EDITOR’S NOTE: DWI TREATMENT COURTS: AN EFFECTIVE EVIDENCE-BASED SENTENCING ALTERNATIVE

In 2017, 37,133 people died, and an estimated 2.5 million people were injured in motor vehicle traffic crashes in the United States. Of the motor vehicle fatalities in 2017, 29 percent occurred in an alcohol-impaired crash in which a driver or motorcycle rider had a blood alcohol concentration (BAC) of .08 grams per deciliter or more (which is illegal per se in every State in the United States). In 2014, more than 1 million drivers were arrested for driving while impaired by alcohol, with about one-fourth of all drivers convicted of impaired driving being repeat offenders.

DWI Treatment Courts were developed as a more effective, judicially coordinated treatment-focused program to help reduce the adverse impact of repeat drug and alcohol offenders on the court system, and the community at large. DWI Treatment Courts directly manage, oversee and supervise treatment and recovery. The Court recognizes day-to-day success and failure on the spot with a system of sanctions and incentives while working with treatment providers to enforce and adjust treatment plans. These specialty courts follow the well-established drug court model and are based on the premise that impaired driving can be prevented if the underlying causes, such as substance addiction and mental health issues, are identified and addressed.

Gratuates from these courts have expressed the impact that their participation had upon them in a number of ways. Two graduates from DWI Courts in Maryland expressed the impact in the following ways:

“This program has given me roots where none had existed before. It has given me the courage to dare to do that which I thought was impossible. It has given me a sense of belonging to the human race again. Simply stated, Drug Court has help me find myself.”

“At one point I had lost everything: my car, my license, and my freedom. After a year and a half in DWI court, I have gotten my license back, gotten my car back, graduated from community college, ran a half marathon, volunteered my winter vacation tutoring poverty children on the border of Mexico, donated blood four times, quit my dead-end job to pursue a new career, and read over 40 books. And, I have stayed clean and sober the whole time.”

A large body of research supports the effectiveness of DWI courts to lead participants out of the justice system and into long-term sobriety and supports the evidence-based practices employed in these courts. Why do communities invest in Treatment Courts? The answer, simply put, is that DWI Courts and Drug Courts work! These courts are saving lives, and improving communities—all at a cost far less than what it would take to simply warehouse in jails and prisons those who commit crimes as a result of alcohol and drug addictions.

In this issue, Judge Kennedy writes about his personal experiences as a DWI Court judge, and the personal and professional satisfaction he gained by serving in a problem-solving court. His comments reflect that of many other judges who have undertaken the effort to approach addiction and its impact upon our communities and how judges can and do make a difference in the lives of those who appear before them.

In our second article, Chief Justice Dan Kemp of the Supreme Court of Arkansas writes about just some of the many ways in which DWI Court judges can “think outside the box” in seeking and employing solutions to what otherwise may be barriers to success in problem solving courts.

If you would like to learn more about DWI Treatment Courts, you can go to the National Center for DWI Courts website located at www.dwicourts.org or simply take a Drug or DWI Court Judge to lunch. Your colleague will be happy to share their experiences with you, and it will be an eye-opening conversation.
I WAS A DWI TREATMENT COURT JUDGE AND GLAD OF IT!

By Honorable John S. Kennedy
Court of Common Pleas, York County, PA (retired)
ABA Regional Judicial Outreach Liaison, Region 2

Traffic Court judges typically handle high volume dockets and often don’t have the opportunity to see whether the sentences they imposed were effective in reducing recidivism and changing behavior. Except when one returns to court for violating their probation, judges don’t receive a lot of feedback. For 22 years, I served on the York County Court of Common Pleas, and early on in my judicial career I was afforded the opportunity to attend a training session on drug treatment courts. I had come to the bench with certain notions of what a judge should be based upon my prior legal experience. The drug court training changed my judicial life, changed my perspective, and brought me tremendous judicial satisfaction.

