimburse.

MASAP Role and Size

- What is the role of MASAP beyond monitoring? Currently DDMP must address the needs and risks of the individual that relate to recidivism. They do a risk needs assessment and then provide or broker out the services to manage their risk and need, under supervision. Right now DDMP has several thousand individuals with whom they must have monthly contact and must report that contact to the court.
- We need to get data from Virginia to determine how many employees are needed to manage their offender population at the local level. We need to know how often they see people, how many people they have at the local offices.
- MASAP needs to provide a sliding scale of case management. Individuals that are high risk need to be seen more often, those that pose less of a risk can be seen less often.
- We cannot vary the fees by how often a person is seen, that would be an "accounting nightmare."
- DDMP offenders are charged for the frequency of laboratory (i.e., urine) testing.
- We need to ask Virginia about their fee structure, and how this is related to the amount of case management that takes place.

Transitioning the Current DDMP Workforce

- There currently are 90 DDMP monitors, and this isn't even enough people to do the work they have. Most of these people have high school education. They are managed in a regional fashion and we need to find out the number of DDMP supervisors.
- These 90 people manage 12,000 individuals, we need to find out how many people we need to effectively case manage this number of people. This is something that we need to ask Virginia about at the next meeting.
- We will have to roll MASAP out on a regional basis. It will need to be done over time to allow DDMP employees a chance to transition.
- Currently, the DDMP workforce is supported by the DDMP user fee, it even covers employee benefits.

Exit strategy

- How do we figure out when an offender's treatment should end? Part of our recommendation needs to be the 'exit strategy' for the person in the program.

- MASAP's role should be signing off that the offender has complied and MASAP also should send back to the court an assessment.
- Pat noted that in most probation experiences there isn't a clear exit. An offender is done when their court sentence ends, unless they have done something negative. How do we turn this into something positive?
- David indicated that in treatment an individual cannot complete the program until the goals and objectives in their treatment plan are met. These goals and objectives are measured.
- What if they don't achieve the objectives in six months? How do we deal with this scenario?
- Tom W. replied that one of the things that we can do is to track the patient and look at them through their treatment with the SMART program. What happens sometimes is that an individual graduates from drug court and is deemed 'cured' but this isn't really the case.
- Part of the ideal system would be following the person through completion of treatment.

MASAP Evaluation

- MASAP needs to have outcome-based performance measures. We need to have data analysis at a programmatic level. How big is our program? Are we making progress on reducing DUI/DWI recidivism?
- We must include program performance measures in our presentation of the MASAP program to the Governor and the legislature.
- Impaired driving-related fatalities and injuries are two possible measurable indicators.
- A recidivism performance measure on a MASAP program also should be included.
- There have to be performance measures on effectiveness of education and treatment programs.
- Pam noted that there no good performance measures on education programs; she just finished a literature review on this topic. Whatever programs we certify must have some evaluation mechanism with them.
- Once people are tracked in SMART MASAP will have a way of getting at the effectiveness of education programs. If many individuals that took education programs commit a second offense that would be a big indicator.
- Pam notes that she will get a copy of the Countermeasures That Work document to everyone.

Outstanding Issues and Action Steps

- Tom C. notes that we have not addressed the role of medication in treating alcoholism. Some medications have been shown to be very effective in treating alcoholism, but these are not widely in use.
- The committee will be obtaining additional reactions from judges and defense attorneys, and VASAP on various aspects of this meeting's discussion, but we also need to get reaction from DUI courts. The objectives of DUI courts are similar as is the conceptual approach, but MASAP would be less labor intensive.
- It was agreed that Pam and Liza would meet with Neil Axle, the DUI Court judge in Howard County, for additional feedback.
- Another element of an ideal system is that it has strong support from the legislature and judiciary and all of the partner agencies. A big part of successful implementation is doing this in a way that we are gaining support from all stakeholders. We need to have everyone involved in the process of developing this to establish the MASAP concept's credibility.
- At the state level we need to have some key legislators that have an interest in this issue on a commission.
- Another item that we accomplish at the Virginia meeting is comparing our ideal system to what happens at VASAP. After we get the ideal system established we need to think about having a discussion about how to pragmatically get it approved.
- Do we just slip this in to what we have now and just add some powers and authority where needed? Or do we let the court run it? (Courts run many programs all over the country). There are many examples of how these programs are run in different branches of government around the nation. There are 20 states that have all probation functions managed by the judiciary, including Arizona.
- Neil responded that while it is important to have complete judicial support, but this is an executive branch function.
- Liza wants an inventory of how different programs are run, in what branches of government across the nation, so we can examine all possibilities for housing the MASAP program. Pat recommended that the committee look at the American Parole and Probation Association (APPA) for this information.

Ideal System – Process Map

1. BAC Levels/Criminal Report to MASAP.
2. Circumstances of arrest – officer's report to MASAP.
3. Criminal history access, health information (informed consent).

4. Probation order to increase or decrease according to the offender status.
5. Active Judicial Education Program.
6. MASAP coordinated ignition interlock with MVA.
7. MASAP manages compliance with the court order.
8. MVA MAB may recommend court treatments.
9. DHMH and MASAP MOU to provide treatment and education referrals or services.
10. Local program.
11. Address needs of recidivism, certified programs, education programs.
12. Exit strategy.

D.3 THURSDAY, SEPTEMBER 9, 2010 – MEETING MINUTES

Meeting Attendees

Vernon Betkey, Maryland SHA
Neil Pedersen, Maryland SHA
Liza Lemaster, MHSO
Pat McGee, Maryland Division of Parole and Probation
Kira Deaven, Maryland Division of Parole and Probation
David Ennis, Maryland Department of Health and Mental Hygiene
Joeday Newsom, Prince George's County SAO
Darren Douglas, Office of the Public Defender
Roger L. Harrell, Dorchester County Health, MACHO
Captain Michael McGuigan, Charles County Sheriff's Office
Lieutenant Tom Woodward, Maryland State Police
Kathleen Dumais, Delegate, District 15
Chrissy Nizer, MVA
John Kuo, MVA
Gregory Bearstop, Prince George's County Health Department
Thomas P. Cargiulo, Maryland Alcohol and Drug Abuse Administration
Pam Beer, Cambridge Systematics
Shana Johnson, Foursquare ITP

Guests

Elwood Jones, Director, Fairfax County ASAP
Angela Coleman, Deputy Director, VASAP Commission
Gail Ledford, Fairfax County
Jason Robbins, Probation Officer I
Bob Schoneing, Chairman, Fairfax County ASAP Policy Board

Welcome

Neil Pederson opened the meeting and welcomed everyone. He noted that the purpose of this meeting was to identify gaps in the current system and to begin to create a framework for the MASAP Program. Neil and Pat McGee are cochairing the MASAP Program Committee.

