

HIGHWAY TO JUSTICE

SUMMER 2022

From The ABA with support from the National Highway Traffic Safety Administration

NAVIGATING MEDICAL MARIJUANA LAWS

*By Judge Mary Katherine Huffman
Montgomery County Court of Common Pleas
State Judicial Outreach Liaison—Ohio
Centerville, Ohio*

In 2016, the Ohio legislature authorized the development of a medical marijuana program and became one of approximately 38 jurisdictions that have medical marijuana laws. Although medical marijuana laws typically leave control and regulation of medical marijuana to various State agencies and Boards, this legislation leaves significant questions for the judiciary, particularly relating to the court's role in monitoring and evaluating the use of medical marijuana in those who appear in court. This includes potential implications for probation supervision and revocation, substance use treatment, parental rights and responsibilities, tenants' rights, and employment.

Marijuana as Medicine

The question of whether cannabis can be considered medicine in the conventional sense is still unresolved. As noted by NIDA Director, Dr. Nora D. Volkow in July 2020, “[w]hether smoking or otherwise consuming marijuana has therapeutic benefits that outweigh its health risks is still an open question that science has not resolved.” The bottom line is that although components of the cannabis plant may be therapeutic and may meet unmet clinical needs, more research is needed about various aspects of marijuana as medicine.¹

The National Association of Drug Court Professionals (NADCP) released a 2021 position statement on cannabis, supporting reasonable prohibitions against the use of smoked or raw cannabis by participants in substance abuse recovery, including suitable consequences for positive drug tests. Treatment models recognize the persistence of substance abuse and the concomitant propensity to relapse, and these models utilize initial and sustained abstinence from the use of any substance of abuse, including marijuana, to advance recovery.²

Obtaining a Registry Identification Card (a.k.a. the medical marijuana card)

Since marijuana continues to be illegal under federal law, it remains illegal for physicians to prescribe the controlled substance. As a result, many of the marijuana laws around the country authorize a “registry identification card” which is not a prescription. Instead, it is issued by a State agency based on a physician's recommendation for its use by a patient diagnosed as having a “debilitating” or “qualifying” condition as set forth in the State statute. Although States have authorized use of medical marijuana for numerous conditions, by far, the most popular condition for which medical marijuana has been authorized is chronic pain.³ To obtain a registry card, typically there must be a bona fide physician-patient relationship which may be established either at an office visit or via telemedicine.

Purchasing Medical Marijuana

Once an individual obtains his or her registry identification card, they may go to a State-licensed dispensary where they can purchase cannabis in several different forms and quantities as set forth in the medical marijuana statute. In Arizona, for example, one may purchase (and possess) up to 2.5 ounces of marijuana every 2 weeks.

Cardholder Protections and Immunities

Medical marijuana laws typically restrict the possession and use of medical marijuana in certain circumstances, yet also provide various protections and immunities. In Michigan, for example, the statute prohibits any legal consequence for the use of medical marijuana. On the other hand, Ohio continues to authorize courts to consider the use of medical marijuana in constructing judicial decisions.

At the same time, some State laws provide for a rebuttable presumption that possession of a quantity of marijuana by a cardholder is lawful if possessed in accordance with the requirements of the medical marijuana law. In some instances, statutory language provides that one may not be subject to “arrest, prosecution or penalty in any manner or denial of any right or privilege . . . for . . . medical use of marijuana” when possessed in accordance with statutory limits on quantity and

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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. Neil E. Axel at neilaxel49@gmail.com with a copy to the staff liaison, lisa.yoon@americanbar.org. Please contact Ms. Yoon for editorial guidelines.

The deadline for submission of articles for the Fall issue is August 31, 2022.

location of use. Arizona also provides by statute that the odor of marijuana or burnt marijuana does not by itself constitute reasonable articulable suspicion of a crime except in impaired driving investigations⁴ and that mere possession of a registry card does not constitute probable cause or reasonable articulable suspicion, nor may it be used to support a search.⁵

The bottom line is that each State statute will have its own provisions and requirements, and it is important for judges to become familiar with those provisions and how their appellate courts have interpreted them.

