

# **Walking the Line:** ***The Role of JOLs & the Impaired Driver Adjudication Process***



*2021 Lifesavers Conference*  
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# **Presenters**

**Moderator- Caroline Cash**

National Highway Traffic Safety Administration

**Judge Neil Edward Axel**

*ABA National Judicial Fellow*

**Judge John S. Kennedy**

*Judicial Outreach Liaison (Region 2)*

**Judge Laura Weiser**

*Texas Judicial Resource Liaison*

# Topics for Discussion

1. Judicial Outreach Liaisons – What Are They?
2. The Judge's Role in Impaired Driving Cases
3. Evidence-Based Interventions to Reduce Recidivism
4. Judicial Outreach Liaisons – How They Serve Your Communities

# The JOL Program: A Quick Overview

Developed through a cooperative agreement with the American Bar Association (ABA) and NHTSA

- 2 National Judicial Fellows work directly with the ABA & NHTSA's Impaired Driving Division
- 9 Regional JOLs work with NHTSA Regional Offices
- 20 State JOLs

# The Network

Promoting proven and promising practices so to improve highway safety :

- Law Enforcement Liaisons (LELs)
- Traffic Safety Resource Prosecutors (TSRPs)
- Probation Fellow
- NHTSA Judicial Fellows
- Regional Judicial Outreach Liaisons (RJOLs)
- State Judicial Outreach Liaisons (SJOLs)



# The Role of Judicial Outreach Liaisons:

Judges Working Together to  
Promote Traffic Safety

**Judge Laura Weiser**

# The Essence of a JOL

- While remaining independent and impartial, the JOL serves as a statewide resource for the judiciary and other members of the highway safety community dealing with highway safety related court cases, particularly cases involving impaired driving.
- Peer-to-peer judicial education, court case interpretations, guidance, and being a liaison between the judiciary and the highway safety community.

# The Essential Role of the SJOL

“Knowledge Transfer”

## ➤ Working:

- with the Judiciary
- with State HSOs
- with other stakeholders

## ➤ As a:

- teacher
- consultant
- liaison
- writer





# Essentials for Traffic Court Judges

- Understand & apply law specific to traffic cases
- Assess admissibility of scientific and emerging technological evidence
- Keep current on pharmacological, medical, mental health issues
- Be familiar with evidence-based sentencing options

# The Judge's Role In Impaired Driving Cases

Judge Neil Edward Axel



# The Trial Judge

*“A trial judge is a short order cook, not a gourmet chef.”*

Massachusetts Superior Court Judge  
Alan J. Dimond



# Judging on “Autopilot”



- Heavy dockets
- Consistency
- Convenience
- “It’s what I’ve always done.”
- “I didn’t know that I could . . . .”

# Our Role As Viewed Through Different Eyes

- To our administrative judge – to move the docket
- To the party before us – to listen & believe them
- To prosecution/law enforcement – to find them guilty & lock them up
- To our community – to hold offenders accountable and to protect the community

# Code of Judicial Conduct

- Promote confidence in the judiciary
- Promote fair administration of justice
- Be fair & impartial
- Avoid appearance of impropriety

# Areas of Judicial Influence

## ➤ *Inside the Courtroom*

- Pretrial release
- Plea agreements
- Trial
- Sentencing

## ➤ *Outside the Courtroom*

- Working with other stakeholders
- Coordinating Councils & Task Forces
- Community outreach

**“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*



# Pretrial Release & Bail

- Generally defined by court rules, statutes and constitutions
- Designed to:
  - Assure defendant's appearance; and
  - Protect the community

# Trial Issues

- “Calling balls and strikes”
- Gatekeeper of the evidence presented
- Burden of proof
- Insurer of a fair trial

# Collision of Implied Consent and the 4<sup>th</sup> Amendment: *The Taking of Breath & Blood Samples*



# Noteworthy U.S. Supreme Court Decisions

- *Missouri v. McNeely*, 133 S.Ct. 1552 (2013)
- *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016)
- *Mitchell v. Wisconsin*, 139 S.Ct. 2525 (2019)



# Sentencing



# Sound Decision Making

"Every judge understands that with more information about an offender's circumstances, a sentence can be better tailored to the person to ensure he or she doesn't repeat the offense."



David Wallace, *Highway to Justice*, at p. 5-6 (a publication of the American Bar Association, Summer 2015).

# Sentencing Approach

- Establish reduced recidivism as a specific sentencing goal
- Have a flexible sentencing approach – one size does not fit all
- Combine effective substance use treatment with mental health services
- Avoid docket pressures





# Evidence-based Interventions

## Pre- and Post-Trial

Judge John S. Kennedy





# Food for Thought

1. Do judges protect the community most by:
  - Incarceration?
  - Probation?
  - Imposing consistent sentences?
  - Changing behavior?
2. To what extent does jail change behavior?

