

NHTSA Judicial Outreach Meeting



U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**



EXECUTIVE SUMMARY

On August 19, 2008, the National Highway Traffic Safety Administration (NHTSA) hosted a Judicial Outreach meeting in Washington, DC, and included NHTSA's Judicial Fellows, State and Regional Judicial Outreach Liaisons, and NHTSA headquarters and regional staff. The meeting provided an opportunity for participants to share ideas, success stories, and challenges with one another.

The meeting focused on NHTSA's priority programs for reducing impaired driving, in which members of the judiciary can play an important role, specifically:

- DWI courts
- Ignition interlocks
- Evidence-based or promising court, sentencing, and supervision practices

This report summarizes presentations made regarding each of these priority programs. It also summarizes presentations made regarding other resources available to the judiciary, including the Century Council's judicial training efforts, a discussion of Data-Driven Approaches to Crime and Traffic Safety (DDACTS), data resources available from the National Center for Statistics and Analysis, and data translation capabilities available through the Federal Motor Carrier Safety Administration's Commercial Driver's License Information System (CDLIS).

Meeting Attendees:

Judicial Fellows: Hon. Yvette Diamond, Hon. Kent Lawrence

NHTSA Regional Judicial Outreach Liaisons: Hon. Michael Padden (Region 10), Hon. Karl Grube (Region 4), Hon. Lynda Howell (Region 9)

State Judicial Outreach Liaison: Hon. David Hodges, Texas

NHTSA: Nancy Ross, Ann Burton, Garrett Morford, Heidi Coleman, Mike Geraci, Jeff Michael, Brian Chodrow, and Evelyn Avant, NHTSA HQ; Bill Kootsikis, NHTSA Region 9; Sandy Richardson, NHTSA Region 4

Other Attendees: Bob Redmond, Federal Motor Carrier Safety Administration; Bill Georges, The Century Council; Robyn Robertson, Traffic Injury Research Foundation (TIRF); and Elizabeth Hurley, American Bar Association (ABA)

PRIORITY PROGRAM PRESENTATIONS

I. PRESENTATION ONE: *OVERVIEW OF IMPAIRED-DRIVING PRIORITIES*

To set the stage for the meeting discussion, Heidi Coleman, Chief of NHTSA's Impaired Driving Division, gave an overview detailing NHTSA priority programs in the impaired-driving area.

Key points:

- A 3.7-percent decline in 2007 impaired-driving fatalities in crashes involving drivers or motorcycle operators with a blood alcohol concentration (BAC) of .08 grams per deciliter (g/dL) or above (2007: 12,998 versus 2006: 13,470).
- 32 percent of 2007 fatalities involved a driver or motorcycle operator with a BAC of .08 g/dL or greater.
- 86 percent of all alcohol-positive fatal crashes involved drivers or motorcycle operators at .08 or greater.
- NHTSA is engaged in a number of priority programs to reduce impaired driving, including:
 1. High-Visibility Enforcement: efforts include general deterrence; the National Crackdown; sustained high-visibility enforcement; a national communications strategy;
 2. Support for the Criminal Justice System: efforts include Traffic Safety Resource Prosecutors; Judicial Fellows and Judicial Outreach Liaisons; DWI courts;
 3. Screening and Brief Intervention: efforts include working with the medical and health care community to screen and provide brief intervention with patients who show signs of an alcohol misuse problem; and
 4. Ignition Interlock: efforts are underway to increase use of interlocks, including development of a judicial primer and ignition interlock curriculum; technical assistance to States; elements of a model interlock program; case studies; rural demonstration project; blue ribbon panel.
- Priority areas in which judges can play the most critical role include:
 1. Promotion of DWI courts;
 2. Promotion of use of ignition interlocks; and
 3. Identification and promotion of evidence-based and promising court, sentencing, and supervision practices for DWI offenders.

