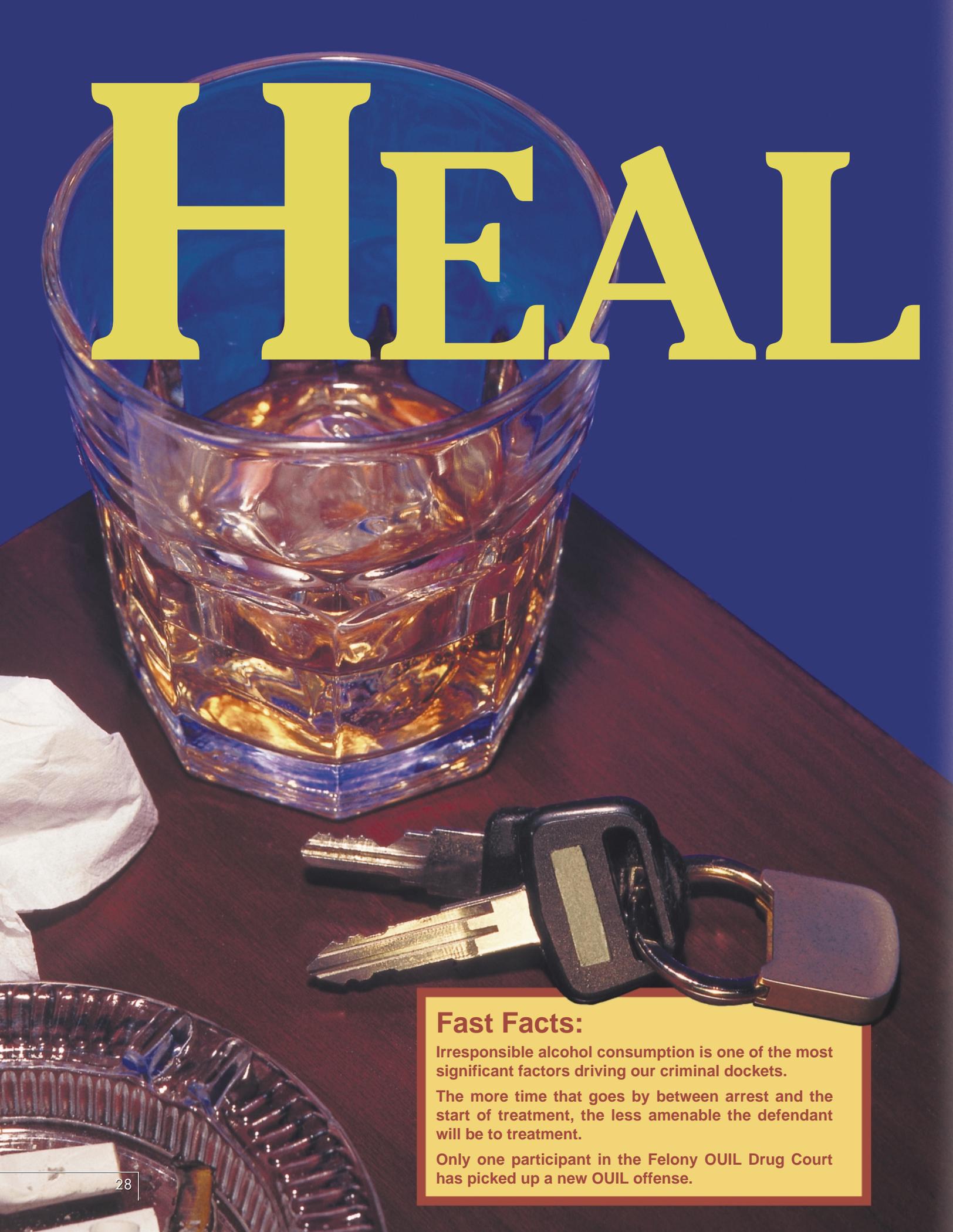


# HEAL



## Fast Facts:

Irresponsible alcohol consumption is one of the most significant factors driving our criminal dockets.

The more time that goes by between arrest and the start of treatment, the less amenable the defendant will be to treatment.