Discussion of the Draft Plan

- *Fragmented System:* In second bullet we need to emphasize that DDMP is not a true case management system.
 - Chrissy – it is not that MVA doesn't exchange data/information with other agencies – but the definitions, statutory, and legal requirements are often different.

- Tom – MD has an annual judicial training, but to get MASAP training in there it would have to be mandated every year. Currently, the state police are allowed to present on impaired driving typically once every four to five years.
- *Lack of Consistency:* Liza, this is a matter of standardization – Chrissy – treatment standards are not uniform among the agencies – Tom (DHMH) – we need to have certified acceptable programs. There are evidence-based models, but we need to be sure people need to go to evidence-based treatment and assure that they do.
- *Treatment Models:* The 6/26 week models, this becomes the issue of attendance not treatment. We need fold this population into one with people that have chemical dependency issues.
- Any other ways to demonstrate the need for this program – if we can argue that there is lower cost to the government – to the extent that VASAP that has performance data that can provide us this will be beneficial – they also say that there are lower insurance rates, we need this evidence (at SHA CODES Just tracks the medical data).
- Part of the problem is case management starts at court and not at arrest – we don’t intervene early enough – any evidence-based model shows the earlier one intervenes the more engagement and better outcome – American Parole and Probation Association may have – in general the earlier someone is in treatment the better outcome. Pat will look into finding data/research on this.

Other Questions/Issues

- At what point is the VASAP process mandated?
- In Maryland – the law for ignition interlock only those with a high BAC can opt in, the law as isn’t very logical, since someone with an 0.08 and three offenses cannot opt in.
- Do the fees vary by local offices for VASAP? We need more information on this – possibly obtain their financial statements.
- Data management.
- What is the sanction if offenders do not report to VASAP?

Proposed Structure

- In Maryland MASAP would be connected with an existing department – perhaps the Department of Public Safety.
- MVA would continue to contain MAB, Ignition Interlock – they also have driver education – but it is a general DIP curriculum.
- DHMH – has public health/public safety education.

- Tie education and treatment programs.
- Neil – we don't want to create a single database – what we want is accessibility to all relevant databases – information sharing agreements.

Elwood Jones, Director, Fairfax County ASAP

Welcomed the attendees, on a typical Thursday they have two groups of intakes, but today they've scaled back to accommodate us today.

- Cannot get their licenses back until they pay their fees.
- People that do not pay their fees may come back years later – they come back as volunteer clients and must pay all old and new fees.
- New clients must pay a participation fee and – many people come and pre-enroll if they've been charged with a DUI, if they don't get convicted they don't get that money back.
- Elwood – will give the numbers of pre-enrollees for Fairfax County ASAP.
- Cases can be transferred between ASAPs.
- A \$300 service fee – same across the State, the only fee that changes is the intervention fee, which is \$100 here, just \$75 in other parts of the State.
- Individuals are under the supervision of ASAP for the entire one-year driving suspension.
- Fairfax County ASAP will take any violation of driving restrictions as a probation violation and will take this back to the court.
- Operate under the premise that they serve at the pleasure of the court.

Angela Coleman

Overview of the Commission

- State regulatory office for the local 24 programs – the Virginia Code is included in the packet. Commission is required to meet quarterly, there are 15 commission members and 6 legislative commission members selected in the Speaker of the House. Senator Henry Marsh is the current chair. Every month the local programs have to send three percent of their funds collected to the commission office – they currently have five staff members (the 3 percent was formerly 10 percent, then 6 percent).
- Each local program has their own independent policy board; state office is the only office where they are actually state employees. They have quite a few large and small independent programs – meaning they are not tied to any fiscal structure but they do have a resolutions with the jurisdictions about which they serve. The jurisdictions can decide how they want to get together to get an ASAP. The commission determines which localities are to

have an established ASAP. They haven't established any new ASAPs in a very long time. They cannot operate without a resolution in place. Most of the ASAPs were formed because a judge or a commonwealth's attorney determined a need for an ASAP program in that area. Pam – if you are operating in an area you must let them know that you are providing services to their citizens. Angela Coleman – yes – many times the local jurisdictions have elected officials on their local ASAP policy boards.

- Neil requests that we get a copy of the local resolutions.
- Vern – MD had a centralized court system, so we...
- The commission oversees the 24 local programs, including the independent and the nonindependent (jurisdiction-based).
- The majority of ASAPs are independent, but in Fairfax County they are employees of the County. In Alexandria – the ASAP falls under the Sheriff and he oversees the program. Even though the local programs have different structures, the commission still has oversight over local fiscal structures and budgets and must approve all of this.
- The Commission also employs an audit firm that annually audits each local program – the commission pays for all of the audits.
- Everyone has a uniform position description – the salary structure is established locally for the independent programs by local policy board and executive director.
- The commission must certify each local program every three years. If the program is not certified it cannot receive court referrals. They do have a certification process and they go on-site for two to three days.
- Neil requests that we get the certification checklist and the manual – this process is standardized throughout the State.
- When deficiencies are found they are given a form that details these, and the director had 30 days to address how these will be met. Even though they do certifications every three years they space the programs out so they are always doing certification.
- The \$300 base fee has not changed since 1987. However, the commission has instituted these administrative fees to cover program costs, the intervention fee varies throughout the State, some jurisdictions court's don't want these fees in place, in Fairfax it is \$100, in other areas of the State it is \$75.
- DMV Intervention fee – including all driving by suspended.
- First offender can get through ASAP for \$400 – if you miss any class or if for second and third year of DWI offenses they have individualized case management fees of \$30 per appointment.

- In Fairfax ASAP individualized probation officers are assigned particular judges so they establish a relationship. If an offender cannot follow through they are rereferred to the court.
- The commission has authority to set the administrative fees – the ASAP entry fee is set by the legislature. They’ve had some instances where entities other than the commission have attempted to get the legislature.
- Ignition Interlock program – because they now have four vendors they can get the ignition interlock put in more quickly, however, local staff must now monitor four vendors, creating more work for local employees.
- For the past two years there has been legislation proposed that all DUIs have ignition interlock, but this has yet to happen. This wouldn’t result in new funding for ASAPs, but they have required that the vendor must send \$10 per month for each offender in the program to the local programs – this helps local programs offset the additional staff time.
- For cases that are successful they do have automated connection to the DMV, the information is entered in the local program and goes directly to the DMV. In the State office they maintain the Inferno database system that the entire State uses.