# “Evidence-Based”

What Does it Mean?

Two different forms of evidence:

- Anecdotal evidence – what we think works
- Empirical evidence
  - what has been proven to work
  - based on controlled studies

# Why Use Evidence-Based Practice?

1. They reduce recidivism
2. They improve public safety by:

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





# 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?

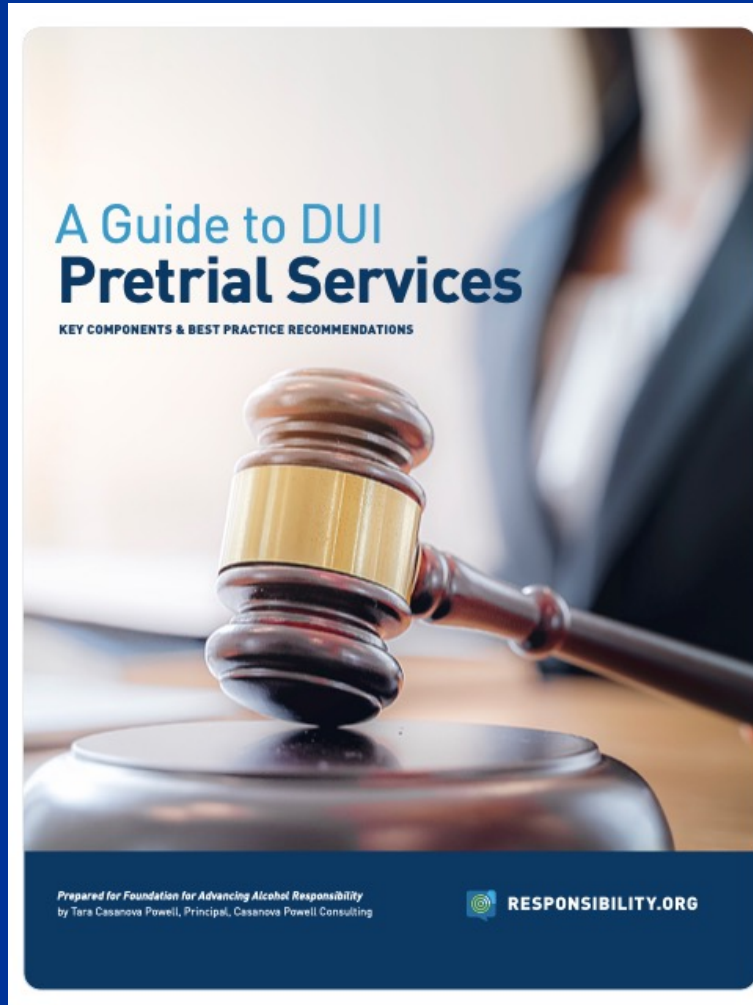
Does the  
defendant pose a  
danger to the  
community?

Are there release  
conditions that can  
reasonably protect  
the community?

# Evidence-Based Approaches to Pretrial Release

- Assessment & treatment
- Drug & alcohol testing
- Supervised release
- Electronic monitoring

# Resource





# Evidence-based Sentencing



## Missouri Chief Justice William Ray Price On Evidence-based Sentencing

*“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.”*

*State of Judiciary Address (2010)*

# Evidence-Based Practices to Improve Outcomes

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

## Validated Risk & Needs Assessments

*“substantial research has demonstrated that the use of certain practices in criminal justice decision making can have a profound effect on reducing offender recidivism. One of these practices is the use of validated risk and needs assessment (RNA) instruments to inform the decision making process.”*

*Using Offender Risk and Needs Assessment Information at Sentencing (NCSC, 2011)*

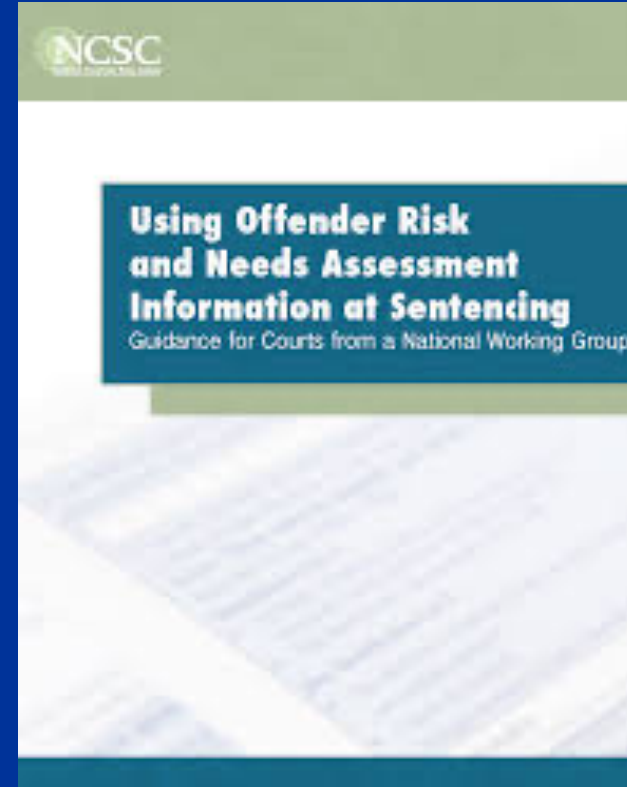
# **Use of Risk & Needs Assessments as Aids in Sentencing**