Judicial Involvement in the Use of Medical Marijuana

Around the country, courts are grappling with the application of statutory privileges and immunities in both criminal and civil cases. In criminal cases, perhaps the most common challenges are in probation supervision cases and in cases where the court must determine whether there was probable cause to search or effect an arrest.

In probation supervision cases, courts generally may impose a condition of supervision that the defendant not use drugs and must submit to random drug testing. Use of medical marijuana may interfere with the Court's ability to reliably interpret drug test results and impede its efforts to monitor court-ordered abstinence. In Ohio, for example, courts possess the inherent authority to prohibit medical marijuana use while on supervision.⁶ Other jurisdictions, however, have taken different approaches. Although some States allow judges to prohibit the use of medical marijuana while on probation, in Michigan and other States, a sentencing judge may not prohibit a probationer from the lawful use of medical marijuana.⁷ One State has taken a hybrid approach that would allow judges to prohibit the use of medical marijuana upon a finding that it was necessary and appropriate to promote statutory sentencing goals.⁸

In the area of search and seizure, the enactment of medical marijuana and marijuana legalization statutes has impacted the determination of probable cause based on the odor of burnt and raw marijuana. In some instances, States have enacted statutes prohibiting consideration of the odor of marijuana for purposes of probable cause. In other instances, appellate courts have been split on whether the odor of marijuana in and of itself may constitute probable cause.⁹ Some require more indicia, while others do not. In a Florida case, the Court noted that the *possibility* that a driver might be a medical-marijuana user would not automatically defeat probable cause. The Court held that the probable cause standard is a "practical and common-sensical standard" and it is enough if there is "the kind of 'fair probability' on which 'reasonable and prudent people, not legal technicians, act.'"¹⁰

The use of medical marijuana has also impacted child custody and parenting time cases. For example, in Ohio, unless there is clear and convincing evidence that a child is unsafe, the use of medical marijuana may not be the primary basis for an adjudication that a child is abused, neglected, or dependent, for allocation of parental rights and responsibilities, or for a parenting time order.¹¹ Numerous Ohio courts have considered the alleged use of medical marijuana by a parent, and notably the failure of a parent to either obtain a valid registry identification card and/or failure/refusal to provide verification of purchasing medical marijuana from a dispensary, as a factor in making decisions related to permanent custody requests. See *In Re R.D.*, 2020-Ohio- 145; *In Re L.H.*, 2021-Ohio-2849 and 2021-Ohio-2850.

How States Can Prepare for the Advent of Legalization

As more and more States explore and consider medical marijuana programs, it is important for them to consider the experience of other States and some of the unintended consequences of the use of medical marijuana: impact of medical marijuana on treatment, impact on the criminal justice population and treatment courts, and abuses in obtaining

NAVIGATING MEDICAL MARIJUANA LAWS

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registry cards without a legitimate treatment need, to name a few. Moving forward, medical marijuana statutes need to consider all aspects, benefits, and consequences of a medical marijuana program.

1. Dr. Marilyn Huestis, *What Do I Need to Know About Marijuana* (National Families in Action Podcast, 8/13/19).
2. Kenneth Silverman, Dace Svikis, Conrad Wong, Jacqueline Hampton, Maxine Stitzer, and George Bigelow, A Reinforcement-Based Therapeutic Workplace for the Treatment of Drug Abuse: Three-Year Abstinence Outcomes, 10 *Experimental and Clinical Psychopharmacology* 228 (2002).
3. According to agency reports filed in Arizona, 94% of registry cards were issued for chronic pain. In Rhode Island, 62% of all registry cards were issued for pain.
4. Arizona Revised Statutes 36-2852(C).
5. Arizona Revised Statutes 36-2811(H).
6. Judge Frederic B. Rodgers, On Prohibiting the Use of Medical Marijuana by Persons Granted Probation, 49 *Judges J.* 29 (2010). See also *State v. Ryan*, 2021 Ohio 4059, 2021 WL 5298847 (Ohio Ct.App. 2021); *State v. Sanchez*, 170 N.E.3d 958 (Ohio Ct.App. 2021); *State v. Hobden*, 2020 Ohio 2877, 2020 WL 2319298 (Ohio Ct.App. 2020).
7. See e.g. *People v. Thue*, 336 Mich.App. 35 (2021); *State v. Nelson*, 195 P.3d 826, 833 (MT. 2008); *Reed-Kalisher v. Hoggatt*, 347 P.3d 136, 139 (AZ. 2015); *State v. Miller*, 299 Or.App. 515 (2019).
8. *Walton v. People*, 451 P.3d 1212 (CO. 2019).
9. For example, courts in Oregon, California, Nebraska have upheld searches based solely upon the odor of marijuana, while courts in Massachusetts, Colorado and Pennsylvania have not.
10. *Johnson v. State*, 275 So.3d 800 (Fla. 1st DCA 2019).
11. *RC § 3796.24*.