DISCUSSION

Following the *Impaired Driving Priorities* presentation, meeting participants raised the following issues:

The use of NHTSA's new alcohol measure - a driver or operator involved in a crash with a .08 or greater BAC = alcohol-impaired versus the presence of any alcohol = alcohol-related

- Represents a move towards intellectual honesty; using statistics that include crashes that could arguably be caused by alcohol.
- NHTSA wants to be conservative yet emphatic about reporting alcohol involvement in impaired-driving crashes.
- Statistics previously used are still available for comparative purposes.
- Concerns that the new alcohol measure may underreport the involvement of low-BAC young drivers and low-BAC drivers with commercial driver licenses.
- Concern that the new measure's elimination of low BACs does not track with society's shifts in attitude away from the acceptability of drinking and driving.

The need to focus on multiple young-driver issues

- Many issues are of concern for the safety of young drivers: underage drinking, texting while driving, other distractions, etc.

NHTSA staff posed the following questions for consideration throughout the day's discussions:

- How can judges help promote NHTSA priorities?
- What roles can Judicial Fellows and Judicial Outreach Liaisons play in this promotion?
- How can NHTSA best help judges?

II. PRESENTATION TWO: *DWI COURTS*

To address the priority area of *DWI courts*, the Hon. Kent Lawrence, Judicial Fellow, shared his perspectives. On the bench for 22 years, Judge Lawrence has run a DWI court in Athens, Georgia, since 2001.

Highlights from Judge Lawrence's presentation included the following observations:

Background of DWI courts

- Initial DWI courts are believed to have originated with Judge Michael Kavanaugh in Albuquerque, New Mexico, more than 10 years ago.
- Primarily for repeat DWI offenders, U.S. DWI courts now number more than 400 and are considered "accountability courts," or programs that combine chemical addiction treatment with behavior accountability expectations.
- Traditional sentences often don't work for repeat DWI offenders. Courts continue to see the same offenders over and over again. Money, technology, and advocacy groups alone won't solve these issues.
- Individual criminal justice system participants cannot solve the problem of repeat DWI offenders. A team approach, including judges, prosecutors, defense attorneys, public defenders, law enforcement, probation, and treatment professionals, is necessary to collectively and successfully redirect the behavior of offenders. Judge Lawrence said that "collective decisions made by a team are far superior to unilateral decisions made by a judge."

Success in DWI courts

- DWI courts must follow the 10 Guiding Principles for DWI courts as developed by the National Drug Court Institute (see http://www.ndci.org/pdf/Guiding_Principles_of_DWI_Court.pdf).
- The Four Goals of DWI Courts:
 1. Offender sobriety
 2. Increase in public safety
 3. Decrease in recidivism
 4. Return the offender to being a productive member of the community
- For most offenders, participating in a DWI court (or accountability program) is the "hardest thing these folks have ever done."
- Offenders with the most convictions seem to have the most success in changing their behavior. They "want to please the judge" and their success may be age-related; older offenders tend to have more convictions and appear more willing to make life changes.

Why do DWI courts make a difference for repeat DWI offenders?

- In Judge Lawrence's DWI court, his participants are:
 1. Held to a high standard of behavior;
 2. Subject to enhanced supervision of the court;
 3. Required to work unless they are disabled;
 4. Tested frequently for drugs and alcohol; and
 5. Subject to continued judicial monitoring.
- In Georgia, research shows DWI courts are working. Examining recidivism outcomes for three pilot DWI courts after four years, 1,100 DWI court accountability program participants had DWI recidivism rates of 9 percent compared to 350 percent for similar offenders from the same counties who were sentenced to traditional sanctions during a two-year period immediately prior to the establishment of DWI court programs. The DWI court program retention rate for participants was 79 percent.

Obstacles and opportunities

- In Judge Lawrence's opinion, the biggest obstacle to DWI courts are judges themselves. "Judges don't like to surrender control," Judge Lawrence said, "and some have no interest (in DWI courts); some believe it isn't their job to redirect behavior. That's for corrections."
- Judge Lawrence believes the future of DWI court programs lies with younger judges who have a different mindset and are more comfortable with technology.
- Operational since earlier this spring, the National Center for DWI Courts and its director, David Wallace, are developing resources to assist judges, prosecutors, and law enforcement that are starting DWI court programs. According to Judge Lawrence, the significant interest being expressed in DWI courts is the "tip of iceberg."

DISCUSSION

Meeting participants raised the following observations in a discussion following Judge Lawrence's presentation.

