

HIGHWAY TO JUSTICE

SUMMER 2016

From The ABA and The National Highway Traffic Safety Administration

ADDRESSING DUI RECIDIVISM: THE “TARGET 25” PROGRAM

*Judge John S. Kennedy, Court of Common Pleas, York County, PA
NHTSA Region 2 Judicial Outreach Liaison*

In October of 2008, a 50 year old man walked into my courtroom and started a process that would change how York County processed DUI cases from arrest through sentencing.

When I entered the courtroom that morning, I had approximately 75 people on my docket. It was a typical “current business” session where we have 3 hours to hear guilty pleas, impose sentences and conduct revocation hearings.

This man was present for a revocation hearing on a theft charge. It was alleged that he had consumed alcohol excessively. As I reviewed the factual scenario, I noticed that he had committed 4 DUIs in about 10 months. Three had very high blood alcohol levels (ranging from .345 to .527).

I was shocked. I wondered how he could remain free and able to drink and drive while being in frequent contact with police, probation officers and the judiciary. I felt fortunate that he had not killed himself or someone else during this time period. I decided to review his case and see how this happened.

My last involvement with the nuts and bolts of a DUI case had been almost 30 years ago when I was a young prosecutor. At that time, standard procedure for a DUI stop was to make the arrest and then transport the driver to the police station or hospital for a breath or blood test. Charges were filed the same night and the individual was released to family or friends.

Things had changed. Our DA had moved to a blood only testing system and now sent the blood out of town for processing. Police officers did not file charges until the test result was received and sometimes they waited 6 to 8 weeks for the results. Defendants were still released the same night of their arrest, with no bail conditions, regardless of how many prior DUIs they had.

Charges weren't filed until after the officer received the BAC report which was often sent by snail mail. If an officer was not on duty or on vacation, another delay of one to two weeks was not uncommon.

When the charge was finally filed it was sent by summons resulting in another two to three week delay. Suffice it to say we had a myriad of systemic issues to address.

The man who had appeared before me had 14 contacts with the criminal justice system in the ten months before he appeared in my courtroom and no one had attempted to intervene with bail conditions, treatment or incarceration. The danger he presented during that time period was unconscionable. I had to find out if this was an isolated incident or a regular occurrence.

I brought the issue to our Criminal Justice Advisory Board. We decided to have the bench do an informal survey and our DA's office undertook a review of all DUI cases. What we noticed was that about one third of all of our criminal cases were DUIs. Of those, around 25% were repeat offenders. We noticed that about 25% of the repeat offenders would be arrested for a new DUI before they were sentenced on their most recent DUI. It was clear that many were continuing to drive intoxicated after receiving a DUI and while awaiting trial and sentencing. This was a danger we could not tolerate.

We formed a coalition of all relevant stakeholders and began a review of our process. We changed from a punitive based system to a treatment based system that emphasized sobriety and counseling. We addressed the delays in the system. Our DA wrote protocols for law enforcement and the judiciary.

The new protocols for law enforcement require police officers to check records on anyone stopped for a DUI to determine if there have been prior offenses. If there are prior offenses, the officer is required to arrest the individual immediately and transport them for a blood draw. The offender is then seen by a magistrate who imposes bail conditions that include 24/7 alcohol monitoring and a drug and alcohol evaluation.

There was initial resistance to these changes. Police departments did not want their officers off the street writing criminal complaints and booking defendants. Judges did not want to be available over night. We

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We would like to hear from other judges. If you have an article that you would like to share with your colleagues, please feel free to submit it for inclusion in the next edition of *Highway to Justice*.

To submit an article, please send it to the editor, Hon. Earl Penrod penrod26d01@msn.com with a copy to the staff liaison, Cheronne.Mayes@americanbar.org. Please contact Ms. Mayes for editorial guidelines.

The deadline for submission of articles for the Fall issue is October 7.