Based on that training session, in 1997 I established a drug treatment court. Eleven years later, our county decided to overhaul the processing of DWI offenders. We had noticed that 25% of repeat offenders would commit a new offense again before they could even be sentenced. As part of evaluating the arrest through sentencing process, we realized that we could apply the evidence-based practices of our drug court and the lessons learned from eleven years of experience running a problem-solving court and apply them in a new dedicated DWI Treatment Court. Using our experience and resources from the National Association of Drug Court Professionals and the National Center for DWI Courts, we began a pilot program of 50 participants in our new DWI Court. I was chosen to expand the program to 150 participants. I had prior experience in treatment courts but wasn’t sure how this population would differ from the drug addicts I had been accustomed.

I was sent for training to Athens, Georgia where Judge Kent Lawrence ran a DWI Academy Court. I remember my first day in his courtroom when he said, “I take 10th and 12th offenders into my program.” I thought he was insane. Surely those offenders belonged in state prison.

He must have sensed what I was thinking. He looked at me and said, “you think I am crazy”. He continued, “Who has a worse problem with alcohol: the second offender or the person who has habitually violated the law?” If I put them in jail, they get out and reoffend. If I put them through this program, they won’t drink or drive drunk again and I make my community safer.” It made sense and statistics show that DWI courts have some of the lowest recidivism rates of any treatment courts.

I found the experience of being a problem-solving court judge one of the most rewarding aspects of my judicial career. By intervening in the lives of those charged with criminal and traffic offenses, I had the opportunity to change the future for individuals who were caught in the spiral of addiction, be it drug or alcohol. By utilizing best practices and the collaborative non-adversarial approach that are central to Drug and DWI Treatment Courts, we were able to break the cycle of addiction, promote long-term sobriety, and reduce recidivism.

Handling both Drug and DWI Treatment Courts certainly was challenging and required me to become familiar with various aspects of addiction, treatment and the differences between those addicted to drugs and those who were addicted or dependent upon alcohol. Generally, the drug addict would readily admit they had an addiction and would agree they needed help. They wouldn’t always want the help, but they would agree they needed it. The alcoholic would have an attitude of “I don’t have a drinking problem, rather you have a problem with my drinking.” It would take longer for them to realize they were alcohol-dependent, that it was adversely impacting their life, and that the sober lifestyle was better.
Our DWI clients usually had jobs. Sobriety helped them in their job performance, frequently resulting in promotions and other career advancements; their family life improved; spouses and children became supportive and relationships repaired. It wasn’t unusual for me to hear, “I used to drink every day. I lived in my parent’s basement. This was the first time in 10 years I was sober for my child’s birthday. Now, I have my own apartment, a driver’s license, and a car that is insured.”

At each graduation from the program, I would see that we had 40 people who had transformed their lives. These graduates, all graduates from the program teach us that the cycle of addiction can be broken, and in doing so, lives can be changed, families strengthened, and communities improved. Colleagues who have presided over Drug and DWI Treatment Courts all share this common experience that we, as judges, can make a difference.

DWI courts are clearly more effective countermeasures in addressing the problems of the repeat impaired driver. Jails, prisons and probation have been shown to be far less effective in reducing recidivism. Most counties throughout Pennsylvania send their repeat offenders to the state prison system which costs close to $40,000 a year per offender. They receive little treatment and when released are placed on a large parole caseload with an over worked Parole Officer. That officer is also supervising murderers, rapists, robbers and other high-risk violent offenders. He looks at the DWI offender as low risk and accordingly gives him or her very little attention. The result is a very high recidivism rate. Our DWI Court graduates have less than a 5% rate of recidivating, and these outcomes have been replicated in many other States. In Michigan, for example, outcome studies have shown that DWI Court participants were 19 times less likely to re-offend. In Georgia, studies showed that their DWI Court graduates had a 9% recidivism rate versus 35% in traditional court.

Another wonderful outcome for DWI Court graduates is that a large percentage of graduates continue to be part of the solution. After graduation, many of our graduates stay involved in the recovery community and help others through the program. In fact, our last graduation speaker was a prior graduate who now works as a recovery specialist with a local recovery agency.