Giving up judicial independence to the judgment of the DWI court team

- Judges, while having ultimate control of the team, must be willing to use it sparingly and surrender control to the group under some circumstances.

Driver license issues for DWI court participants

- With the hard work being done by defendants in DWI court, should there be a consideration of regaining driving privileges?
- How should issues of driving after suspension or revocation by DWI offenders be addressed?
 - At least one State had the legislature redefine the charge to a fine-only offense; another created a two-track system: one track for driving-related suspensions, a second for "other" suspensions (e.g., not having a dog license).

Support for DWI courts

- To foster community and legislative support for DWI courts, Judge Lawrence involved local employers.
- Form a non-profit organization to accept community donations; use a powerful offender video for victim impact panels.
- DWI courts can be self-sufficient with assistance from and partnerships within the community.

- To get a DWI court going, redefine current court staff responsibilities; identify resources in the community and “think outside the box”; extra effort from judges and others is required to get a DWI court started.
- Funding and incorporating treatment into DWI court programs is an ongoing challenge.
- Education of judges about DWI courts is critical, but all judges are not cut out to be DWI court judges.
- Legislators must believe DWI courts increase public safety; both legislators and the public must be educated about DWI courts if they are to be successful.

III. PRESENTATION THREE: *IGNITION INTERLOCKS*

Promoting the increased use and implementation of effective ignition interlock programs for impaired drivers is a top priority for NHTSA. Robyn Robertson, president and CEO of the Traffic Injury Research Foundation (TIRF), shared information about a project TIRF is completing for NHTSA in her presentation, “Developing a National Curriculum on Ignition Interlocks.”

Key observations from Robertson’s presentation included:

Background on ignition interlock technology

- Despite advanced technology, supportive research, and laws that allow use, overall ignition interlock usage is low.
- A lack of familiarity in the criminal justice system with ignition interlocks is one reason for low usage rates.
- TIRF’s Ignition Interlock Curriculum will provide needed educational opportunities for criminal justice practitioners, including judges, to improve implementation and delivery.

Ignition interlock implementation issues related to education needs

- Many new interlock laws are being considered and enacted.
- As of August 2008, 47 States authorized use of ignition interlocks for at least some offenders and 8 States required use of interlocks for all (including first) offenders.
- Many practitioners lack current knowledge of effectiveness and confidence in the devices and, therefore, use ignition interlocks for fewer offenders than are eligible (about 10% of all people arrested for DWI have interlocks installed).
- When practitioners are familiar with ignition interlock technology, they are more interested in using it.

TIRF’s Ignition Interlock Curriculum

- Funded by NHTSA, Alcohol Countermeasure Systems Corp., Smart Start, Inc., and Draeger.
- The curriculum is designed with input from law enforcement, attorneys, judges, probation, treatment professionals, and licensing agencies.
- Issues addressed in the curriculum include ignition interlock research, technology, implementation, legal issues and service providers.
- The curriculum is Web-based and includes a video demonstrating the use of an interlock device as well as a mock traffic stop involving an interlock. The report is now complete and can be obtained from the Century Council.

Conclusions

- There is a need and an opportunity to provide criminal justice system practitioners, including judges, with current information about interlocks and interlock programs.
- Education can encourage and enhance the delivery and consistency of interlock programs to affect more offenders.
- Educational efforts can help interlocks fulfill their potential to reduce impaired-driving deaths and injuries.

DISCUSSION

Ignition interlocks are a current issue in many States; judges are very interested in having a role in the policy conversations. Meeting participants expressed the following points in a discussion following Robertson's presentation:

Judges and legislators need education on ignition interlock technology

- Legislators should include judges and probation representatives in discussions about creating ignition interlock laws.
- Partnerships with advocacy groups can create training opportunities.
- Ignition interlock companies provide some de facto training.
- Educational resources exist online; many judges will not use them.

The role of ignition interlocks and treatment

- More research is needed in connecting use of ignition interlocks and treatment.
- Substance abuse issues must also be assessed.
- Research is needed on recidivism in ignition interlock users in regular court cases versus DWI courts.
- Concerns about moving away from treatment in favor of ignition interlock.