Gail Ledford

- She has a dual role with the policy board –she is appointed to the policy board by the county exec – the Fairfax County ASAP is one of the quasi local programs and supports ASAP, so the County BoS get complaints, financial, tech, other complains and issues go to the County.
- About 16 years ago the County centralized all human services – contracting, budgeting, financial payments, human resources management, liaison with county corporate agencies, etc., IT, strategic planning – their agency oversees this for a \$450 million set of subagencies – ASAP is quasi-county run, the employees are County employees, but Fairfax County has little to no impact on the ASAP program content.
- Having a linkage to the local government is very beneficial – the County helped moved them to their building for example, provide human resources support (payroll, employee relations, employment, etc.), as a user fee agency ASAP is very challenging – the nature of the business is the that many people do not pay their fees, until the last two fiscal years the county had to support Fairfax County ASAP to keep them in the black. As user fees do not always come in on schedule, Fairfax County ASAP is supported by GO funds until back user fees come in.
- Fairfax County also helps with emergency, continuity of operations plans, etc. – so many other supports are offered, they assist with audit and the financial management on an ongoing basis, must be the same with the county

- It is not unheard of for complaints from ASAP participants to go directly to the BoS
- Inferno is not compatible with Fairfax County's systems, and they don't have access to it because of the nature of the information in there, but when they do go through it when they find the inferno system very challenging, it is more of a case management.
- There is a quarterly financial report that goes to the policy board, and the county monitors the revenues/expenditures of ASAP very closely throughout the year. ASAP has not always been under the Dept of Administration for Human Services – the administration aspect provides infrastructure support.
- All of the administrative/county expenses – so therefore ASAP is not completely user fee supported.
- Neil – it would be very interesting to compare financial statements.
- Fairfax County – largest jurisdiction in the State, 1.2 million people and 400 sq miles, and the largest ASAP in the State.
- Chesapeake Bay also is an independent program, similar in size to Fairfax County – but the cost factor is very different in the cost of staff (cost of living etc.), so this factors into how well supported. This program owns its own program and it...
- The independents have reserve accounts – this isn't required but it is suggested. Most independents have done well financially, however, as required by the code to commission is required to maintain a certain amount of money for reserve for deficit funding, but the requirements for obtaining this deficit funding are really stringent. But if a program gets to that point then many times the commission will already have taken over the local program.
- Every month the commission must have a financial report from all independent programs.
- All positions have uniform requirements in terms of skill sets across the State.
- ASAP funding goes into its own cost center, it is not lumped into the GO fund.
- They can have a carryover process, they can't build a surplus. Local programs can manage their own funds, invest their reserve funds, etc.
- Performance Measures – the county expects performance measures to be submitted by ASAP and all quasi-county agencies; the commission does not have to have performance data, that is part of the general certification process – they are in the process of redoing the certification process to take into account more of the outcome measures, they encourage local ASAPs.

- National Center for State Courts does the study on recidivism for all of the 24 programs; DUI Court Study done by state supreme court.
- Annual Law Enforcement recognition event well attended by local politicians, helps them understand the value of the program.
- They keep a record of all complaints, but look at these qualitatively, the commission is mostly concerned about complaints that deal with rules violations.
- Fairfax County also gives professional development classes to the ASAP staff.

Bob Schoening, Fairfax County ASAP Policy Board Chairman

- Represents the City of Fairfax ASAP Policy Board.
- Fairfax ASAP was first in the country, funded through NHTSA grant.
- Fairfax is unique in that they are helped by the County.
- Each Fairfax County Board of Supervisors nominates someone to serve – that person must come from their magisterial district. They have a number of ex officio members, police department, commonwealth’s attorney, MADD, bar association, the used to have a member from the district judges but they’ve bowed out – everyone has an interest in substance abuse.
- Fifteen members are on the board, the quorum is six minutes, meet once a quarter – organized by Fairfax County ASAP. Meetings last an hour and half to two hours.
- Their single biggest item is money. The budget person for ASAP is present at the meeting and the budget takes up a great deal of their time. The policy board chairperson must sign off on the budget.
- ASAP has a reserve fund – right now it is a couple thousand dollars, this is the carryover.
- Fees are lower than what is typical for a treatment program cost.
- Asks the board members to go out and do and going out to doing checkpoints, assist with interviews, board members should participate in board member trainings, VASAP offers policy board training in Richmond – eight members went to that.
- All policy boards have the same basic structure; all have to have case management staff with the same skills/qualifications, all policy board members must attend the law enforcement recognition from ASAP/MADD.
- Elwood – the finance people from the county and ASAP.
- He wants each case manager 225 people – but this isn’t really possible as they have over 5,000 intake clients each year.

- To deal with any overload of cases – they can do a case redistribution to different probation officers. The case load has gone up to 450/500 per probation officers.
- Performance data – really just recidivism rates.
- DUI offenders are regularly breath tested; drug offender clients are tested at least twice.
- Policy board is mandated by Virginia Code – all of the policy boards have bylaws, an odd number of members – the commission recommends that the policy board makeup in terms of skill sets mirror the commission.
- Neil requests a copy of policy board bylaws.
- There are some policy boards with the local judges – and the commonwealth’s attorney (or his alternate).
- They do have insurance for a policy board members, and they...

Jason Robbins, Probation Supervisor

- 251 program – first time drug offender – deferred disposition program.
- Official – sworn officers of the court – but not under state probation – all of the DWI first and second offenses are put through the court – only – this is actually part of the court.
- Must have a process to process referrals – the court and the DMV will both mandate someone to go through ASAP. If they ever want to drive in Virginia again the DMV will mandate that they go through the program. At the sentencing the judge will tell them – they are given an intake appointment by the clerk’s office – or it could be after they get out of jail. Intakes are set up Monday to Thursday – 7:45 and 9:45 appointments.
- The ignition interlock piece is if the BAC is above a 0.15 they need to have a ignition interlock automatically – a DWI second within five years they cannot get it license back without interlock period – this is based on statute, but judge also can use some discretion here.
- Treatment is only recommended at the ASAP process – ASAP will refer out to make a treatment recommendation – they have the authority to refer for treatment evaluation.
- At intake the people will given information on the conditions of probation and Arrest history, alcohol and drug use history and other criteria will this classify someone at different levels at the intake process – education/intensive education/treatment – different curriculum and both must go to AA meeting – education must attend one AA meeting, intensive education must go to six AA meetings.

