

**From Gavel to the Gravel:
*Judges & the Community Unite to Reduce
Impaired Driving Recidivism***



2022 Lifesavers Conference

March 13, 2022

Panel of Judges

Moderators

Judge Neil Edward Axel - Senior Judge, District Court of Maryland

ABA National Judicial Fellow

Judge Jules Edwards, III - 15th Judicial District Court, Louisiana (ret'd)

Louisiana State Judicial Outreach Liaison

Panelists

Judge Eric Bergstrom - Circuit Court for Multnomah County, Oregon

Oregon State Judicial Outreach Liaison

Judge Kerry Meyer – Fourth Judicial District Court, Hennepin County, MN

Minnesota State Judicial Outreach Liaison

Judge Laura Weiser – Victoria County Court At Law No. 1, Texas (ret'd)

Texas State Judicial Outreach Liaison

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 your everyday approach to impaired driving cases

What are Our Roles in Impaired Driving Cases?

Police

Detection

Investigation

Community Protection

Prosecution

Accountability

Community Protection

Sentencing Judge

Punishment

Accountability

Community Protection

Probation

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

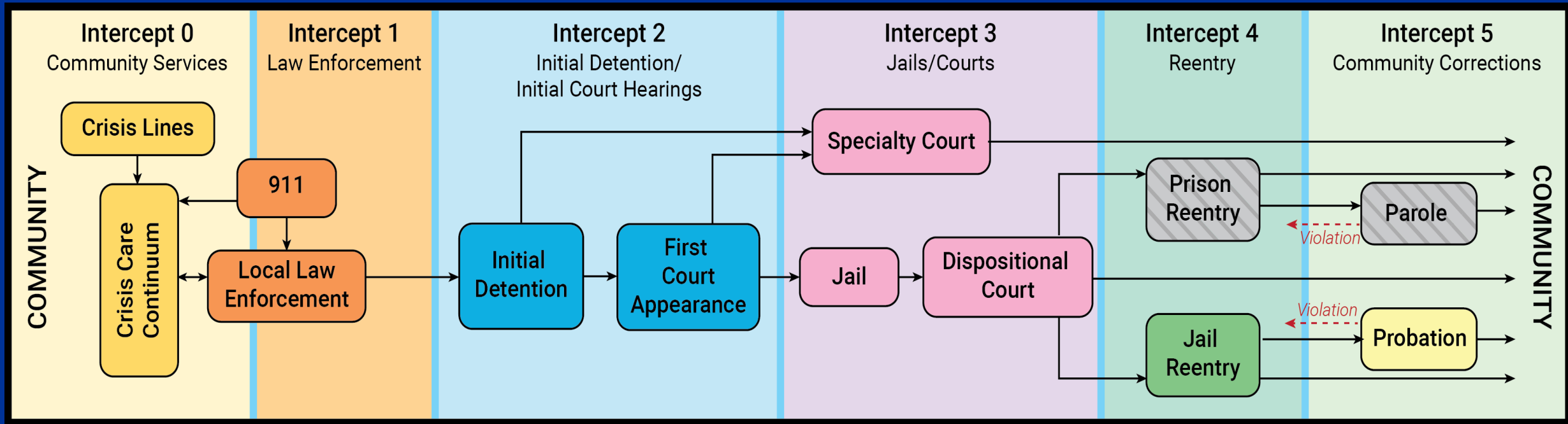


“An encounter with the criminal justice system . . .

. . . 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

The Sequential Intercept Model



Criminal Justice Coordinating Councils



Hypothetical

The Changing Face of the Impaired Driver

- Tom is operating a vehicle at 8:30 p.m. on a 2-lane road, with his 5-year-old son as a passenger
- He is driving erratically, loses control of their vehicle and hits another vehicle causing significant property damage but fortunately no serious injuries
- Tom has an odor of alcohol on him, has a baggie of marijuana in his pocket, along with a prescription slip for benzodiazepine

Polling Question

Assuming that Tom is under the influence, what substance is he under the influence of?

