

Eliminating Jail for Impaired Drivers Through Interventions:

A Primer for Prosecutors and Law Enforcement



2021 Lifesavers Conference

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Panel of Judges

- **Judge Robert Anchondo**

Judge, County Criminal Court #2, El Paso, TX

- **Judge Neil Edward Axel (moderator)**

Senior Judge, District Court of Maryland

- **Judge Patrick C. Bowler (ret'd)**

Michigan Judicial Outreach Liaison

- **Judge Jules Edwards, III (ret'd)**

15th Judicial District Court, Louisiana

Learning Objectives

As a result of this session, you will be able to:

- Recognize how a coordinated response to impaired driving cases can reduce recidivism and protect our communities
- Integrate evidence-based pretrial and sentencing practices into the prosecution's approach to impaired driving cases
- Identify and encourage use of various sentencing options to reduce reliance upon jail

What is the Role of Police & Prosecutor in Arresting/Prosecuting Impaired Drivers?

Police

- Detection & investigation
- Community protection

Prosecutor

- Accountability
- Community protection

What is the Role of the Judge in Sentencing Impaired Drivers?

- Punishment/Accountability
- Community protection

Common Goals

- But we cannot do this alone
- We need your help and your cooperation
- We all share the same goals
 - Community safety
 - Accountability
 - Reduced recidivism



“An encounter with the criminal justice system . . .

. . . provides a valuable opportunity to intervene in an individual’s life by identifying the clinical needs of substance abusers and then confronting them with the consequences of their own drug and alcohol use.”

“Responding to Substance Abuse: The Role We All Play,” 1999

Food for Thought

Is jail effective in changing behavior?

Do we protect the community most by:

- Incarceration?
- Imposing consistent sentences?
- Probation?
- Changing behavior?



Hard Core Impaired Drivers

What Doesn't Work

- Fines & jail alone
- Traditional probation
- Community service
- License suspension
- Victim impact panels

What Works

- Assessment & treatment
- Cognitive behavioral therapy
- DUI Courts
- Close judicial supervision
- Intensive supervision

How Can Prosecutors & Law Enforcement Help Promote Effective Outcomes?



Build on Your Foundational Knowledge

- Recognize the changing face of the impaired driver, and its impact
- Understand the nature of addiction and treatment
- Promote the use of evidence-based practices in reducing recidivism

Triage

Early identification and referral of eligible offenders:

1. At time of arrest
2. At arraignment/bail review
3. During plea negotiations
4. At sentencing



Pretrial Interventions

Pre-Trial Release

A Hypothetical

- Defendant is charged with DUI (BAC – 0.18)
- 38 years old; lives with spouse & 3 children
- Has lived & worked in community for 20+ years
- Has 2 prior DWIs, and 2 drug possession convictions
 - On probation for DUI # 2
 - Pending trial for DUI #3
- Not presently in treatment
- Has never failed to appear

Pre-Trial Release

Is the Defendant a
Flight Risk?

Does the
defendant pose a
danger to the
community?

Are there release
conditions that can
reasonably protect
the community?

What Are Evidence Based Practices, and Why Use Them?



Evidence-Based Practices to Improve Outcomes

- Validated risk & needs assessments
- Reliable assessments & treatment plans
- Tailored Individualized Sentences
- Drug/DWI Court models
- Increased/on-going judicial supervision

The Goals of Utilizing Evidence-Based Practices

1. Reducing recidivism
2. Improving public safety by:

implementing practices based on empirical research to transform probation into a more efficient, effective, and meaningful arm of the court



Treatment Courts



WHAT IS A DWI COURT?