DRIVING UNDER THE INFLUENCE OF PRESCRIPTION MEDICATION

By Judge Kerry W. Meyer
Minnesota District Judge for the Fourth Judicial District
ABA Minnesota State Judicial Outreach Liaison
Minneapolis, Minnesota



CAUTION
THIS DRUG ALONE OR WITH
ALCOHOL MAY IMPAIR
YOUR ABILITY TO DRIVE

Nearly 46 percent of Americans take prescription drugs.¹ When examined by age, 88 percent of Americans over the age of 65 use at least one prescription. The use of multiple prescriptions in that age group is significant with 66 percent taking three or more prescriptions and 42 percent taking five or more prescriptions.² Many people who use prescriptions drive motor vehicles. In the 2014 NHTSA roadside survey, 22.5% of drivers during the day and night tested positive for at least one drug other than alcohol.³ Over 10 percent of the drivers surveyed on the road during weekdays tested positive for one over the counter or prescription drug.⁴ That figure does not include the drivers who had alcohol or illegal drugs in their system in addition to a prescription.

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Dates to Remember

July-August

Impaired Driving / Drug-Impaired Driving

Buzzed Driving is Drunk Driving



Drive Sober or Get Pulled Over



If You Feel Different, You Drive Different.
Drive High Get A DUI

**IF YOU FEEL DIFFERENT
YOU DRIVE DIFFERENT
DRIVE HIGH GET A DUI**

DRIVING UNDER THE INFLUENCE OF PRESCRIPTION MEDICATION

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While not all prescription medications impair driving functions, many classes of medications do. Further, combining medication with alcohol or other drugs can amplify the impairing effect of the medication. The FDA warns:

Often people use more than one medicine at a time. The combination of different medicines can cause problems for some people. This is especially true for older adults because they use more medicines than any other age group. Due to changes in the body as people age, older adults are more prone to medicine related problems. The more medicines you use, the greater your risk that your medicines will affect your ability to drive safely.⁵

So, what happens when people ignore the warnings and drive when taking these medications? If the medication impairs that person's ability to safely operate a vehicle, they can be subject to criminal and administrative licensure penalties; and in almost half of the States, the mere presence of an impairing substance in their body could subject them to the same sanctions under *per se* or zero tolerance impaired driving laws.

Typically, in States with *per se* laws that prohibit driving with any level of prohibited drugs in one's body, there are also prohibitions against driving while one's abilities have been impaired by alcohol or drugs, thus also requiring proof of impairment at trial. Minnesota's statute, for example, prohibits one from driving when their body contains any amount of a Schedule I or II controlled substance (or metabolite) other than marijuana or tetrahydrocannabinols.⁶ Minnesota's Schedule I and II controlled substances list hundreds of drugs in the broad categories of opiates, opium derivatives, hallucinogens, peyote, central nervous system depressants, stimulants, and synthetic cannabinoids.⁷ While this statute appears to apply strict liability, the law allows an affirmative defense to a *per se* violation relating to prescriptions.⁸ Likewise, the related civil licensure revocation will not apply if a preponderance of evidence proves the driver used the controlled substance according to the terms of a prescription issued for that person.⁹ The State, of course, could still proceed under the general impairment section of the impaired driving statutes but would have to prove the defendant's impairment.