- a) alcohol
- b) marijuana
- c) cocaine
- d) benzodiazepine
- e) we don't know

The Changing Face of the Impaired Driver

- The impaired driver is often a poly-substance user
- Yet DUI is the only crime where the investigation often stops after obtaining a minimum amount of evidence
- Implications:
 - Hinders the ability to measure extent of drug-impaired driving problem
 - Many DUI arrests are inaccurately attributed to alcohol alone
- Important for LEO's to record all observations of impairment
- ARIDE training and DRE training

Working Together to Promote Effective Outcomes: *A Judicial Perspective*



Communication:

More Information \Rightarrow Better Decision Making

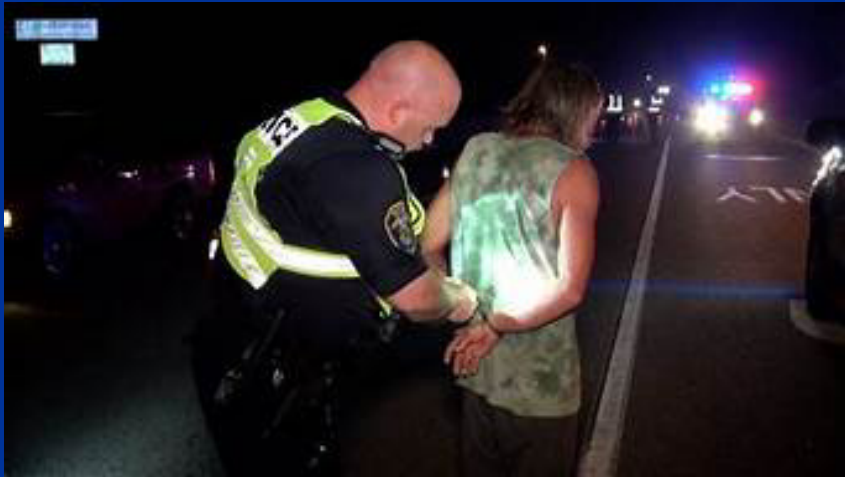
➤ Investigation

- What substances contributed to impairment?
- What substances were possessed?

➤ Communication

- Report writing
- Providing sufficient information to prosecutors
- Providing sufficient information to judges

➤ Early interventions



Triage

Early identification and referral of eligible offenders:

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



Pretrial Interventions

Pre-Trial Release

A Hypothetical

- Defendant is charged with his 3rd DUI (BAC – 0.19)
- 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
- 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?

Shifting Paradigms/Trends in Pretrial Release Decisions

- minimize unnecessary detention
- release based on objective criteria of risk
- increased focus on community supervision & early interventions
- consideration of one's ability to pay

Plea Agreements

A Hypothetical

Prosecutor announces plea agreement where Tom will plead guilty to driving under the influence of alcohol:

- BAC – 0.08
- He has two prior DUI arrests that resulted in reckless driving convictions + 1 prior drug possession conviction
- Prosecutor recommends a sentence of a fine and unsupervised probation since this is 1st conviction & he has entered a 6-week alcohol education program.

1. Is the Court required to accept the plea agreement?
2. Should the Court accept the plea agreement?
3. Does the judge have enough information?



Plea Agreements: *A Judicial Perspective*

- judges should not merely be rubber stamps
- consider individualized sentencing and reduced recidivism as specific goals in plea agreements
 - “one size does not fit all”
 - consider need for effective substance abuse treatment and mental health services

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).

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

What Are Evidence Based Practices, and Why Use Them?