Uses of ignition interlocks for first-time, repeat, and pre-trial offenders

- Concerns about low implementation rates across the board.
- Challenges of motivating offenders to choose interlocks.
- Research shows reductions in recidivism for both first time and repeat offenders.
- Most research has been done on repeat offenders; need more research on first-time and pre-trial use.
- Some jurisdictions are using ignition interlocks as conditions of bail.
- With early use, offenders have more resources to pay for ignition interlocks and interlocks reinforce early behavior change.

Monitoring offenders with ignition interlocks and other technologies

- Circumvention issues for chemically addicted offenders.
- Concern about programs that lack violation reporting processes.
- New technologies may provide alternatives to interlocks, but practitioners need more information and industry standardization to help guide decisions.

IV. PRESENTATION FOUR: *EFFECTIVE AND PROMISING SENTENCING PRACTICES*

In his presentation "Sentencing Impaired Drivers: Effective and Legally Sound Approaches to the Sentencing of Impaired Drivers," the Honorable Karl Grube, NHTSA Region 4 Judicial Outreach Fellow, explored how NHTSA's emphasis areas are reinforced through the use of sound sentencing practices for DWI offenders.

Judge Grube's presentation emphasized the following elements:

Impaired-driver sentencing principles

- Legitimate objectives for sentencing impaired drivers include rehabilitation, deterrence, restitution, education, punishment, revenue, and docket management. According to Judge Grube, the best sentence accomplishes the most sentencing objectives at the least cost to society.
- Before sentencing, a judge must give an offender an opportunity to speak and must make certain the defendant entered a valid plea with an attorney or filed a waiver of attorney.
- In order to be effective in sentencing a repeat DWI offender, it is essential for the judge to monitor the defendant's compliance with a sentence, either through probation or some other means of monitoring. The judge must also have the legal discretion to impose a sentence of incarceration.
- The recognized test of the validity of a condition of probation is that it is reasonably related to the offense and the rehabilitation of the defendant and the protection of society.

Promising sentencing practices for impaired drivers

- The 2004 NHTSA document *Sentencing Strategies for DWI Offenders: 10 Promising Sentencing Practices* was discussed by Judge Grube. Strategies described in that publication with potential for reaching DWI offenders included DWI courts, staggered sentencing, sentencing circles, vehicle sanctions, ignition interlock devices, electronic monitoring and SCRAM, victim impact panels, cognitive behavioral therapy, drug therapy, and reentry courts.
- Other potentially effective practices suggested by Judge Grube include creating penalties for breath test refusal that carry the same penalty as for impaired driving; counseling and zebra tags.
- Criminal justice system stakeholder groups add value when addressing the problem of impaired driving. While limits exist as to what stakeholder groups can discuss, they can confer about treatment modalities, DWI courts, license reinstatement, the impact of new laws, and the implementation of certain procedures.
- Judges can and should talk to legislators about sentencing practices. Judges can share their expertise in sentencing in connection with matters concerning the law, the legal system, or the administration of justice.

PRESENTATIONS ON OTHER RESOURCES FOR JUDGES

A series of presentations were made, describing a variety of resources that are available to assist judges, either through NHTSA, other Federal agencies, or outside organizations.

I. PRESENTATION ONE: *JUDICIAL TRAINING EFFORTS BY THE CENTURY COUNCIL*

A presentation was made by Bill Georges, Senior Advisor, Century Council, detailing the efforts of the Century Council's Hardcore Drunk Driving Project in reaching and educating judges. Starting in 2004, and working in concert with the National Association of State Judicial Educators, the Century Council has provided education to more than 5,000 judges in over 40 States with presentations on their *Hardcore Drunk Driving Judicial Guide*.

Mr. Georges discussed the primary issues covered by the Century Council in their three hour interactive judicial presentations. Focusing on the contents of the Century Council's *Hardcore Drunk Driving Judicial Guide*, the presentations cover discussions on DWI data, characteristics of hardcore drunk driving offenders, sanctioning strategies and the role of judicial leadership.

The Century Council presentations lead judges to the conclusion that even if effective and creative sanctioning methods are used, sanctions can be successful only if the hardcore drunk driver changes his/her behavior. Therefore, judges need a deeper understanding of offender characteristics and BAC levels, knowledge of sanctions that are geared toward changing behavior, information about technology available to assist in behavior change and case flow management techniques to help them successfully reach the hardcore drunk driver.