- They have a list of 16 private treatment providers that are contracted to provide ASAP services at a given level, and this ensures quality and a uniform, reasonable fee structure. Also have the alcohol and drug services at the CSB – also in there – they do not have to go to one of these people. What happens sometimes is that people may come in and involved in treatment in a nonreferred program – they will not refer to any programs that – but must be licensed provider in the State of Virginia.
- They are doing a full DSM type evidence-based evaluation – 16 sessions over 16 weeks – all the way up to inpatient residential – there are clients that have failed through treatment – and the CSB is recommending 18 months of inpatient residential treatment.
- Many people going to the CSB don't have any health insurance, etc.
- If it is plea bargained down to reckless driving that are related on.
- They have a very good relationship with the judges – they have specific probation officers that serve the individual judges, each probation officer is assigned to two judges. This works in general district court – at circuit court they are assigned to court based on the general district court judge was for the case.
- Preconviction intakes – “a fair amount” – the process that is different with them is that they have to sign a form saying that they understand this doesn't affect the case and then they can't get a refund if they are not convicted.
- They don't get all of the arrest data across the State – they only get people that are arrested and chose to pre-enroll – these people are not a...
- DMV has the number of DUI/DWI arrests.
- We can look at the percent of the population of self-referred 3,100 court referred, 500 volunteer (including pre-enrollment) – for Fairfax County ASAP – at the state office they can look at this number for all local ASAPs.
- At the point of arrest they are don't know they have to go ASAP, unless...
- Going to ASAP – required in code, and DMV requires it – if the person with a restricted license doesn't enter into VASAP within 60 days their license goes into a revoked status.
- Everyone that has DWI as their conviction gets probation – they don't have PBJ. The first time offender with a low BAC and no history get ASAP and one year of probation period.
- Reckless driving – Six months license suspension and DMV/ASAP enrollment and jail time. Same misdemeanor class of DWI in VA – same number of points.

- Two hundred fifty-one – first time drug offender – these people are referred to ASAP and they have a six-month supervision, treatment (if recommended) or DMV has administrative authority by code to impose VASAP.
- The courts and the DMV can mandate ignition interlock – but ASAP can send a letter recommending ignition interlock t he court will often have a show-cause hearing that result in ignition interlock.
- ASAP provides 20 hours of education, but at least half also get treatment.
- Once done with the program they are in case review – and the probation officer runs record checks.
- Education is the lowest category for – most first time offenders are getting intensive education – higher AA attendance requirement.
- They do not get all of the warrants, police reports, etc. – they do get DMV, BAC information, previous involvement in ASAP. However, if they really need that information they can go to the police and get that information.
- A rearrest is not considered recidivism, must have a new conviction.
- They won't let the clients “shop around” for a second, lesser treatment recommendation. The send the information from the first treatment provider/recommendation story to the second.
- Treatment providers send monthly reports on the client – if there are things that require action on the probation officers part they will...
- In the second probation every three months, in the third year they meet quarterly they meet with the PO, breath test, talk about if they are using.
- Their intensive education and treatment people have to sign an abstinence agreement for three years for a DWI second offense. IF this is violated that is taken into account in court or into recommending a higher level of intervention or treatment.
- What is a manageable or ideal caseload? Three hundred per case manager is the guideline – case review status is inactive, so not included. Between 300 to 400 there are case managers in other jurisdictions that are doing 600 to 700 – including inactive.
- The commission is in the process of the revising the recommendations and they will remove the 300 recommendation.
- For DWI education programs – they may randomly breath tests, typically this times. For intensive education and treatment groups they breath test every time.
- For out-of-state – there is the national registry for the DMVs, for Maryland, if you have a DWI in Virginia and...

- Their general district court cases – each judge hears the ASAP noncompliant cases once a month – for some of them, most of them are split on two different days, some Probation officers go twice a month – and there could be circuit court appeals/cases.
- ASAP gives the number of appointments for a particular day to the traffic window.
- When people enter the program for intake they do the MAST and another questionnaire and in a face to face meeting they talk through the night of the arrest – the commission Simple Screening Instrument and MAST are sanctioned by the Commission, local programs chose what they want to use. They look at client self-report, prior ASAP, CMS (court records), (for 251 they do a national search).
- Third time offenders – go to state parole and probation and get treatment, go through treatment process then they go through ASAP, the person must have a – DMV revokes a person’s license indefinitely for someone with a third offense, once they are three years away from the last DUI they can petition a judge to get a restricted license or a full license back, then the person must complete ASAP, get full national background check and have to meet a bunch of other conditions before they can get their license back via a circuit court – which is a civil process.
- DWI third within 10 will still suspend, even if these were pled down to three first offenses – then the must go through the same process (?) as a real f...
- Client signs consent to send information to treatment provider – with treatment records they must have written release for confidentiality within Federal guidelines.

Neil Pedersen

- We’d like to capture some initial reactions and thoughts.

Pat McGee

- Initial reflection on case management – there are more similarities than differences. They sort who goes to treatment assessment – DDMP does not, they are court-order driven – so that is clearly a functionality that they take, and that drives what goes on what is going on with their relationship with the offender. This is one area we can look at.
- Treatment should go to treatment providers – everyone with DUI should go to an assessment.
- Disclosing criminal history information in Maryland is complicated.
- Another advantage is that everyone comes to Fairfax ASAP, this helps the right people get to treatment.

- DDMP does not look at the...
- A very significant difference in the level of familiarity with the judiciary.

Neil Pedersen

- In all cases in Virginia someone other than a judge who has more training in terms of seeing alcohol-related problems is making an initial screening decision to seeing them treatment or they are being sent to treatment by someone other than a judge.
- Most, if not all of the people who in MD would get PBJs go their ASAP program.
- Fifty percent of first time offenders going to intensive education or education – people with more professional credentials are making that screening decision.
- Third significant difference – rather than going to generic driver improvement they get since alcohol-specific training – which is these people are licensed by VA DMV to do specific driver improvement training.

John Kuo

- Fee structure is part of the punitive structure.
- Much of their existing driver motor vehicle laws.

Evaluating the need for assessment.

- \$250 to \$300 an assessment, unsubsidized.
- Mandate treatment, etc.
- License – is the big carrot of compliance – your license is tied to completion of a mandatory program.
- Screening by a licensed professional.
- Is it possible to draw a side-by-side comparison chart of how Maryland and Virginia operate?

Elwood Jones

- It is pretty definitive of what the parameters are that put them over the threshold for treatment – they feel pretty confident that if something that wasn't caught in the screening will come up in the process of the education component of VASAP.
- If someone blows positive on ignition interlock they go back to treatment.
- 0.025 – legal limit for ignition interlock.