change behavior

collaborative team approach

court monitoring

holistic and comprehensive

accountability

high-risk / high-need

frequent alcohol and drug testing

long-term treatment

recovery

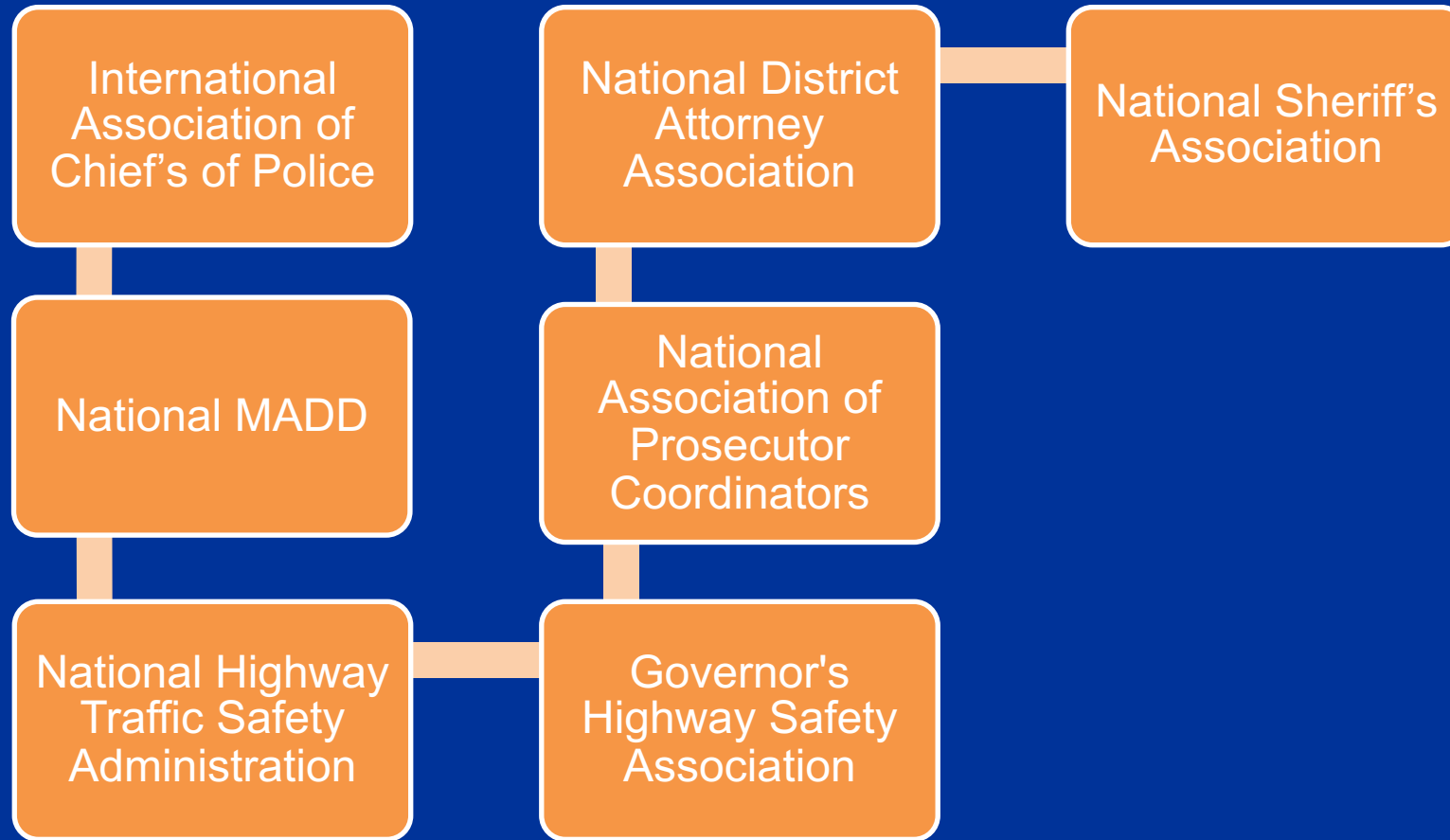
*intensive
supervision*

non-adversarial

Research on DWI Courts

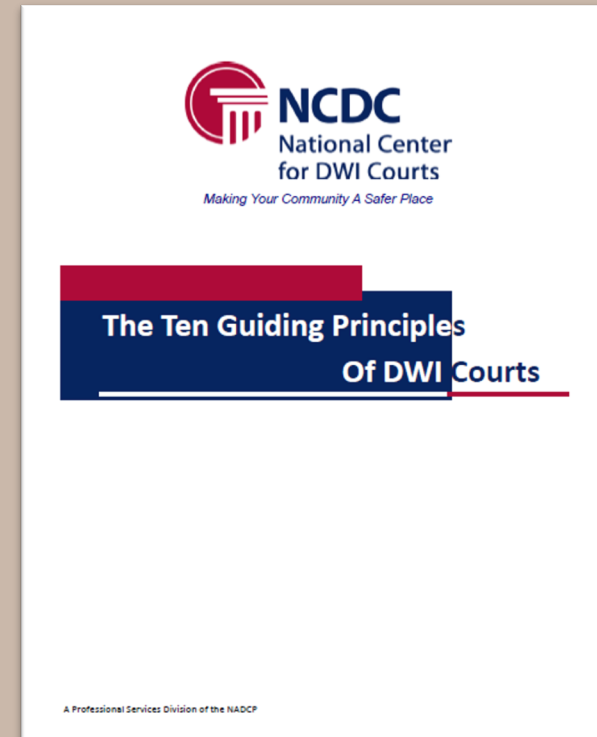
- “DWI Courts reduce DWI recidivism and general criminal recidivism while returning substantial cost savings to the taxpayers.”
- Recidivism reduced by an average of >12%; and by as much as 50-60%

DWI Courts are Endorsed by:



DWI COURTS ARE SPECIALIZED

1. Target the Population
2. Provide a Clinical Assessment
3. Develop the Treatment Model
4. Supervise and Detect Behavior
5. Develop Community Partnerships
6. Take an Active Judicial Role
7. Provide Case Management
8. Solve Transportation Barriers
9. Evaluate the Program
10. Ensure Sustainability



Team Involvement

What roles do law enforcement and prosecutors play in effective handling of DWI Court participants?



Who Gets Into DWI Court?



Risk Need Quadrant Model

	High Risk	Low Risk
High Need	Treatment Court	Traditional Probation
Low Need	Intensive Probation	Prevention Minimal Supervision

Eligibility Determination

- Target population: high risk-high need
- Use of assessments vs. evaluations
- Development of Treatment Plans

Reasons For Success

1. Team approach - ability to identify & overcome barriers to success
2. Use of evidence-based practices
3. Moving/pushing individuals from compliance to commitment - coerced treatment works

Reasons For Success

(cont'd)

4. Close supervision & accountability
 - Frequent court reviews
 - Ongoing judicial interaction & encouragement
 - Sanctions & incentives
5. Close coordination between treatment & supervision

Overview of a Typical DWI Court Case

- Referral of potential candidates
- Determination of eligibility
- Guilty Plea & sentenced into program
- Treatment plan established
- 12 months minimum participation – 4-5 phases
- Close supervision
 - By case manager/probation agent
 - By Court – biweekly initially
 - Progress reports