Mr. Georges noted that the Century Council's Hardcore Drunk Driving Judicial Guide is under evaluation by Dr. Maureen Connor, Executive Director of the Judicial Education, Reference, Information, and Technical Transfer Project at Michigan State University. (The report is now complete and can be obtained from the Century Council.)

II. PRESENTATION TWO: *DDACTS (DATA DRIVEN APPROACHES TO CRIME AND TRAFFIC SAFETY)*

A presentation on the Data Driven Approaches to Crime and Traffic Safety (DDACTS) program was made by Mike Geraci, NHTSA Director of Safety Programs. DDACTS is a joint program between NHTSA and the Bureau of Justice Assistance, using local data and non-traditional partners to reduce both crime and traffic crashes through data-driven policing.

In an era of reduced resources, traffic safety enforcement often takes a back seat to crime. Using proven crime reduction strategies, DDACTS combines crime and crash data to strategically integrate operations, thereby extending resources and maximizing the impact of law enforcement. Because crime and traffic crashes often are co-located, combining traffic and crime analyses can focus and prioritize limited enforcement resources, such that community quality of life can be improved.

Through DDACTS training and technical assistance, law enforcement agencies are encouraged to drill down into localized data that yields a deeper understanding of the problem. Using GIS mapping technology, law enforcement can visually develop a clearer picture of where problems are happening – using fatal and injury crash data, as well as locations of shootings and shots fired. In concert with data

mapping, operational plans are developed, helping enforcement target both criminal activity and traffic safety issues. Key elements of operational plans include problem definition, defined terminology, and identified approach to the problem, the inclusion of a specific traffic enforcement approach, staffing/deployment strategies, local partner collaboration and community outreach/marketing. DDACTS is flexible, adaptable to all environments and locally controlled. The Federal role is one of assistance and support.

DDACTS demonstration projects are taking place with the Vermont State Police; Rochester, New York Police Department; Baltimore County, Maryland Police Department; Nashville, Tennessee Police Department; LaFourche Parish, Louisiana Sheriff's Office; and the Oakland, California Police Department. Core elements of each demonstration project include crime and traffic data collection, data analysis, coalition building, communications, public information and education, dissemination of information, data driven operations and monitoring/evaluation/program modification.

One judge noted that, in some jurisdictions, offender race must be tracked by law enforcement and the courts. The judge asked whether this analysis constituted *de facto* profiling. Geraci said that if data shows the area under consideration is an area of high crashes, shots fired, robberies and the like, the decision to concentrate enforcement resources on that particular area can be defended successfully if it's being done for the right reason.

III. PRESENTATION THREE: *DATA TOOLS – NCSA and NHTSA*

Brian Chodrow of NHTSA's Enforcement and Justice Services Division updated judicial meeting attendees on resource materials available through NHTSA's National Center for Statistics and Analysis (NCSA). Working with examples found in the attendee meeting material, Mr. Chodrow pointed out national and State-by-State data summaries that can be useful for Judicial Fellows and Judicial Outreach Liaisons in their work with Regions and individual State judicial educators. Traffic Safety Fact Sheets, FARS/GES reports, technical reports, and other research documents are all available on NHTSA's Web site at www.nhtsa.gov.

Regional and State Judicial Outreach Liaisons can be successful by recommending informative training to other judges, offering themselves as a resource and sharing their experience in impaired driving and other traffic safety issues. Other available resources Judicial Fellows and Judicial Outreach Liaisons can offer their judicial colleagues include five traffic-safety-related courses available online or in person at the National Judicial College, seminar at American Bar Association meetings and training material and curricula from the Traffic Injury Research Foundation.

NHTSA has an ongoing interest in helping Judicial Fellows and Judicial Outreach Liaisons find effective strategies and materials to educate fellow judges about impaired driving and other traffic safety issues. Through this important outreach, the use of successful sentencing and criminal justice practices can be increased and safety on the roadways can be improved.