The use of problem-solving courts in our communities recognizes the need for a new and better approach to the underlying problems that bring our neighbors before the court. Research and experience have demonstrated that the intensive, collaborative and non-adversarial approach undertaken by DWI Treatment Courts has greatly improved outcomes and reduced recidivism. I am proud to have been a part of this approach.
USING DRIVING PERMITS TO IMPROVE SPECIALTY-COURT OUTCOMES

By John Dan Kemp, Chief Justice of the Supreme Court of Arkansas, and Chaney Taylor, NHTSA Region 7 JOL

INTRODUCTION

Arkansas Act 1246 of 2015 allows specialty-court judges to issue temporary restricted driver’s permits to participants who are enrolled in the specialty-court programs. Specialty courts often have rigorous appearance requirements that include, among other things, court attendance, drug-and-alcohol testing, drug treatment, twelve-step programs, and employment. Consequently, transportation, particularly in rural areas, can be a significant obstacle for people in those programs. Many, if not all, drug offenses covered under the Uniform Controlled Substances Act, Ark. Code Ann. §§ 5-64-101 et seq., carry with them an automatic one-year driver’s license suspension, even if the offense does not involve driving. Moreover, people who enter a specialty-court program frequently have license suspensions unrelated to the offense that landed them in the program.

LIMITATIONS ON PERMITS

Specialty courts as defined in the Act, include drug courts, DWI courts, mental-health courts, veterans courts, juvenile drug courts, “HOPE” courts, “SWIFT” courts, and “smarter sentencing” courts. There are limitations, however. Permits issued under the Act authorize permitees to drive only to and from court appearances, drug-and-alcohol-testing appearances, employment, treatment sessions, support or counseling organizations, school, and medical appointments. In addition, permits shall not be issued if the participant has (1) an unrelated license suspension because of a revocation in another state, (2) a court-ordered suspension prohibiting issuance of a restricted permit; (3) suspensions outside Arkansas that restrict the person to the use of an ignition interlock device; (4) an underage DUI; (5) a DWI; (6) failed to pay court-ordered child support; (7) been convicted of vehicular homicide or manslaughter; (8) committed any felony using a motor vehicle; (9) been convicted of failure to stop and render aid at a motor-vehicle accident resulting in death or injury of another; (10) been convicted of perjury; (11) been convicted of three or more reckless driving convictions within a twelve-month period, or (12) been convicted of an offense in another state that would be grounds for a license suspension in that state.

THE PROBLEM OF IMPAIRED DRIVING

Alcohol impairment is a factor in nearly one-third of all traffic fatalities. In 2017, in the United States, 10,874 people were killed in crashes involving a driver with an illegal BAC (.08 or greater). This involves 29 percent of all fatalities.1 With more states legalizing marijuana, both medical and recreational, driving while under the influence of marijuana is a growing problem as well. In a roadside survey conducted by the National Highway Traffic Safety Administration, 20 percent of drivers surveyed tested positive for potentially impairing drugs.2

SPECIALTY COURTS ARE SOLUTIONS

Specialty-court programs are designed to change the dangerous behavior of people who drive while impaired, including repeat offenders. These programs give people with addiction problems the opportunity and “know-how” to turn their lives around and once again become productive, law-abiding citizens. Act 1246 was passed to give specialty-court-program judges another tool to help participants succeed. Specialty-court incentives are divided into three general categories: low magnitude, moderate magnitude, and high magnitude. Low-magnitude incentives ordinarily are used for proximal, or short-term, achievements, and high-magnitude incentives are used for distal, or long-term, achievements. Examples of low-magnitude incentives are verbal praise, standing ovations, handshakes from specialty-court team members, and certificates of achievement. Examples of high-magnitude incentives include lifting travel restrictions, waiving fines and court fees, and reducing supervision.
requirements. Research shows that rewarding good behavior is as important as punishing bad behavior. Offering restricted-driving privileges is yet another moderate-to-high-magnitude reward that can be used as an incentive for participants to improve their behavior.