 - Team review sessions
 - In-court reviews
 - Sanctions and incentives

Substance & Alcohol Use Disorders: Treatment Courts vs. Healthcare Professionals



Why It's Time to Abandon Drug Courts **(The Crime Report, March 5, 2021)**

“Drug courts are part of a failed system that presumes we can “punish” our way out of addiction. . . . If we want to move beyond the discredited War on Drugs and save lives, we must abandon the fixation on drug courts, invest in proven solutions, and let healthcare professionals – not lawyers and judges – guide treatment.”

Statement of Salem Health Hospitals and Clinics in Opposition to Oregon Ballot Measure 110

“The framers of ballot measure 110 portray individuals with active addictions as rational actors who will naturally seek out and accept treatment for their condition. . . . This is simply not true. Removing the threat of incarceration and abandoning the collaboration between law enforcement, the judiciary, probation and the drug court system will result in a revolving door of drug abuse, treatment refusal, crime, homelessness and ongoing costly health related expenditures for hospitalizations. . . .”

What About Regional Treatment Courts?



COVID-Related Court Delays

What can prosecutors, police and judges do to counteract the delays occasioned by court closures and restricted dockets?



Impact of COVID-19

1. Are participants with SUDs experiencing risk factors relating to COVID-19 and how can police, prosecutors and courts address drug intervention needs?
2. How have treatment courts responded to restrictions on courthouse access?

Have we learned anything from
COVID about our reliance on
incarceration as a sentencing
option?



Concluding Thought

“There is a better way. We need to move from anger-based sentencing that ignores cost and effectiveness to evidence-based sentencing that focuses on results — sentencing that assesses each offender’s risk and then fits that offender with the cheapest and most effective rehabilitation that he or she needs.”

Missouri Chief Justice William Ray Price, *State of Judiciary Address* (2010)



Questions
Comments