- There are many ways that the judges deal with noncompliance – find in violation of probation, if they are revoked from ASAP they are removed from ASAP immediately, that means that it doesn't matter what you've done, you've got to start over.
- There is an indigence process – they are required to do payment plans – he has adjusted fees for people in very rare cases.
- They will close cases for not paying ASAP fees, not in Fairfax County ASAP but other local ASAP consider this noncompliance.
- What would he change? The mission is to reduce impaired driving. If they truly eliminate impaired driving in Fairfax County – there should be some positive tradeoff there – based on being revenue-based meeting the mission doesn't help. It is hard not to have set funds allocated to them – because there are times when they have certain needs and deserve to have things.
- They don't work with the local health departments.
- If someone that is on probation for robbery gets picked up for DWI – there is no communication between state probation office and the ASAP office without a signed consent form.
- They don't release anything – cannot even confirm or deny that someone is on the program.

D.4 WEDNESDAY, OCTOBER 20, 2010 – MEETING MINUTES

Meeting Attendees

Neil Pedersen, Maryland SHA
Pat McGee, Maryland DPSCS, Division of Parole and Probation
Kira Deaven, Maryland DPSCS, Division of Parole and Probation
Vernon Betkey, MSHO
Liza Lemaster, MHSO
Natasha Galloway, MHSO
Chrissy Nizer, MVA
Thomas Cargiulo, Maryland DHMH, Alcohol and Drug Abuse Administration
David Ennis, Maryland DHMH, Alcohol and Drug Abuse Administration
Roger L. Harrell, Dorchester County Health, MACHO
Gregory Bearstop, Prince George's County Health Department
Joe Rosenthal, District Court
Darren Douglas, Office of the Public Defender
Joeday Newsome, Prince George's State's Attorney
Bill McMahon, Howard County PD
Shana Johnson, Foursquare ITP

Consensus Building

Consensus has been reached on a number of issues as they were discussed during the meeting. Rather than going over all the areas of consensus at the end of the meeting, Neil asked that each member of the committee *carefully review these notes and voice any concerns or anything that is a nonconsensus item prior to the drafting of the final report*. During the review of these notes committee members should think through all of the key stakeholders in this system. We want to ensure that all key stakeholders will be able to support the final proposal. Following the completion of this draft the committee will seek input from all of these stakeholders, working first with partners and stakeholders internal to state government, and then with external stakeholders.

Welcome

Neil, Pat, and Liza welcomed everyone to the meeting. Following the meeting with Fairfax County ASAP and VASAP in Virginia, a small work group met and put together the current draft structure and presentation based on the Program Committee's previous meetings and what was learned in Virginia. The perspective of the committee changed after the meeting with Virginia, as we

realized that Maryland already has many of the elements present in Virginia's ASAP programs in a less coordinated and formal structure. The thinking of the program committee changed as a result, and our focus shifted to modifying Maryland's existing structures to be more efficient, coordinated and better serve the DUI offender population, rather than creating an entirely new organizational structure.

Liza asked everyone on the committee to review the outline of the draft final report present in the meeting participant packets. She noted that at the Virginia ASAP site visit the committee discovered that that the Virginia ASAP programs are not exactly what we thought they were, that we previously thought that the local ASAP offices had more control over sanctions (ratchet up, ratchet down), and we learned that was not the case. She then opened the door for all program committee members to review the lessons learned from the Virginia ASAP site visit.

Lessons Learned from Virginia

- Virginia ASAP programs are not really revenue neutral. Fairfax County ASAP is subsidized by Fairfax County, and even for independent ASAPs around the State they are likely receiving operating support from a source other than user fees.
- There was a lot less preconviction involvement than we believed under our previous impression of Virginia's ASAP program. In reality, the local Virginia ASAP offices deal with only a small number of offenders preconviction.
- They are a lot more dependent on their relationship with the judiciary than we previous thought. It was clear that local ASAP office staff really cultivate their relationships with the judges with whom they work.
- Judges in Virginia have legal jurisdiction over the license, whereas in Maryland this power is with MVA. This gives Virginia judges more leverage to ensure VASAP completion than Maryland judges might have.
- Although Virginia has a centralized VASAP commission office, the local offices are very decentralized in terms of funding sources, management, and programming. The funding goes up rather than down.
- A far greater proportion of Virginia ASAP clients receive only the education component of VASAP and not the treatment components, as opposed to what we formerly believed.
- In Virginia a first time DUI offender may meet with his or her case manager only four times a year. In Maryland the first time offender on probation has more supervision than that.

Reactions to Proposing a Modified Current System versus a Whole New Organization

- Creating a new agency would be much more difficult, a harder sell, and is not necessary.
- In the report we need to explicitly state that we considered the option of creating a new agency and why this option was not selected.
- DPSCS's (Department of Public Safety and Correctional Services) Division of Probation and Parole manages 54,000 criminal offenders, and the priority of the division is the management of these criminal offenders. The Drunk Driver Monitor Program (DDMP), an office within the Division, manages 16,000 DUI offenders, a population very different from criminal offenders. Unlike criminal offenders, DUI offenders are predominately prosocial. However, DUI offenders should be followed in a similar way as criminal offenders. Because DUI offenders are different from criminal offenders, but also need a comprehensive case management approach, using DDMP as a basis for a new division within the Department can best serve these individuals. A Division also would increase the level of professionalism, credibility, and awareness of the State's work in managing the drunk driver offender population. DDMP was a "huge step forward in the 70s and 80s" in managing offenders, now it is time to take this to the next level.
- While we need to increase the skill level of the current DDMP monitors in the new division, requiring at least a Bachelor's degree for case managers, there is no desire to lay off any of the current DDMP monitor workforce. Therefore we would grandfather the current DDMP personnel into the new division; however training would be necessary for the current employees to be able to take on their new case management responsibilities. As employee attrition naturally occurs, the case manager positions' required skill sets would be upgraded based on funding and population. This transition will not happen overnight. This would be a phased-in process; as people retire, we will move to higher-level skilled employees.
- DDMP monitors manage on average about 200 offenders annually, but this number varies throughout the State. Some jurisdictions have spikes in the number of cases per staff member due to staff turnover. In the transition it would be "good business" to say that higher risk offenders get the higher level of skilled monitors vis-à-vis lower risk offenders. We need to be prepared to address this question.
- The report will not be that detailed oriented, but we will have answers to all questions when asked.
- **There is a consensus that we recommend a division within the Department of Public Safety and Correctional Services.**

DDMP/New Division Table Comparison

Pat reviewed the table that compares the current system for dealing with drunk drivers throughout all facets of the government and the proposed system. The table covers the “before and after” of the transition to the Division, and all of the positive aspects of the proposed system. The committee needs to be able to explain how and why each aspect of the new system will be an improvement.