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prepared a presentation outlining the issues and explained the dangers we were seeing. We took a team of Judges, Prosecutors and Police Chiefs to the County Police Chiefs meeting and the County Magistrates meeting. We outlined the new procedures and explained that we could not force anyone to follow the procedures but if they weren't followed and a death or serious injury occurred, we would advise the press that the existing procedures in place that may have prevented the crash were not followed by the officer or Judge.

Our Sheriff's office also made the system as officer friendly as it could. They hired a phlebotomist to be present in the central booking center and installed computers with templates so the officer could do paper work while the blood was being withdrawn. For departments far from central booking, the Sheriff's Office offered to meet the officer half way and transport the defendant to central booking. We got unanimous buy in.

The District Attorney has also made in house changes with a new screening process. Victim witness coordinators screen files for victim information services and contact victims for medical release forms and injury updates to provide input for DUI Treatment Court admission. Case managers calculate prior records utilizing criminal and driving records.

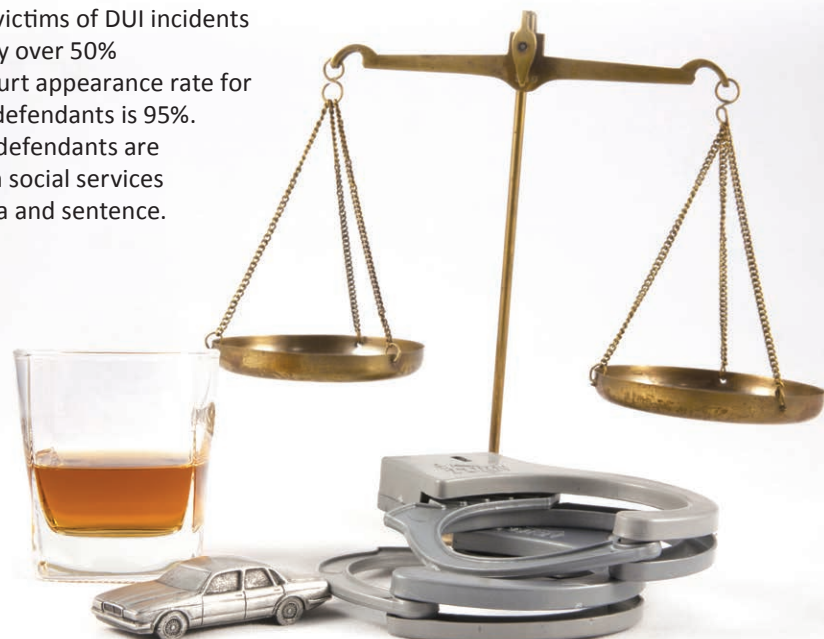
An experienced DA reviews every file within days of arrest and refers DUI Treatment Court eligible cases to probation and places sentencing recommendations in the file for those not eligible. The entire screening process occurs within 25 days.

We find that this expedites the time from arrest to DUI Treatment Court Entry. It also ensures new participants are sober and therefore more amenable to treatment services.

Pennsylvania has mandatory confinement for most DUIs. For first offenders and those second offenders with low blood alcohol concentrations, the mandatory confinement period is between 48 hours and 30 days. This time was traditionally served in prison. It is now standard to use house arrest with an additional period of alcohol monitoring, which not only freed bed space at the prison, but also allowed us to have longer periods of sobriety for DUI offenders.

PROGRAM OUTCOMES

1. The repeat offender who continued to get arrested for new DUIs while on bail was virtually eliminated.
2. Incident date to filing date was reduced from 21 days to less than 4 days.
3. Incident date to first court appearance was reduced from 53 days to 38 days.
4. Multiple offender cases dropped by over 50%.
5. Claims by victims of DUI incidents dropped by over 50%
6. Overall Court appearance rate for Target 25 defendants is 95%.
7. 75% of all defendants are engaged in social services before plea and sentence.