"Impairment" for purposes of impaired driving laws has been defined in various ways around the country and generally applies to both alcohol and drug impairment. In Minnesota, for example, juries are instructed that

[w]hen a person is so affected by the substance that the person does not possess that clearness of intellect and control of (himself) (herself) as (he) (she) otherwise would have, that person is "under the influence."¹⁰

In Texas, impairment means "not having the normal use of mental or physical faculties." In some States, including Arizona, one is under the influence of alcohol or drugs if they are "impaired to the slightest degree." Indiana defines impairment as "loss of normal control of one's faculties."

With regard specifically to prescription drugs, Minnesota law also prohibits driving when one "is under the influence of an intoxicating substance and the person knows or has reason to know that the substance

has the capacity to cause impairment."¹¹ This includes prescriptions with the CAUTION label at the top of this article. By contrast, Washington State prohibits driving "under the influence of or affected by . . . any drug" regardless of whether one has a prescription and regardless of knowledge of its impairment potential.¹²

Regardless of whether impaired driving laws prohibit any level of drugs in our system, or require proof of impairment, prescriptions, like illegal drugs, modify something in our bodies - that is why we take them. Medications can make us drowsy, dizzy, nauseous, blur our vision, slow our movements, and impair our ability to focus.¹³ Those side effects can seriously impair the ability to safely operate a motor vehicle. Unfortunately, we sometime ignore or overlook the potential impact of getting behind the wheel of a car after we've taken prescription medication that impacts our ability to safely operate a vehicle. The average weight of a passenger vehicle is 4,100 pounds.¹⁴ That is two tons of metal traveling at a variety of speeds up to and including highway speeds. A pedestrian hit by a vehicle traveling as slow as 23 miles per hour has a 10% risk of death. At 58 miles per hour, that pedestrian has only 10% chance of survival.¹⁵

Proving impairment from prescription drugs is the same as illegal drugs. It starts with the officer on the street. Strong documentation of what the officer observed is critical to proving impairment to a judge or jury. This includes all observations from prior to the traffic stop until the driver's release from police custody. It also includes admissions from the driver, the presence of drugs or prescription bottles in the vehicle or on the person, as well as results of field sobriety tests and drug recognition expert (DRE) evaluations. Furthermore, if there is evidence the prescription container included a warning cautioning against operating a motor vehicle or other heavy machinery, that could help persuade a jury the driver had a reason to know the medication could cause impairment.

Obviously, a breath alcohol test is not going to result in useful evidence related to prescription drug use. A blood test is the most reliable method to determine the amount of substance in the body. While the amount of substance in the body will vary throughout the day even when using the drug as prescribed, if the amount in the body is significantly above the therapeutic level, that evidence could show abuse, rather than compliance with the prescription dosage. Even within the prescribed dosage, the test result will show presence of the chemical in the driver's system which helps explain the impairment seen in DRE evaluations. Obtaining a timely search warrant to obtain a blood draw will help understand what caused the impairment observed at the scene. In those States that provide an affirmative defense for proscribed prescription use, blood test results showing drugs within therapeutic levels may help show whether the affirmative defense applies.

As a society and as professionals dedicated to safer streets, we need to remember that impaired driving is not just due to alcohol and illegal drugs. We need to keep in mind that medications designed to help us can also impair our ability to safely operate motor vehicles. No one wants to cause a tragedy. We can prevent tragedies by being aware of the potential side effects and the actual impacts of prescriptions before we drive. As professionals, we can do the extra work it takes to identify

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Below is the contact information for the network of active and retired judges who serve around the country as resources and educators on highway safety issues:

Judicial Fellow:

Hon. Neil E. Axel: neilaxel49@gmail.com

Tribal Courts Fellow:

Hon. J. Matthew Martin: abajudicialfellow@gmail.com

Regional Judicial Outreach Liaisons:

Hon. Eric M. Mehnert, Region 1 (Maine, Massachusetts, New Hampshire, Vermont, and Rhode Island): emehnert@hm-law.us

VACANT, Region 2 (Connecticut, New Jersey, New York, Pennsylvania, Puerto Rico, and Virgin Islands)

Hon. A. Robinson Hassell, Region 3 (North Carolina, Kentucky, Virginia, West Virginia, Maryland, Delaware, and District of Columbia): judgehassell@gmail.com

Hon. Ronald Ramsey, Region 4 (Tennessee, Alabama, Georgia, South Carolina, and Florida): judgeramsey@att.net

Hon. Karen Khalil, Region 5 (Minnesota, Wisconsin, Illinois, Indiana, Michigan, and Ohio): region5jol@gmail.com

Hon. Robert S. Anchondo, Region 6 (Texas, New Mexico, Louisiana, Oklahoma, Mississippi, and Indian Nations): rsanchondo@aol.com

Hon. Alan Blankenship, Region 7 (Iowa, Missouri, Arkansas, Kansas, and Nebraska): Alan.Blankenship79@gmail.com

Hon. Scott E. Pearson, Region 8 (Colorado, North Dakota, South Dakota, Nevada, Utah, and Wyoming): region8jol@gmail.com

Hon. Richard A. Vlavianos, Region 9 (Arizona, California, Hawaii, and Pacific Territories): ravlavianos@comcast.net

Hon. Mary Jane Knisely, Region 10 (Montana, Idaho, Oregon, Washington, and Alaska): maryjaneknisely@gmail.com

the impairing substance and get drivers off the road who are not able to drive safely while treating their medical conditions.

1. CDC Data Finder, Health, Table 039.
2. *Id.* Page 2, Table by age.
3. NHTSA Roadside Survey, published DOT HS 812 118, Office of Behavioral Safety Research, February 2015
4. *Id.* Table 3.
5. FDA Pamphlet, *Driving While You Are Taking Medications*.
6. Minn. Stat. Sec. 169A.20, Subd. 1(7)
7. Minn. Stat. Sec. 152.12, subd. 2 and 3.
8. Minn. Stat. § 169A.46, subd. 2
9. Minn. Stat. § 169A.53, subd. 3(i)
10. 10A Minn. Prac., Jury Instr. Guides—Criminal CRIMJIG 29.14 (6th ed.).
11. Minnesota Statutes Section 169A.20, Subdivision 1(3).
12. RCW Section 46.61.502 (2021)
13. FDA Pamphlet, *Driving While You Are Taking Medications*.
14. Shaun Furman, "How Much do Cars Weigh?", *Autolist*, April 22, 2022.
15. Caroline Cash, NHTSA, Safe Systems Approach Presentation.

UNCLOGGING OBSTRUCTION AND BYPASSING PANDEMIC DETOURS: RESTORING THE HEART OF OUR NATION'S TRAFFIC COURTS TO PRE-COVID HEALTH

*By Judge A. Robinson (Robby) Hassell
Superior Court Judge, State of North Carolina (Ret'd)
ABA Region 3 Judicial Outreach Liaison
Greensboro, North Carolina*

As I write this column, the jury is still deliberating upon whether the bedlam, disorientation, and disruption of institutional norms wrought by the COVID-19 pandemic are finally in our nation's rearview mirrors. Experience has shown that even in the wake of real-time adjustments to viral infections, public exposure risk reduction, and subsequent variant outbreaks, the judicial branch of government has not escaped this unprecedented paradigm implosion and incremental reconstitution at any level, particularly in the filing, administration, and disposition of traffic and impaired driving cases. Across the country, court systems have been forced (by administrative order or otherwise¹) to shut down, restrict, re-convene, and adapt, as officers of the court and administrators alike seek to balance and achieve multiple common goals of due process, access, equity, sanction, public health and security, deterrence and prevention, and restorative rehabilitation, all in the pursuit of justice for all.