Question: What would be different in terms of what judges would be providing to the new Division, in terms of the parameters of what sentences they are issuing and what flexibility they are giving to the new Division in terms of treatment plans?

Answer: Pat – Initially, there would not be much change from the current system. The key to a new model would be to sit with the judiciary, to explain new capabilities and initiate a dialogue on how to serve the courts better. Also, we should coordinate more on pretrial supervision. The long-term goal would be to use technology to better manage offenders. We need to partner with the courts for the long term, to enable the system to effectively apply and decrease sanctions based on compliance with MASAP. Personal liberty is a very sensitive issue in Maryland and the courts are reticent to limit it, so we need to keep in mind as we move forward.

Neil: For the final report we need to be clear on what the court’s role is and how it may change in the new system.

Dave: A big criticism of the current system is that in the pretrial period individuals can “shop around” for a good evaluation to present at their trial. Judges will often base their sentencing/treatment decisions on these faulty evaluations, resulting in the wrong sentence and treatment for the offender. One of the most difficult aspects of the system is that there are so many players – treatment and education providers, DHMH, DDMP, MVA, the Judiciary, etc. – at least four to five organizations need to communicate fairly intensely to keep track of a person through the system.

Pat: Each agency has its own database, and we are now on the threshold of linking these systems. The biggest obstacle is that in the pretrial phase the arrest is not entered into any criminal database, DUI arrests are kept at MVA.

Dave: It is critical that we not lose people from time of arrest to time of requirements completion, and we do need to know who is in this population at the time of arrest. In the past those arrested for DUI that are proactive in getting an evaluation, taking education classes, etc., before their trial have gotten off too easily, and don’t get caught until they’ve gone through this pattern three to four times. These individuals are not receiving the appropriate level of care. DHMH is working to put certification levels in place, but currently these requirements are not stringent enough to ensure quality.

Pat: There is no offender-focused system; we have an incident focused system. What happens in one jurisdiction may not cross over to another. Our role is to

track the offender. That is why standard, evidence-based education for low-risk offenders is important. We also looked at some of the fee structures around the State, and there is a chart comparing these fees provided in the participant packet for this meeting that everyone should review.

PowerPoint Presentation Review

Slide 2 – Current Weaknesses

- The problem statement in the final report will be what is first presented to the legislature. This will set the context for them, and help them understand what these weaknesses mean.
- We need to make sure that we establish a solid definition of recidivism in Maryland.
- Lack of Data: Recidivism data is one of the pieces of data that we currently lack.

Definition of Recidivism

- An individual convicted of a DUI or that has received PBJ who commits a second offense within 10 years of the first.

Question: Are we only looking at DUI? Or do we include related drug offenses? This would be difficult to monitor, but if we have a shared database then would the system be able to look at who is arrested for related offenses? Is this in the definition of recidivism?

Answer: Pat – We should collect data on those that are rearrested for the same crime, and those that are arrested for other related offenses. However, we should define repeat offenders as someone that has been reconvicted for the same offense. However, having the data for related offenses and managing it effectively will be important and this needs to happen.

- We need to use a definition of recidivism that is comparable to what is in use in other states.
- *Vern will e-mail NHTSA and see if they have a national standard for DUI recidivism.*
- There can be subdefinitions for recidivism (reconvicted, rearrested, and recidivism over time). Law enforcement considers some a recidivist if they are re-arrested.
- Howard County PD defines DUI recidivism as a re-arrest within three years.
- MASAP should be able to look at a person's complete criminal record even during pretrial supervision. This will aid MASAP in being able to provide the appropriate level of support and care at the earliest juncture possible, ensuring that the "entire person" is looked at during sentencing, education, and treatment.

- We need the recidivism data to ensure the support of the District Court. We must show that the new system will decrease recidivism. Eventually we will have Maryland comparative data from the first phase of the program, but right now we need to compare with other states that have ASAP-like programs, and we need to prove the Maryland program will be as effective as it is in other states.

Slides 7 and 8 – Post Sentence Process

- The slide demonstrates that if an individual came to intake on probation (or PBJ) that they would be managed in the same way as someone coming in post-trial, and would be screened for drugs and alcohol. This population is then sorted for education or treatment.

Question: What portion of those screened would just go to education?

Answer: We don't know how to answer this, as we don't know the current statistics for those that are on probation and receive education. This figure may be around 55 or 60 percent, but we do not know for sure. We may need to have a sense of this for Maryland, or at least know what other states do (e.g., in Virginia nearly all go to education), and review relevant Alcohol and Drug Abuse Administration (ADAA) reports. In a long-term model we would need to know this, and we would need to make sure our new case management software that is coming in soon that these things link so we can get a real sense of long-term outcomes.

- If the person is referred for AOD assessment they are going to Code of Maryland Regulations (COMAR)/DHMH treatment, if offender is compliant then the case closes at expiration.
- The case plan would be developed with court-order controls. If the offender is noncompliant violation proceedings would be initiated. All actions will be implementing the court order.
- Everyone needs to go through the safety education class. This would be an enhancement to the system.
- MASAP would need to work with attorneys' groups to make sure that those arrested for DUI are getting into the system as soon as possible. Part of the advantage of having a Division of a Department is being able to approach all actors one on one. Particularly with the courts we need to approach them collectively to let them know all of the capabilities and expertise of the new Division.

Changes to the Flow Chart

- Everyone would get the AOD screening, so the AOD screening line needs to go to "case plan implemented."
- There needs to be a bullet or two under intake that explains why an offender goes on a treatment or a treatment and education path.

- There needs to be a title on chart for post DUI sentence (either PBJ or post DUI conviction).
- The committee needs to have someone that is an expert in flow-charting assist in preparing this chart for the final presentation and report.

Key Post Sentencing Issues Discussed

Ignition Interlock Opt In:

- Chrissy – This is somewhat controversial and we may not want this as part of the proposal, but opt in for ignition interlock needs to be at .08 not .15. The statute says that those arrested for high level BAC can opt in to ignition interlock in lieu of license suspension. This would give people an incentive to opt in to ignition interlock on the front end. It also would be a legislative change that we'd have to make.
- Vern – This could include for first term offenders. This is an area where changes are anticipated in reauthorization as well.
- Neil – We could add this as an option to add on to the MASAP proposal, but it is outside the assigned task for this committee.

Ensuring MASAP Participation:

- MASAP would serve as a tool to get participation by all DUI offenders either via the courts or through MVA.
- We need to make sure that we create a system where we can't lose track of offenders, as that is essentially the criticism of the current system.