TACKLING IMPAIRED DRIVING IN RURAL JURISDICTIONS

Robyn D. Robertson, President & CEO, Traffic Injury Research Foundation

Impaired driving has remained a dominant road safety priority and focus of concern in the United States despite a 23% decline in impaired driving deaths in the past decade. Of note, progress has not been uniform across or even within jurisdictions, and reductions in impaired driving fatalities have been more pronounced in urban centers as opposed to rural areas, although the magnitude of the problem in terms of sheer numbers remains considerable. A closer examination of impaired driving laws, programs and policies in the United States reveals that urban centers tend to be better equipped to implement proven strategies to reduce impaired driving as compared to their rural counterparts,

This article briefly summarizes current data about impaired driving fatal crashes in rural jurisdictions and key implementation challenges facing these jurisdictions, along with some positive examples of innovative practices in rural jurisdictions that hold promise.

Fatal crashes.

While it may be widely believed that the majority of traffic fatalities occur in population centers, research reveals the opposite to be true. Rural jurisdictions have a higher fatality rate compared to urban and metropolitan areas, with rural fatalities accounting for 54% of all traffic fatalities in 2013 (NHTSA 2015). Of concern, the fatality rate per 100 million vehicle miles traveled (VMT) was 2.6 times higher in rural areas (1.88) than in urban areas (0.73) in 2013 (NHTSA 2015), and a variety of risky driving behaviors are more pronounced in rural areas, such as speeding, non-use of seatbelts, and drinking and driving, particularly among younger ages. As a result, road safety programs and policies must be developed and implemented with this context in mind.

Implementation challenges.

Rural jurisdictions, by virtue of their unique characteristics, may encounter a wider array of challenges than urban areas in the successful implementation of impaired driving strategies. Rural counties and communities have lower levels of resources or availability of services. Variations in organizational structures and points of decision-making are also distinct, and these jurisdictions are not always a consideration in relation to the development, passage and implementation of legislation and programs. Other specific challenges include:

- Levels of public awareness and concern about impaired driving tend to be lower in rural jurisdictions. Campaign messages are more often tailored to urban environments, public transportation options may be limited or non-existent, and strong social norms and traditions may reinforce the acceptability of driving after drinking. The presence or lack of advocacy groups focused on this issue can also be a factor.
- Capacity is also a pressing concern in rural jurisdictions. Agency staff face a multitude of competing priorities that must be addressed regardless of lower staffing levels, longer distances, greater costs and fewer resources to support the acquisition of tools, training and equipment.
- Rural jurisdictions are rarely well-represented on state task forces, committees, or workgroups that develop impaired driving strategies. Researchers and policy makers may give little consideration to the capacity and ability of rural jurisdictions to fully enforce or implement strategies.

- The structure and authority of agencies within rural jurisdictions also tends to be more fragmented and variable. This can make it difficult to coordinate activities, share information, and form partnerships with others, although strong community relationships help to minimize these challenges. Jurisdictional boundaries of agencies may impede their staff from participating in initiatives.
- The large geographical areas and long distances characteristic of rural jurisdictions have important implications for workload and case management. Safety is also a pressing concern for staff in rural areas, and agencies are less likely to have specialized staff to complete tasks. This means that they are often responsible for responding to incidents posing all levels of risk and across large geographical areas.
- The presence of Indian Country and Tribal Lands may also pose unique challenges. Each tribe has different governance, resources, population, geography, and cultural issues (Myers 2014). Some 334 federally and state recognized American Indian reservations exist (Perry 2015), but only about 180 tribes have court systems comparable to those of the U.S. or the states.
- The impact of indigency, particularly in rural communities, on impaired driving sanctions and programs is frequently a concern. The costs associated with an impaired driving offense are substantial and cumulative, and there are frequently concerns associated with equality and the ability of impaired driving offenders to fulfill sentencing requirements, or avail themselves of treatment and alternative sentencing.

Examples of innovation in rural jurisdictions.

Rural jurisdictions frequently aim to adopt creative approaches that meet their unique needs. Adaptability is key and some examples of successful practices applied in various facets of the DWI justice system are briefly described below.