Only one participant in the Felony OUIL Drug Court has picked up a new OUIL offense.

# ING DRUNK DRIVERS

## *Michigan's OUIL/Sobriety Drug Courts*

*By Hon. Harvey J. Hoffman*

A minor Eaton County legend began a few years ago when my bench mate, Judge Paul Berger, was preparing to sentence a man for OUIL in the 56-A District Court. The judge, a cool headed veteran of the bench, was stunned to find that the defendant had come to court wearing a "Bud Man" tee shirt.

"Why would you possibly wear a 'Bud Man' shirt to a drunk driving sentencing?" he asked.

"Because my Jack Daniels shirt was in the wash," was the reply.

Whether hypochrophal or not, the defendant's reply illustrates an important point: alcohol is America's drug of choice. Its use is interwoven within our social fabric. We drink it at the end of a hard day and to break the ice during the dating process. We sip it in church and during toasts at our children's weddings. It's even the stuff we

use to launch battleships. Billions of dollars are spent annually to promote its sale in the print and electronic media, and yes, our citizens regularly choose to convert themselves into living billboards on behalf of their favorite brands. In one form or another, humans have been merrily swilling it down for over 5,000 years.

Most alcohol consumption is "responsible" to use a phrase coined by the alcohol industry. For the purposes of this article, I will choose to define "responsible alcohol consumption" as that which does not result in a violation of the criminal code. I realize that this leaves out a whole panoply of alcohol-related social woe (divorce, health issues, lost productivity at work, poor parenting, etc.), but so be it. Any judge will tell you that irresponsible alcohol consumption is one of the most significant factors driving our criminal dockets. A solid

majority of domestic violence, assault and battery, theft, and property crimes are committed by persons with significant alcohol or drug and alcohol problems.

A certain level of alcohol-related crime has always been with us. However, in the last 50 years the problem of drunk driving has exploded in our society and in the courts. When we were driving ox carts back from the mead hall, or rolling bleary eyed in the saddle while Trigger carried us back to the bunk house, it wasn't much of an issue. However, with the coming of the internal combustion engine and the interstate highway system, things have changed drastically. A person careening down the highway at 70 miles per hour with a blood alcohol level of .20 is literally an accident waiting to happen. In any given year, between 35 and 40 percent of all auto accidents involving serious bodily injury or death are caused by persons with blood alcohol levels above the legal limit. Furthermore, persons with alcohol levels above the legal limit are eight times more likely than sober drivers to be involved in a serious auto accident.

It should be noted that all persons committing OUIL or OWI offenses do not have significant alcohol problems. If the truth were told, there are probably very few persons reading this article who have not, at some time, gotten behind the wheel when they have had too much to drink. My ultimate concern focuses on the alcoholic drunk driver. Alcoholism is a chronic, relapsing disease. Not surprisingly, alcoholic drivers offend over and over. Nationally, between 40 and 50 percent of all persons convicted of OUIL or OWI are convicted of at least one additional OUIL or OWI within seven years.

The defacto nerve center of the Eaton County bench and bar is the 56th District Court Bailiff's Office, located in the courthouse in Charlotte. Nestled between the courtrooms in the judicial corridor, the bailiff's office is where the lawyers and judges daily gather to eat donuts, and to discuss sports, the law, and the generally sorry state of mankind. In the summer of 2000, a young woman, whom we shall call Chris, was led out of a holding cell on her fourth OUIL charge. Many of the defense lawyers had represented her in the past and the prosecutor knew her all too well. Typically you might expect her appearance to cause the bailiff's room crowd to simply roll their eyes and go back to their baked goods, But not this time—Chris was about to become one of the first participants in the nation's first Felony OUIL Drug Court.

Her story actually begins in the spring of 1997. At that time our court was looking for a way to reduce OUIL/OWI recidivism in our county. Eaton County is fertile ground for OUIL/OWI cases. The Lansing metropolitan

area is rapidly spreading into our northeastern townships. We have three medium-sized cities: Grand Ledge, Charlotte, and Eaton Rapids. The rest of our population is primarily rural, spread over rolling, open farmland. We have a lot of interstate highway and local by-way. We have extremely limited public transportation. For the most part, to get anywhere in the county you have to drive.