Question: Could MASAP be made mandatory via MVA regulation?

Answer: Not really, the suspension actions are all specified in statute. We should explore what we can fit in regulation rather than legislation.

- In the final report and PowerPoint and there needs to be a clear differentiation of actions taken by the court and actions taken by MVA.
- MVA will need to be given direction from the new Division on the compliance or noncompliance of the offender in MASAP. This could be a process similar to what MVA has with other agencies. For example, when MVA changes licenses privileges of those that fail to pay child support, the relevant agency will contact MVA to ask them to change the license privileges of the individual, and the individual will then be referred back to the other agency if they want their license privileges reinstated.
- *Chrissy will help Liza construct a table that shows the links between criminal and administrative sanctions, and any changes to MVA rules or statutes needed to help make ensure MASAP participation.*

Question: If someone is convicted and the judge does not order them to complete MASAP then it could this be accomplished administratively through MVA?

Answer: MVA currently has a large number of folks that go through MAB for reinstatement of their license. However, while MVA could use its jurisdiction over the license to require MASAP, the defense bar may not like this, and even for PBJ there would be an administrative hearing under certain circumstances.

A view was expressed that the program committee needs to at least ask that the ability to send someone to MASAP be part of an MVA regulations, and that the offender would be required to complete MASAP for license reinstatement.

Question: What about for a first time offense or PBJ, the offender's license is valid and they have no points? If the individual is not ordered to MASAP then MVA will not be able to send them.

Answer: We do not know how many first time offenders that get PBJ are required to attend MVA's general safety education classes. Even first time PBJ offenders with unsupervised probation must go through DUI education, we need to encourage judges to do this. The number of offenders that get unsupervised probation is actually very small, and are usually individuals in specific circumstances, such as out-of-state residents, someone that has done some other type of program. In a scenario where the MVA does not have any leverage we do not have any way to mandate MASAP.

The MAB has a lot of powers, and a regulatory change would not be required for the MAB to refer individuals to MASAP, but that these are people that received a conviction.

Additional Recommendation

There needs to be a new specially designed MVA program for DUI offenders. MASAP should encourage judges to send all offenders, even PBJs, to this class. This new class needs to be comprehensive, and cover all aspects of the risks and costs associated with a DUI offense.

Slide 9 – Intake and AOD Screening

- All offenders in MASAP will get safety education and an AOD screening. Offenders also may receive treatment based on the results of the AOD screening. The screening and safety education components may occur contemporaneously.
- The public safety education must be separate from the treatment, again there needs to be a clear differentiation between treatment and education. Everything in the report and the PowerPoint that currently is listed as education/treatment needs to be listed as only treatment.

Slide 10 – Post Sentence Process – Safety Education/Assessment Treatment

- Take out the phrase “not by a judge” on bullet three.

Slide 11 – Post Sentence Process – Safety Education

- All offenders will receive education, so the first bullet should be taken out.

Slide 12 – Post Sentence Process – Case Management/Court Ordered Controls/MVA Process

Question: Could MASAP recommend to MVA put someone on ignition interlock?

Answer: We need to make it clear that MASAP could recommend to the MAB that someone needs to be on ignition interlock. We should keep in mind that a driver's license is a privilege; it is not a right, not a civil liberty.

- *Under MVA Process:* It needs to be clear that if an offender fails to participate in MASAP that MASAP must tell MVA of this noncompliance so that the MVA can take action to restrict or suspend the license. In the MVA statute the language dealing with noncompliance with other programs, such as required child support payments, says that if one does not comply with the program that "MVA *shall* suspend the license."

Question: Where is the opposition from the legislature? Will there be opposition to sanctioning more individuals through the restriction of the license? (Even though the restriction will not be from MASAP, it will be a result of what the court ordered).

Answers:

- While the legislators may have an issue with this, the District Court will not.
- The more hammers we give to MVA the better off we'll be in the long run. The administrative requirements are where we will make the most headway, although for that to happen it could put a financial burden on the MVA.
- Fees will likely be an issue for legislators.
- We may have to come back to the legislature a few times before our proposal is accepted. The MASAP legislative proposal can be refined according to the concerns of the legislature between attempts.
- The report needs to be detailed, but what goes to the legislature must be at a higher-level and enable them to understand quickly why this system would be an improvement.
- Even if we cannot have the legislative aspects of MASAP approved on a first attempt, the decision to move forward with the establishment of MASAP lies with the executive branch.

There is a consensus that we will recommend changing MVA statutes to allow license suspension due to the noncompletion of MASAP. This will be in the final report.

Slide 13 – Postsentence Process – Compliance

- The first bullet needs to be changed to say that MASAP, not MVA signs off on final completion of all MASAP requirements.
- MVA does not really need notification or need to take any actions in the cases of compliance, but only noncompliance. Except in cases where a license has been as a result of MASAP noncompliance.
- Noncompliance would be reported to the courts (in cases where the court ordered MASAP it would be a violation of the court order) and to MVA (to take license suspension action as needed).

Slide 4 – Proposed Program

- The pilot or phase-in process should be based on population size, rather than the urban, rural, suburban classification. In Joeday's experience there is a vast difference in the capacity of jurisdictions based on their size, and he generally classifies the State's jurisdictions based on their population size. Here is the breakdown that he proposes we use in MASAP:
 - Group 1: 500,000 and over;
 - Group 2: 105,00 to 499,999;
 - Group 3: 72,000 to 104,000; and
 - Group 4: Under 72,000 (eight counties).
- In the smaller jurisdiction group we need to carefully select the first phase jurisdiction, as there may be only a single District Court judge in these jurisdictions and if that judge is not receptive to the new system it will not work well.
- The program also will need to be phased in as budgets become available. Initially existing special fund revenues will support the new system. Since the new system will be a transition from the current DDMP there are no large additional infrastructure (i.e., space leasing) costs anticipated.
- This is not program under DPP, and this needs to be changed on the PowerPoint.
- *Partners versus Stakeholders:* It was decided that the key agencies in the system – Department of Transportation, Department of Health and Department of Public Safety and Correctional Services would be listed as *partners*. The courts will not be listed as a partner since the judiciary is independent, and the proposed program will not in any way alter the court's responsibilities or jurisdiction, and we need to be clear about that. MASAP is a resource for the court. *Stakeholders* would include the courts, law enforcement, legislators, local governments, existing drug and abuse councils at the local jurisdiction and state levels and public safety advocacy groups such as Mothers Against Drunk Driving (MADD).