For numerous reasons, many beyond the scope of this article, public trust and confidence in our justice system is at an all-time low. With the suspension, discontinuance, and limited access of court operations in the last twenty-four months, along with the impeded ability of forensic specialists to examine and process essential toxicological evidence, tens of thousands of traffic cases (and impaired driving cases in particular) have remained

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pending and unresolved. It remains essential for us as participants and stakeholders to both become informed and engage creatively and proactively in addressing, managing, presiding, and preparing for the continuing tasks of reducing the accumulated backlog of existing and aging cases while adjudicating new case filings in ways that the further fairness, due process, and the administration of justice.

Why worry about the age and number of pending impaired driving cases? The morass of molasses that traffic court caseloads can experience is not a novel development or conundrum. Prior to my time on the bench, I was fortunate to have worked for two of our local legal legends here in Guilford County, North Carolina. Wally Harrelson was our state's first Chief Public Defender, and in the course of his tenure of more than forty years, he would often remark to me when I recounted concerns over age and amounts of pending DWI matters, in his gravelly yet astutely attuned wisdom, " 'Aaay. Robinson,' they'll be trying cases in this courthouse long after you and I are gone; just deal with who and what's in front of you in a way that doesn't (tick) people off!" Yet the truth is, in impaired driving cases, fair and timely dispositions are essential for at least four major reasons:

1. As with many court matters, impaired driving cases do not improve with age. Witnesses' memory and accounts may erode, change, or become less accurate; investigating officers may be transferred, their data and reports misplaced, or chemical or other evidence lost.
2. As noted in a report from a 2015 Texas Impaired Driving Task Force, the lack of systemic data on adjudicated DWI offenses and offenders has impeded the ability to "gauge the effectiveness of various interventions, treatments, assessments, or lack thereof."² A similar report from California's DWI Task Force in 2021 also noted the need for and benefit of analytical data for development of "better methods to screen for and prevent DUI's."³
3. As a result of delays in case dispositions those charged may not be assessed and treated for underlying substance use or behavioral health issues. Without critical interventions to prevent recidivism, some offenders continue to drive, re-offend, and place the public itself at risk for periods extended well beyond the norms of intervention and resolution. According to information provided by Judge Rogelio Flores, California's State Judicial Outreach Liaison (JOL), although 85% of first-time DUI offenders comply with court-ordered treatment, less than half of all second-time offenders in California comply with and complete assessed court-ordered treatment, thereby increasing the likelihood of reoccurrence.

Additionally, recent reports from the National Highway Traffic Safety Administration (NHTSA) have shown that even during the COVID years of 2020 and 2021, although fewer vehicles were on the road for much of 2020, traffic crashes and fatalities increased in multiple state jurisdictions across the country, attributable to increasingly risky and dangerous decisions and behavior of those continuing to drive on public highways (including impaired driving)—a tragically dramatic increase to upwards of 42,915 deaths in 2021.⁴ Where approximately 30

percent of all traffic fatalities occurred in crashes in which at least one driver was alcohol-impaired,⁵ how many of these occurrences have happened at the hand of those who remain unmonitored, unassessed, or untreated while awaiting disposition of an aging pending DWI?

4. COVID-related delays in addressing an offender's impaired driving issues further frustrates the goals and successes achieved by effectively dealing with a defendant through early assessment and intervention, with resources to be deployed such as ignition interlock, therapeutic treatment, and placement in specialty and treatment courts, all of which strive to reduce recidivism, promote public safety, and prevent future dangerous behavior (and accompanying subsequent charges for courts to address). The disruption experienced in treatment courts alone has been a multitiered challenge in dealing with an already isolated and vulnerable population in these isolating and vulnerable times.