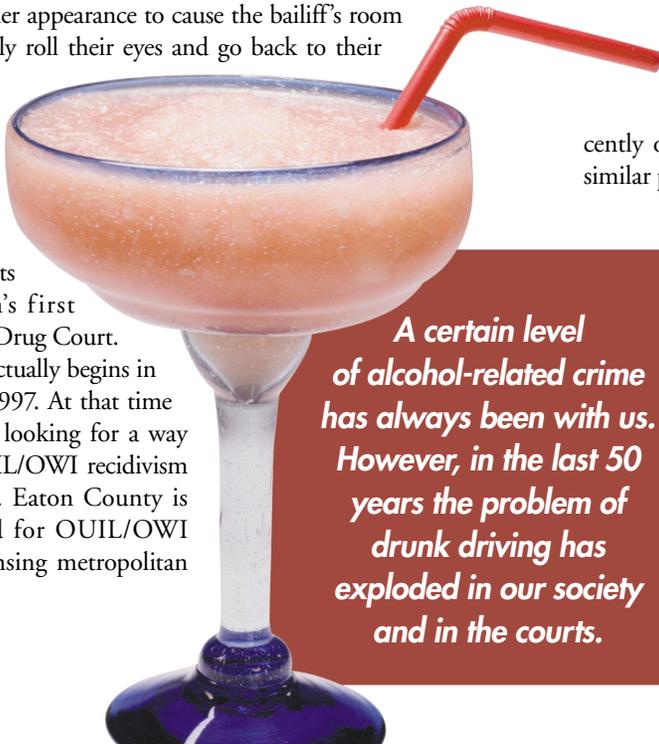
During this search, our court administrator came upon the concept of drug courts, or as they are now frequently known, drug treatment courts. The first drug court has been in operation in Dade County, Florida since 1989. It has shown a lot of success in attacking the addictions on South Florida heroin and cocaine addicts.

Certain basic concepts involved in the drug court model appealed to us. They included, among others:

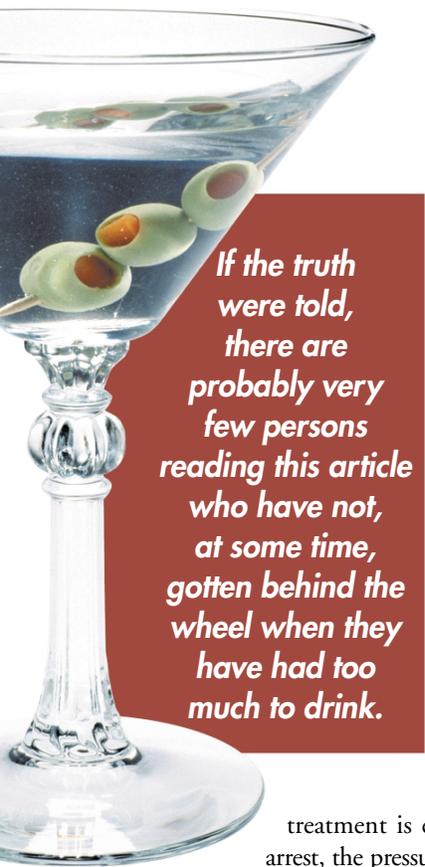
- The integration of alcohol and drug treatment services with justice system case processing
- Using a nonadversarial approach where the defense attorney and prosecutor work towards a speedy resolution of the case with an ultimate goal of addressing the defendant's substance abuse issues
- Placement of the defendant rapidly into meaningful substance abuse treatment
- Frequent testing to determine whether the defendant is using alcohol or other drugs
- A team approach to the defendant's treatment program including the judge, the treatment provider, probation, and the lawyers, as needed
- Regular appearances of the defendant before the judge, on the record, to monitor program compliance
- A system of graduated sanctions and rewards based upon the defendant's performance

We sought and received a federal grant to apply the drug court model to a misdemeanor OUIL/OWI and possession of marijuana case. We booked our first case on October 15, 1997. Interestingly, at almost the same time, courts in Albuquerque, New Mexico and Virginia Beach, Virginia were starting similar programs. We eventually began calling our program the "Fast Track" since participants in the program kept telling us that they didn't need a drug court. They insisted that they never did drugs, they only drank a case of beer a day. Recently other courts have adopted the name "Sobriety Court" for similar programs.