- Impaired driving task forces are comprised of community leaders that develop a comprehensive, achievable strategy to reduce impaired driving within their jurisdictions. Two examples from Pikes Peak Region, in Colorado, and Gallatin County, Montana emphasized sharing resources and changing social norms. More information about these efforts can be accessed at www.nhtsa.gov/static-files/nti/pdf/811460b.pdf.
- The San Carlos Apache Tribal Motor Vehicle Injury Prevention Program emphasized reducing alcohol-impaired driving and increasing use of seat belts and child safety seats among tribal members. It included different tools such as diverse and far-reaching media campaigns, educational tools, and enforcement efforts that emphasized sobriety checkpoints and enhanced police enforcement. A cost-benefit evaluation showed that during the project period the Tribe saved \$2,710,000 (USD). Important lessons that emerged included the importance of strong partnerships involving police, tribal leaders, a full-time tribal program coordinator and evaluation consultants.
- Sobriety checkpoints are perceived as less feasible in rural jurisdictions due to the staff and resources needed to execute them. Low-manpower checkpoints can be conducted by as few as 3 to 5 officers and may be more practical in rural jurisdictions, and research has demonstrated their effectiveness. Multi-jurisdictional checkpoints may be another viable alternative because the burden on individual agencies is reduced.

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- The State-Tribal Collaboration Act was enacted to strengthen law enforcement activities across New Mexico, with an emphasis on respect for tribal sovereignty, traditions, and customs. Key contacts were designated in six police districts to facilitate and streamline work with tribal officers. Training and certification opportunities for officers were implemented, and the Act provided coordination and cross-training opportunities to ensure that State Police officers are well-equipped to deliver essential police services throughout the entire state, including Indian lands. This formalized relationship has helped enhance public safety and created a strong foundation for partnerships between police agencies, and more structured and ingrained operational practices. (See: <http://www.nmlegis.gov/lcs/legislation.aspx?Chamber=S&LegType=B&LegNo=196&year=09>).
- In 2010 several DWI courts in urban areas of Michigan initiated a pilot program that made DWI court participants eligible to obtain an ignition interlock across the state. This pilot made it possible for rural jurisdictions to pool their resources and be better able to establish and maintain these programs. The DWI court staff would travel to designated locations and conduct DWI court proceedings on select days. In the first year of this expansion to create regional DWI courts, 18 counties participated in four regional programs; by year two there were nine additional courts included in four new regional programs. This example illustrates that it is achievable to improve service delivery to include rural jurisdictions with some strategic planning and flexibility.
- The DUI supervised probation program in Fremont County, Wyoming was designed for rural communities and serves a Native American population with services tailored to individual offenders. It handles serious impaired driving offenders who are not eligible for the Wyoming Drug Court program, and is both comprehensive and long-term. It is adaptable to a variety of settings, depending on which agencies are present in a community, and is designed for communities with high rates of impaired driving and limited resources. Recidivism rates among offenders in this program are much lower than those of offenders in an unsupervised probation program (25-37% versus 50% respectively).
- Wright County, Minnesota adopted a holistic approach, and criminal justice officials and the community undertook efforts to reduce impaired driving fatalities and arrests. These efforts involved developing a Sober Cab program, an intensive supervision program, and an alcohol education program. As of 2011, following the implementation of some of these countermeasures, Wright County reduced impaired driving fatalities. Lessons learned from Minnesota's experience show how partnerships between stakeholders representing the justice system and the community can help to reduce impaired driving both by strengthening prevention efforts and by increasing awareness and providing alternatives to help people make better choices.

Lessons learned.

These examples of innovation in rural jurisdictions reveal how partnerships and collaborations at county and regional levels can help overcome the resource and infrastructure limitations common to rural jurisdictions. In particular, policymakers are encouraged to:

- Consult with officials and advocates in rural jurisdictions to identify priority issues.
- Emphasize proactive/preventive activities.
- Create targeted campaigns that link alcohol, seatbelt use, and speed.
- Transition from local to regional approaches and build partnerships.
- Engage agencies in program development.
- Provide practitioners with data to demonstrate intervention effectiveness.
- Cross-train professionals.