Although Arkansas Act 1246 is relatively new, and no significant data has been accumulated, specialty-court judges who are using restricted permits as incentives in the program suggest the incentives have improved participants’ compliance with attendance requirements, contributed to their ability to secure and maintain employment, and reduced recidivism. Other states may want to consider enacting a similar law that rewards positive behavior and thus improves traffic safety.

Endnotes:
1. Governor’s Highway Safety Association

WELCOME TO JUDGE JOHN DAVID KENNEDY

Hon. John David Kennedy, commonly known to his colleagues and friends as David, was recently appointed as Maine’s Judicial Outreach Liaison. He is a Senior Counsel with the firm of Eaton Peabody in Brunswick, where his practice is limited to mediation and arbitration, including ADR services in cases involving vintage and collector automobiles.

Prior to Judge Kennedy retiring from the bench in 2014, he served as a Judge of the Maine District Court from 2002 to 2014, and prior to that was a Magistrate in the Family Division from 1998 to 2002. He was awarded the Career Performance Award, the Judicial Branch’s highest achievement award, in 2013. Before his judicial service he was a Regional Administrator for the Administrative Office of the Courts; served as the Revisor of Statutes for the Maine Legislature, litigated matters at Amerling & Burns, PA, and served as Executive Director at Pine Tree Legal Assistance. He has an A.B. degree from the College of the Holy Cross (1973), a J.D. degree from Boston University Law School (1976), and completed post-graduate seminars in mediation and facilitation at the Program of Negotiation at Harvard Law School (1995–96). Together with Justice Andrew M. Horton he is a co-author of Do Your Divorce Right; Straight Talk from Family Court Judges. Judge Kennedy is a frequent presenter at various legal education programs in Maine.

As Maine’s first Judicial Outreach Liaison, Judge Kennedy will be working with judges, court staff and other stakeholders to provide information, resources, and training on impaired driving and other highway safety issues.

Recognizing the need for appropriate education and training in this area, the National Highway Traffic Safety Administration has made it a priority to provide resources to educate judges and other court staff on impaired driving issues. Partnering with the Judicial Division of the American Bar Association, NHTSA has created a national program of Judicial Outreach Liaisons as a part of its Countermeasures that Work initiative. Under this program, seven NHTSA regions now have JOLs, covering 36 states, and 11 states have their own JOLs.

DON’T FORGET

Valuable resources can be found at:

- National Highway Traffic Safety Administration
  http://www.nhtsa.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

- Governor’s Highway Safety Association: Impaired Driving Issues

- AAA Foundation for Traffic Safety
  https://www.aaafoundation.org/

- National Center for State Courts
  http://www.ncsc.org/

- National Center for DWI Courts
  http://www.dwicourts.org
Traffic Court Seminar

MARCH 18–20, 2019
WASHINGTON, D.C.

The Traffic Court Seminar is designed for judges, judicial officers, prosecutors, and defense attorneys. The seminar includes educational sessions discussing current traffic court decisions, scientific evidence, cutting edge technology, and proven sentencing practices. Networking opportunities with professionals nationwide will be available.

EARLY BIRD REGISTRATION ENDS JANUARY 31, 2019.
LIMITED SCHOLARSHIPS AVAILABLE.

THANK YOU TO OUR SPONSORS: National Safety Council, CourtCall, and Intoxalock.

LifeSavers will host a special evening event (included with your paid registration) at Churchill Downs on Monday, April 1 featuring a buffet dinner and museum and paddock area tour.

To register, visit: https://lifesaversconference.org/registration/

Contact Info continued

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Tennessee: Hon. Leon Burns: leoncburns@gmail.com

Texas: Hon. Laura Weiser: lweiser@yourhonor.com

Virginia: Hon. Gordon Wilkins: gordonwilkins@outlook.com

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Justice Department Announces Funding Opportunities to Support Public Safety in Indian Country

**Application deadline is 9:00 p.m. EDT, Feb. 26, 2019**

WASHINGTON–The U.S. Department of Justice today announced the opening of the grant solicitation period for comprehensive funding to Indian Country to support crime prevention, victim services, and coordinated community responses to violence against native women.