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



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

DWI 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

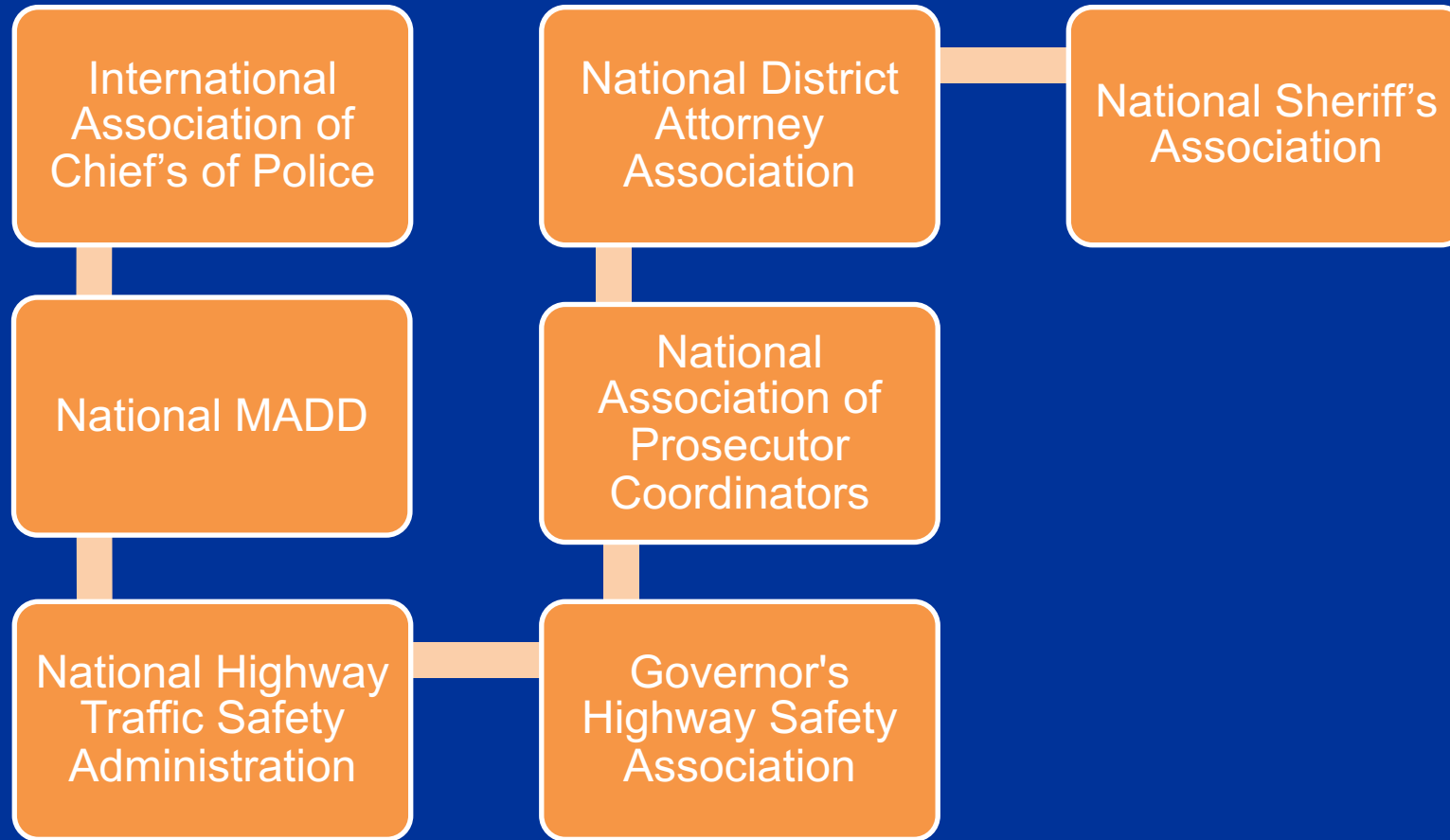
*intensive
supervision*

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:



Team Involvement

What roles do law enforcement and prosecutors play in effective handling 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	Diversion / Prevention Minimal Supervision

Eligibility Determination

- Target population:
 - *DWI Court: high risk-high need*
 - *Monitoring Court: high risk-low need*
- Use of screenings vs. assessments
- Development of Treatment Plans

Reasons For Success

1. Team approach
 - ability to identify & overcome barriers to success
2. Use of evidence-based practices
3. Close supervision & accountability
4. Incentives and sanctions
5. Moving individuals from compliance to commitment
6. Close coordination between treatment & supervision

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



Oregon's Ballot Measure 110



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. . . .”

COVID-Related Court Delays

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



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



Concluding Thought: *Thinking Outside the Box*

- Breaking old habits
- “It’s what I’ve always done.”
- “I didn’t know that I could do that.”





Questions
Comments