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DATES TO REMEMBER

July 4

**Impaired Driving: Drive Sober or Get Pulled Over
Buzzed Driving is Drunk Driving**



July

Vehicle Theft Prevention Month



August 17 – September 5

**Impaired Driving: Sober or Get Pulled Over
National Enforcement Crackdown**



September 18 – 24

Child Passenger Safety Week

September 24

National Seat Check Saturday



IS YOUR CHILD IN THE RIGHT CAR SEAT?

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To learn more about impaired driving and highway safety programs, please contact one of the following:

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- Bring services to communities and offenders.
- Increase use of technologies and pharmacotherapies to overcome staffing, resource, and service delivery issues.

Conclusions.

Available research suggests that the uniqueness of rural areas must be understood if effective strategies to reduce impaired driving are to be implemented. One mechanism to address this problem is to regularly include individuals and agencies that represent rural jurisdictions in the development of state initiatives. Such efforts are already underway in the form of impaired driving task forces in some jurisdictions, but this approach must become more ingrained and consistent throughout more states to achieve progress on a larger scale. More positively, county and local governments in several states have already undertaken the development of distinct community-based impaired driving initiatives that represent a blend of prevention, detection and sanctioning strategies. These efforts have been designed to leverage specific strengths and assets that exist within these communities, including strong social bonds and community and regional relationships, greater independence and flexibility in adapting practices to meet local needs, and well-supported community-based organizations to deliver services.

Acknowledgements:

This article is based on a report entitled “Impaired Driving in Rural Jurisdictions: Problems and Solutions” authored by Robyn D. Robertson, Carl Wicklund, Erin Holmes and Paul Biderman. The full report can be accessed at: <http://bit.ly/1pmpJTP>

About the Traffic Injury Research Foundation:

The mission of the Traffic Injury Research Foundation (TIRF) is to reduce traffic-related deaths and injuries. TIRF is an independent, charitable road safety research institute. Since its inception in 1964, TIRF has become internationally recognized for its accomplishments in identifying the causes of road crashes and developing program and policies to address them effectively.

DON'T FORGET

Valuable resources can be found at:

- **National Highway Traffic Safety Administration**
<http://www.nhsta.gov/Impaired>
- **American Bar Association/Judicial Division/NCSCJ**
http://www.americanbar.org/groups/judicial/conferences/specialized_court_judges/NHTSA.html
- **Highway to Justice - Archives**
http://www.americanbar.org/publications/judicial_division_record_home/judicial_division_record_archive.html
- **National Judicial College**
www.judges.org
- **National Center for State Courts**
<http://www.ncsc.org/>
- **Governor's Highway Safety Association: Impaired Driving Issues**
<http://www.ghsa.org/html/issues/impaireddriving/index.html>
- **AAA Foundation for Traffic Safety**
<https://www.aaafoundation.org/>



THE NATIONAL
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**Drugged Driving Essentials.
September 27-29, 2016. Reno, NV:**

Faculty: Hon. Peggy Hora (CA, ret.)

Hon. Neil Axel (MD, ret.)

Tuition Fee: \$765

Conference Fee: \$205

Unlike alcohol-impaired driving, drugged driving has no bright line test for impairment. Drugged driving cases require a judge to utilize a variety of judicial tools to effectively adjudicate these cases. In addition to the ability to determine whether an individual may be under the influence of drugs, it is important to know how drugs affect the individual, and their ability to function. It is also imperative that a judge knows how to effectively craft sentences, which include treatment options, in order to provide a participant with the most beneficial mode of recovery.

After this course, you should be able to:

1. Describe the major classes of drugs, and discuss how they affect an individual's driving ability
2. Describe what a Drug Recognition Expert (DRE) does, and identify how to qualify a DRE as an expert witness
3. Give examples of effective sentencing techniques when dealing with an individual who is suffering from a drug abuse issue

Scholarships available: Please contact Rebecca Bluemer at Bluemer@judges.org or 775-327-8269

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