All persons charged with misdemeanor OUIL/OWI or possession of marijuana are set for arraignment on the following Wednesday morning. Prior to arraignment, each potential participant is given an initial alcohol/drug assessment and their criminal record is run. This information is provided to the prosecutor. The prosecutor acts as "the gatekeeper." All persons are offered the chance to go into the program unless they live more than one hour from Charlotte, have a significant violent history, or if they are already involved in a substantial treatment-based program under another court's probation.



*A certain level of alcohol-related crime has always been with us. However, in the last 50 years the problem of drunk driving has exploded in our society and in the courts.*



*If the truth were told, there are probably very few persons reading this article who have not, at some time, gotten behind the wheel when they have had too much to drink.*

Almost everyone opts into the program. The reason for this is that Jeff Sauter, the Eaton County Prosecutor has agreed that if anyone wants to reduce an OUIL Second to a First, or an OUIL First to an OWI, they have to immediately enter the program. Further, if they seek Section 7411 status of a marijuana charge, they must also opt in. A free defense attorney is on hand for the defendants. We also allow a one-week adjournment if they wish to speak to their own lawyer.

As noted above in the basic drug court methodology, speed in getting the defendants into

treatment is essential. Immediately following arrest, the pressure from an angry spouse, an irate boss, and the humbling shame of the arrest and booking experience, create a short-lived period when a person is most amenable to looking at their issues and being open to treatment. The more time that goes by between arrest and the start of treatment, the more likely it will be that classic alcoholic/addict “stinking thinking” of minimization and denial will set in, and the defendant will be much less amenable to treatment.

The defendants enter their pleas on the record, and receive their initial treatment plan as conditions of their bonds before they leave the courthouse. Full assessments are completed by probation prior to sentencing, which is usually six to eight weeks down the road. Significant bond violations can cause a defendant to be brought before the court before sentencing.

Following sentencing, the defendant is brought in for regular review hearings before the judge. If the defendant is doing well, he/she will be praised or given rewards. Dirty drops or breath tests, or poor reports from the treatment providers, typically result in either community service or the next weekend in jail. Sanctions and rewards are swift, so that they are clearly tied to the behavior in question. Alcoholics and addicts typically lead lives of unmanageable chaos. A drug treatment court forces a structure on the defendant's life. It combines a treatment program that is designed and overseen by the treatment providers, with an accountability mechanism driven by the sanctioning power of the court.

We put approximately 350 persons per year through the misdemeanor program. Our statistics for four and a half years in operation shows a recidivism rate of 13 percent. The misdemeanor program has shown certain other benefits. It is largely self-funding. Because alcoholics are frequently more integrated into society than your average crack addict, a much higher percentage of them have meaningful jobs and insurance. They can frequently cover most, if not all, of their own treatment costs. Furthermore, since such a

large percentage of the court's drug and alcohol docket is disposed of by plea on arraignment day, the county saves a lot of money in jury fees, witness fees, and police officer overtime. Likewise the time saved on trials and motions frees up bench time to be used on review hearings.

In late 1999 our treatment providers came to us expressing concern that an upcoming change in the OUIL laws would damage the program. Under new legislation, all OUIL Third cases would become felonies, carrying a one-year mandatory minimum jail term. Interestingly, they were finding that we were having our best results with the older, multiple-offender defendants. These were persons facing stiffer penalties, who had experienced significant losses in their life due to their drinking and drugging. They had lost jobs, spouses, and relationships with parents or children. They were the ones responding best to treatment and the court-imposed structure. It was the 18–21-year-old first offenders who had experienced little loss and didn't believe that they had a problem, who were less amenable to treatment. As a district court program, the Fast Track would no longer be available to persons with more than two prior offenses once the new law went into effect.