IV. Presentation FOUR: *Data Translation - FMCSA*

Bob Redmond of the Federal Motor Carrier Safety Administration (FMCSA) provided information on its approach to making data available to all States via the Commercial Driver License Information System (CDLIS). Because commercial drivers spend the majority of their time traveling outside their home States, crashes and other undesirable driving behavior is more likely to happen away from home. For

this reason, it is important that criminal justice system professionals across the country have the ability to access and correctly interpret commercial driver license data from other States.

Using the real-time, Web-based CDLIS system, information for 13.4 million commercial drivers from the United States, Mexico, and Canada can be accessed. Information about the driver, including a physical description and address, commercial and non-commercial driver license status, endorsements/restrictions, convictions, crash history and other pending license withdrawals can be accessed in a standardized, easily understood format. The ability to obtain accurate and timely CDL status and history information is critical to the successful investigation and prosecution of commercial drivers involved in serious interstate traffic incidents. In addition, the CDLIS system has sought to display the data in a way that it can be interpreted easily by judges.

MEETING CONCLUSION

To wrap up the day's meeting, NHTSA leaders revisited the questions posed to Judicial Fellows and Judicial Outreach Liaisons at the beginning of the day and discussed how the judiciary can advance NHTSA's impaired-driving priorities. The following is a summary of that discussion.

What is needed by the judiciary to move impaired-driving priorities forward?

- Traffic Safety Resource Prosecutors in the 10 remaining States that do not have them (TSRPs are part of the executive branch of government).
- More Judicial Outreach Liaisons, preferably at the State level; if not, at the NHTSA Regional level - State level Judicial Outreach Liaisons would be most helpful because understanding differences in each State's judiciary can be a challenge.
- Judges need an advocate, a person to call with questions about impaired-driving issues.
- New-judge orientation training is a good way to educate new judges, planting seeds about promising sentencing options; efforts to reach new judges are more effective than trying to change opinions of soon-to-retire judges.
- It is inspiring for judges to hear from other judges already working in DWI courts; judges listen to other judges.
- Get into judicial education programs; a suggestion was made to work through State Highway Safety Offices to bring judges one or two-full days of education on subjects that require in-depth discussion.
- Knowledgeable judges should serve on judicial continuing education committees to promote DWI-related education.
- Judges from States that need more help should be invited to more advanced State education.
- Presentations at conferences, such as GHSA, should occur to encourage States to establish DWI courts.
- Information about DWI courts should be addressed in legislator training.

How does the judiciary best receive new information about priority programs?

- The more personal the training, the better; in-person training is best, but video conferencing and even bulk mailing of information can reach some judges.
- Personal communication tailored to one's own State is best; it can even be better if the information is specific to your own community.
- Ethical opportunities for judicial conversations with DWI stakeholders should be encouraged.

- The National Association of Drug Court Professionals (NADCP) provides high-quality training and education that should be encouraged; most of the outstanding practitioners and professionals volunteer their time.

Jeff Michael of NHTSA discussed with meeting attendees the possibility of replicating a particular impaired-driving reduction strategy in use in New Mexico. Comprised of 30 to 40 senior-level State leaders, a standing committee on impaired driving meets monthly in New Mexico to identify gaps in the DWI system, pool resources, share experiences and strategies, and work together to solve issues identified by the group. The participants include members of both the Executive Branch of government and the Judiciary. Dr. Michael asked judges if they thought the judiciary in other States could be involved in leadership coordination activities of similar State impaired-driving committees.

The Judicial Fellows and Judicial Outreach Liaisons believe judges could play an important role in a committee like the one described by Dr. Michael. Judges could add value by sharing their insights about a State's criminal justice system. In some States, judges could even lend credibility to these groups by assuming a leadership role (provided this is allowed ethically). It was noted that these committees could be even more powerful with the addition of legislative or high-level executive (i.e., Governor) support.

MEETING SUMMARY AND NEXT STEPS

Dr. Michael thanked all meeting participants for their dedication and interest in traffic safety. He expressed his appreciation for their contributions to this gathering and for sharing their honest opinions. Judicial Fellows and Judicial Outreach Liaisons were reminded that they are the "eyes and ears" of the judiciary and that NHTSA relies on their input to direct agency efforts in support of the criminal justice system.

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