To assist determination of:

- Appropriate conditions of probation
- Amenability to treatment
- Appropriate level of treatment
- Appropriate level of supervision
- Type of sanction to impose for violating probation

# Risk and Need Assessments

## Resources





# DUI 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*

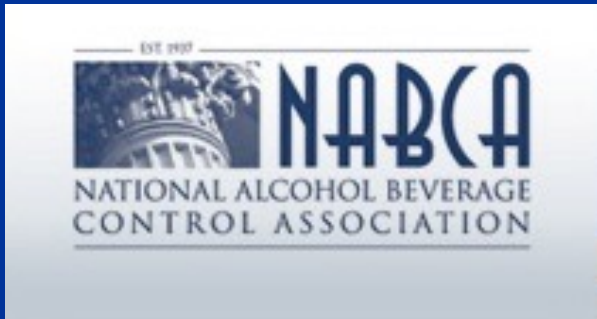


# Team Concept

- Judge
- Probation
- Treatment
- Prosecution
- Defense
- Law Enforcement



# DWI Courts are Endorsed by:



# DWI Courts

## Costs vs. Benefits

- Reduced recidivism by up to 69%
- Cost savings of \$2.00 - \$3.19 for every \$1 invested

# **Judicial Outreach Liaisons:**

## ***Judges Working Together to Promote Traffic Safety***



**Judge Laura Weiser**

# Knowledge Transfer

## Working with Traffic Safety Stakeholders

1. Sharing information with highway safety professionals
  - LELs, SJOLs, TSRPs, SHSOs, etc.
2. Facilitating dialogues
  - Attending meetings, conferences & workshops focusing on impaired driving
3. Networking with National Organizations
  - National Judicial College
  - National Center for State Courts
  - NADCP/National Center for DWI Courts/National Drug Court Institute

# JOLs and DUI Courts

*JOLs work to:*

1. Expand the number of DUI Courts
2. Expand capacity of existing DUI Courts
3. Educate judges about DUI Courts





## **The Role of State JOLs in Providing In-State Judicial Education**

# Judicial Education Takes Many Forms

## ➤ Formal

- Judicial Conferences/Trainings
- ABA In State Impaired Driving Curriculum

## ➤ Informal

- Sharing items of interest
- Newsletters
- Being the “local expert”
- One-on-one



# Target Audience

- Trial judges
  - Law trained
  - Non-law trained judges
  - Tribal court judges
- Administrative law judges
- Administrative Office of the Court

# Topics of Interest

- A judge's role in ID cases
- Current trends & issues
- Drug impaired driving
- Legalization of marijuana
- Sentencing in impaired driving cases
- Evidence-based sentencing practices
- DUI Courts
- Constitutional issues in impaired driving cases
- Drug Recognition Expert Testimony

# **ABA In-State Curriculum**

## ***Impaired Driving Essentials 2021: A One-Day Workshop***

- Developed by JOLs & Judicial Fellows
- 6 modules available for adaptation to local needs
- Designed to raise awareness of effective approaches to sentencing impaired drivers
- Designed to help judges utilize effective sentencing alternatives
- Designed to get judges to think “outside the box”

# **ABA In-State Impaired Driving Curriculum *Modules***

1. Impaired Driving Offenses & their Impact on Communities
2. Alcohol & Drug Impaired Driving: Is There a Difference and What is Its Impact?
3. The Role of the Judge in Impaired Driving Cases: Reducing DWI Recidivism

# **ABA In-State Impaired Driving Curriculum**

## ***Modules (continued)***

4. Evidence-based Pretrial and Sentencing Practices to Reduce Recidivism: Screenings & Assessments
5. Sentencing Impaired Drivers
6. The Promise of DWI Courts

# Why Do You Want to Have or Work With a JOL?

1. JOLs are subject matter experts who serve as a resource for the judiciary and other traffic safety stakeholders
2. JOLs provide peer-to-peer networking with other judges to help implement and expand the use of evidence-based practices
3. JOLs focus on working with all stakeholders on reducing recidivism

# To Find Your Regional or State JOL

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***Questions***  
***Comments***