Because of the concern of the care providers, a pilot program was created in conjunction with the Michigan Department of Corrections. This was the Felony OUIL Drug Court that Chris was entering when she was being arraigned on her fourth OUIL offense. For the first two years of the felony program, I was cross-appointed by the Supreme Court to sit as a circuit judge on the OUIL Felony cases.

Chris was being offered the deal of a lifetime, and she and her attorney knew it. She waived preliminary examination and we immediately came back on the record as the circuit court. She was arraigned and entered her plea of guilty to OUIL Third. The carrot to get her to plea was an agreement to a maximum up-front jail term of 60 days with work release. Rather than face a mandatory minimum of one year in prison, it is easy to see why everybody charged with these offenses is clamoring to get into the program.

Chris was immediately ordered to do AA five times per week, and to use no alcohol or any controlled substances. She was required to do regular urine screens and to be placed on a breathalyzer tether until sentencing. This is a rented machine that is placed upon the defendant's home phone. It has a video camera built into it and a hose sticking out that is attached to a breathalyzer inside. The control center has the defendant's work and treatment hours and will call two to three times per day, at all hours of the day and night. The defendant is required to place their face in front of the camera and then breathe into the hose. If the defendant tests alcohol-free, he/she can go about their business. If they have been drinking, the machine will pick it up and they are in violation of bond.

Chris was required to come back and see me every two weeks until sentencing. She went to jail three times on bond violations prior to sentencing. She was a mess of conflicting emotions. She had been partying hard for many years. All of her friends were heavy drinkers and users and she had no pro-sober support network. She clearly hated my guts, but she was trapped, facing massive prison time if she failed. She was also a fighter. The toughness

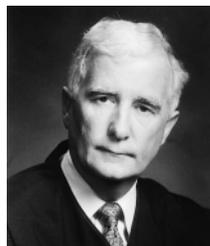


that had gotten her into and out of a lot of scrapes in her life came through for her. At one review, as she was being carted away to a cell, I told her that a lot of people thought that she was not going to make it in this program. She never went to jail again. Apparently nobody, even me, was going to tell her that she couldn't cut it. She has been sober for over two years. She met and married another participant in the felony program. It was his seventh OUIL case, and no one had ever put him into a treatment program. He has also stayed sober for two years. Recently Chris gave birth to their first child, a baby born alcohol-free. They both are working and are buying a house. Chris no longer has to attend review hearings, but she stops by anyway, with her baby in tow. The felony program has been in operation for two and a half years. Seventy-five participants have either completed the program or are currently involved. Only one participant has picked up a new OUIL offense. He is serving three to five years in prison.

Drug treatment courts are no longer experimental exotica. There are over 800 such programs nationwide. In Michigan, the rapid spread of drug treatment courts has been the result of judicial leadership on the local level, combined with the support of Chief Justices Weaver and Corrigan, key legislators, and the Engler administration. In his recent announcement of this budget year's funding for drug treatment courts, Craig Yaldao, the director of the Office of Drug Control Policy, wrote:

*In a collective effort to better realize the full promise and potential of drug treatment courts, Michigan intends to enlarge the capacity of existing drug courts, and establish new drug courts so that more people will benefit. With each new court, Michigan has a greater opportunity to employ a preferred multifaceted approach to dealing with drug use and crime.*

As the drug treatment court system has expanded in Michigan, so has the network of OUIL/Sobriety Drug Courts grown. Along with the two Eaton County programs, misdemeanor OUIL/Sobriety Drug Court programs have opened in Novi, Waterford Township, Isabella County, the 86th District Court covering Grand Traverse, Leelanau, Antrim, and Genesee counties, Southfield, Bloomfield Hills, Dearborn, Ferndale, and Grand Rapids. ◆



*Harvey J. Hoffman is 52 years of age and married with five children. He is a graduate of Thomas M. Cooley Law School and practiced law in Lansing for 14 years before being appointed to the 56th District Court bench five years ago. He is currently serving as president of the Michigan Association of Drug Court Professionals and was recognized as the Judge of the Year 2001 by the Michigan District Judges Association. He serves on the OUIL/DUI*

*Sub-Committee of the National Association of Drug Court Professionals Board of Directors.*