The Department’s FY 2019 Coordinated Tribal Assistance Solicitation, or CTAS, posts today online at [www.justice.gov/tribal/open-solicitations](http://www.justice.gov/tribal/open-solicitations). The solicitation contains details about available grants and describes how federally-recognized tribes, tribal consortia and Alaska Native villages can apply for the funds.

“Public safety professionals serving American Indian and Alaska Native communities frequently find themselves under-resourced and over-extended,” said Principal Deputy Associate Attorney General Jesse Panuccio. “This funding will give tribal officials the tools they need to fight violent crime, protect their citizens, serve victims, and deliver justice.”

The funding from the Department of Justice’s Bureau of Justice Assistance (BJA), Office for Juvenile Justice and Delinquency Prevention (OJJDP), Office for Victims of Crime (OVC), Office of Community Oriented Policing Services (COPS Office), and the Office on Violence Against Women (OVW) can be used to for a variety of public safety and justice-related projects and services. Funds can be used to enhance law enforcement; bolster adult and juvenile justice systems; prevent and control juvenile delinquency; serve native victims of crimes such as child abuse, sexual assault, domestic violence, and elder abuse; improve responses to violence against native women; and support other efforts to combat crime.

New to FY 2019 CTAS is funding designated specifically to address violent crime in native communities (Purpose Area 10). Additionally, the Comprehensive Tribal Victim Assistance Program will be replaced by the Tribal Victim Services Program (Purpose Area 7) in FY 2019. This new program will provide funding to a higher number of applicants and provides funding for a broad range of activities, including a needs assessment, strategic planning, program development and implementation, program expansion, and other actions to address the victim service needs of tribes.

Applications for CTAS are submitted online through the Department’s Grants Management System, or “GMS.” Applicants must register with GMS prior to submitting an application. The application deadline is 9 p.m. EDT, Feb. 26, 2019. Applicants will submit a single application and select from any or all of the 10 competitive grant programs, referred to as “purpose areas.” This approach allows the Department’s grant-making components to consider the totality of a tribal nation’s overall public safety needs.

The 10 purpose areas are:

- COPS Office’s Public Safety and Community Policing
- Comprehensive Tribal Justice Systems Strategic Planning
- BJA’s Tribal Justice Systems
- BJA’s Tribal Justice System Infrastructure Program
- OVW’s Violence Against Women Tribal Governments Program
- OVC’s Children’s Justice Act Partnerships for Indian Communities
- OVC’s Tribal Victim Services Program
- OJJDP’s Juvenile Tribal Healing to Wellness Courts
- OJJDP’s Tribal Youth Program
- BJA’s Addressing Violent Crime in Native Communities

Fact sheets detailing each of the individual purpose areas can be found online at: [www.justice.gov/tribal/grants](http://www.justice.gov/tribal/grants). The Department will also facilitate a series of webinars to guide applicants through the CTAS application requirements. Details, including how to register for these webinars, will be made available online in coming weeks at [www.justice.gov/tribal/open-solicitations](http://www.justice.gov/tribal/open-solicitations).

Additionally, tribes and tribal consortia may also be eligible for non-tribal federal grant programs and are encouraged to explore other funding opportunities, which may be found at DOJ’s Tribal Justice and Safety website at [www.justice.gov/tribal/open-solicitations](http://www.justice.gov/tribal/open-solicitations) or the [www.grants.gov](http://www.grants.gov) website.

In FY 2018, the Department funded 125 tribes with 225 awards across nine grant programs totaling more than $113 million.

CTAS is administered by the Department’s Office of Justice Programs, Office of Community Oriented Policing Services and Office on Violence Against Women.