- **The MASAP proposal should include a concept of an advisory council to the new system, comprised of key stakeholders and all partners, to provide independent program oversight similar to what the VASAP/local Virginia ASAP advisory councils.**
- **The recommendation needs to include an outreach component to educate the courts, local governments, prosecutors, judges, defense attorneys and others on what MASAP is and the current system problems it is addressing.**

Slide 5 – Funding and Employees

Funding

The DDMP user fee (\$55 per month and a \$45 monthly supervision fee) was recently increased and the increased revenues from the user fee are sustaining the program. The supervision fee revenues currently are allocated to the general fund. There are two options for funding the new Division:

IF the supervision fee was diverted from the general fund to this new Division it could support the transition to MASAP.

OR, we could copy the Virginia model and charge a range of different fees by type of service delivered.

- The Virginia model also has a “slush fund” to account for any periods where revenue does not meet program expenditures, so there isn’t a reinvestment of state funds. In Maryland there could be a provision that states that any excess over a certain amount in the slush fund would be diverted to the general fund.

Question: Would the additional funds from the supervision fee be able to support the transition to MASAP and cover additional costs of hiring a higher skilled workforce?

Answer: This is unknown, but it would likely go pretty far towards meeting the additional costs. It currently costs \$95 a month for drunk drivers to be under supervision. There is a general ambivalence to increasing fees.

- **We should present two options for program funding, either use the supervision fee to support it, or increase the DDMP fee to support it.**
- DUI fatalities are very costly to the State and by reducing DUI fatalities through MASAP the State also will reduce costs. *Vern will check with NHTSA and GHSA to obtain information on the public costs of drunk driving incidents and fatalities. Pat will obtain information on the costs of incarceration and to the criminal justice system incurred by DUI offenders.* The more that the proposal can demonstrate a direct cost savings to the State government the stronger the case to transition to the new system will be.

Question: Do we want to have a sliding scale for those that cannot afford the fee?

Answer: The judge has the authority to waive the supervision fee if an offender cannot afford it. DDMP does not have any experience with the sliding scale, and it would make the program's revenue stream unreliable. However, we could explore the sliding scale question further if this becomes a real issue for the legislature.

Question: What about charging fees for individual services, such as the AOD assessment, similar to what is done in Virginia?

Answer: This could be presented to the legislature as an additional option but not our recommendation. There will be more knowledge on the cost issue shapes up during the first phase of the program.

Employees

- The report needs to explicitly state that the current DDMP monitors will be replaced with higher-level skilled case managers at the jurisdiction level in over time, as natural attrition and retirements occur and as budgets allow.
- The Union must be a part of this process.

Question: Do we perceive a need for additional employees?

Answer: We initially anticipate that with the higher skilled employees that the program could manage the same number of offenders as the current DDMP monitors, but that this will be evaluated throughout the phase-in process. The number of employees will always be response to needs, and the report will emphasize that new employees will be supported by user fees and not general fund revenues. Pat – yes, based on the volume, there is a process for this as responsive to need. This is definitely a question we will be asked.

Slide 6 – Data, Other, and Performance Measures

Data

- MHSO has been investigating a DUI Tracking System. There are some Federal data dictionaries that have been put together, and there are lots of existing silos that are being examined. MHSO is working with UMD to study all of the systems and provide recommendations on how to move forward. Hopefully within a year there will be a final report with the recommendations, costs, etc. Our report will reference this forthcoming report and emphasize the importance of having the data sharing capabilities.
- Replace sub-bullet “arrest information” with APSCS CJIS database.
- Reference TRCC.

Other

- Other should be changed to “Education and Training.” The first bullet should read “judicial outreach and training.” A “stakeholder outreach and training” sub-bullet should be added.

- A stakeholders sub-bullet should be added and include:
 - Judges;
 - Prosecutors;
 - Defense Attorneys; and
 - Counties and Municipalities/MACO.

Performance Measures and Program Evaluation

- Additional sub-bullets: process and outcome evaluation for effectiveness, frequency of all arrests and effectiveness of interventions (generic), surveys.
- Sub-bullets to delete: effectiveness of education programs, effectiveness of treatment.

Question: Does calling this a pilot program imply that if it doesn't work we won't do it?

Answer: Yes, this program should be presented as something that is phased-in, rather than "piloted." Alternative working for this should be something like initial implementation phase, phase-in, or graduated implementation process.

- *Vern will talk with NHTSA and see if we can get this into their demonstration project funding; this is a possible method to fund the initial phase of the program transition. MHSO is not able to fund research projects. This is an idea that will be explored, but it is not something that will be in the report.*
- Vern recommends involving academics to assist in the design of program evaluation measures prior to the launch of the program. MHSO is doing this with NHTSA seat belt enforcement, and the process is working well.
- **In the report will mention that there needs to be an evaluation component in the program, not necessarily but possibly an outside organization. The report will state that the program's data and data management practices will be of sufficient quality to be of use for academic or other types of program evaluations.**
- **The report will state that in the current model data collection and management practices are nonexistent or inefficient. The new system will remedy this.**

Is MASAP the right name?

- This is a new division within the Department of Parole and Probation (DPP). All of the subdivisions of DPP are titled as Division of XYZ. This program needs to have a similar name. The name that is being proposed at this time is the **Division of Impaired Driver Case Management (IDCM).**

Barriers to Implementation

- There needs to be outreach to a number of stakeholders internal to the state government with the report in draft form to ensure appropriate support as this initiative moves forward. This outreach should include:
 - Secretary Colmers, Department of Health and Mental Hygiene;
 - Secretary Swaim-Staley, Department of Transportation;
 - Secretary Maynard, Department of Public Safety and Correctional Services; and
 - The Judiciary.
- Prior to this outreach the program committee needs to determine what can be done administratively versus legislatively. DDMP statutes need to be examined by an AG to see if they must be modified to support this new Division.
- After the internal outreach and buy-in is achieved, outreach also must happen externally. This should include meeting with Maryland's defense attorney association, sheriff's association, the chiefs of police association, and the private providers of DUI education and treatment for offenders. However, all external outreach will occur after the final draft has been presented to the Governor.
- There needs to be a strategy for broad outreach to the judiciary. All Maryland judges meet together only once a year and it may be difficult to get on the agenda for that meeting.
- There may be private sector firms that are impacted by the new system. Private firms currently are being trained by DHMH to provide the DUI safety education courses (3- and 12-hour versions). DHMH has a regulation that describes the required content for these courses. The program committee needs to explore the curriculum options for this course, particularly what is done in Virginia, and make an educated recommendation as to the length and place of DUI safety education.