Several States have taken a proactive and multidisciplinary approach to address case backlogs. The National Center for State Courts has formulated a broad repository of resources to address pandemic-related issues, and has maintained a reference base of actions, orders, reports, and measures undertaken to date.⁶ In North Carolina, by example, three concrete steps have been taken: (1) the budget enacted by the NC General Assembly in late 2021 as signed by Gov. Roy Cooper provides for expansion of the eligibility and use of retired and emergency judges to be assigned to preside in supplemental sessions of traffic court; (2) the Governors Highway Safety Program has conferred grants totaling \$204,000 for additional funding for special calendar DWI sessions (and the commissioned emergency judges) during 2022 in the judicial districts which comprise 40% of the identified statewide backlog of 9,515 DWI cases, at least 1/5 of which is attributable to COVID-related causes; and (3) the North Carolina Rules of Evidence and criminal procedure provisions have been modified to allow for remote testimony of forensic technical witnesses at the district court stage.⁷

Our courts have had to and will continue to adapt and adjust nimbly, even in those jurisdictions where preparation and pandemic planning for ongoing operations has been studied for years. As with other settings, triage and life-preserving procedures in a judicial emergency room are insufficient for the long-term health of our court system; even periodic checkups, without deeper diagnostic steps and operational wellness plans, will leave many behind in overcrowded waiting rooms. Neither technology alone nor rigid administrative timetables will solve the pandemic or other similar crises that will reappear in future years. Adherence to grounding principles of due process, access, accountability, and equity as well as fresh air and new blood will be required for all of us to keep the course of justice flowing in the lives of our communities. As Judge Flores has exhorted, "that's what the justice system should be like. We should be proactively improving lives."

The author wishes to thank numerous State Judicial Outreach Liaisons (JOLs) who assisted in providing guidance, information, data, and materials, including Judge Patrick Bowler (Michigan State JOL), Judge Rogelio Flores (California State JOL), Judge Mattison Gamble (South Carolina State JOL),

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Judge Marc Rasinsky (Maryland State JOL), and Judge Laura Weiser (Texas SJOL). Judicial Outreach Liaisons serve as resources and subject matter experts on impaired driving issues around the country. For more information about Regional and State Judicial Outreach Liaisons, contact American Bar Association Project Manager Lisa Yoon at Lisa.Yoon@americanbar.org.

1. See e.g., NCSC archive of state judicial pandemic emergency orders at: <https://nationalcenterforstatecourts.app.box.com/s/bqbbq13fj1wp5bt87j6nnbocxlq9fgpzf>
2. State of Texas Impaired Driving Program Assessment, to be found at: <https://www.texasimpaireddrivingtaskforce.org/wp-content/uploads/2016/04/Texas-Impaired-Driving-Assessment.pdf>.
3. California Impaired Driving Task Force Report to the Legislature (January 2021) to be found at: https://www.chp.ca.gov/Documents/IDTF_SB_94_2020.pdf
4. Early Estimates of Motor Vehicle Traffic Fatalities and Fatality Rate by Sub-Categories in 2021 (DOT HS 813 298)(May 2022) to be found at: <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813298>
5. Alcohol-Impaired Driving (DOT HS 813 294)(April 2022) to be found at: <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813294>
6. See generally <https://www.ncsc.org/newsroom/public-health-emergency>
7. This information provided by North Carolina GHSP Director Mark Ezell and Asst. Dir. Stacy Dean. As for procedural changes to accommodate conditional remote testimony for forensic analysts, there may remain residual confrontation-clause and other due process considerations, notwithstanding preservation of a defendant's right to demand in-person testimony for de novo proceeding in superior court. See e.g. Professor Shea Denning's blog from December 2021 at: <https://www.sog.unc.edu/blogs/nc-criminal-law/remote-testimony-lab-analysts-authorized-district-court-prosecutions---even-without-defendants>

DON'T FORGET

Resources for responding to the COVID-19 pandemic:

- **Sample set of Frequently Asked Questions (FAQs) guidance by Substance Abuse and Mental Health Services Administration (SAMHSA) on COVID-19**
<https://www.samhsa.gov/coronavirus>
- **SAMHSA's Guidance for Medication-Assisted Treatment (MAT) Opioid Treatment Programs**
<https://www.samhsa.gov/medication-assisted-treatment>
- **Up-to-Date Information for the Substance Use Disorder Treatment field from SAMHSA**
<https://www.samhsa.gov/>
- **Centers for Disease Control and Prevention**
<https://www.cdc.gov/>

Valuable resources for traffic court judges can be found at:

- **National Highway Traffic Safety Administration**
<https://www.nhtsa.gov/>

- **American Bar Association/Judicial Division/NCSCJ**
<https://www.americanbar.org/groups/judicial/conferences/specialized-court-judges/>
- **Highway to Justice - Archives**
www.americanbar.org/groups/judicial/publications/judicial_division_record_home/highway-to-justice/
- **National Judicial College**
www.judges.org
- **Governors Highway Safety Association:**
www.ghsa.org/issues/alcohol-impaired-driving
- **AAA Foundation for Traffic Safety**
www.aaafoundation.org/
- **National Center for State Courts**
<https://www.ncsc.org/>
- **National Center for DWI Courts**
<https://www.dwicourts.org/>

Contact Info continued

State Judicial Outreach Liaisons:

California: Hon. Rogelio Flores:
eljuezflores@gmail.com

Indiana: Hon. Earl G. Penrod:
penrodinjol@gmail.com

Kentucky: Hon. Kevin Holbrook:
KevinHolbrook@KYCOURTS.NET

Louisiana: Hon. Jules D. Edwards III:
jules.edwards.iii@gmail.com

Maryland: Hon. Marc Rasinsky:
rasinskym@yahoo.com

Michigan: Hon. Patrick Bowler:
pcbowler@gmail.com

Minnesota: Hon. Kerry Meyer:
meyermnjol@gmail.com

Missouri: Hon. Casey Clevenger:
Casey.Clevenger@courts.mo.gov

New Mexico: Hon. Kevin L. Fitzwater:
kevin.fitzwater2@gmail.com

New York: Thomas J. Carr, Esq.:
tjcarr@nycourts.gov

North Dakota: Hon. John W. Grinsteiner:
john.grinsteiner@ndsu.edu

Ohio: Hon. Kate Huffman:
ohiojolhuffman@gmail.com

Oklahoma: Hon. Rodney (Rod) Ring:
joloklahoma@gmail.com

Oregon: Hon. Eric Bergstrom:
ericbergstrom084@gmail.com

Pennsylvania: Hon. Michael Barrasse:
mbarrasse@gmail.com

South Carolina: Hon. W. Mattison Gamble:
mgamble@sumtercountysc.gov

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

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

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

Introducing: *The Tribal Traffic Safety Bulletin*

The American Bar Association Judicial Division's Judicial Outreach Liaison and Judicial Fellows Program is producing a new publication: *The Tribal Traffic Safety Bulletin*. This newsletter will be shared twice a year, and will feature pieces written by Judicial Outreach Liaisons, Judicial Fellows, judges, and other program stakeholders. The newsletter will be focusing on highway safety matters in native lands. The Judicial Outreach Liaison and Judicial Fellows program is producing this newsletter because of the increased interest in impaired driving, seatbelt use, and motor carrier safety issues on native lands. We are excited to share this new way for our team to communicate news and other information our valued partners and stakeholders on this topic.

If you are interested in being on the listserv, please reach out to ABA Project Manager, Lisa Yoon at lisa.yoon@americanbar.org.

Please click the link below to access the first issue: <https://www.americanbar.org/groups/judicial/publications/tribal-traffic-safety-bulletin/>

UPCOMING WEBINARS AND NJC COURSES



AMERICAN **BAR** ASSOCIATION

Judicial Division

SAVE THE DATE for a FREE Live Webinar

September 21, 2022, at 1:00 PM – 2:30 PM Eastern

Judge Martin and his panel will be speaking on the topic of **Impaired Driving on Tribal Lands**; "Impaired Driving in a Shifting Landscape: New Realities in Indian Country After McGirt, Cooley, and Castro-Huerta." Registration link will be provided when available.

GAVEL TALKS Podcast | SEASON 4 – EPISODE 9

Tackling Lethal Driving—An Invitation To The 2022 National Traffic Academy

In this special edition of Gavel Talks fellow Judges Neil Axel and Ronald Ramsey join host Richard Ginkowski to discuss some of the cutting edge topics that will be taught at the National Traffic Academy October 24 – 26 in Denver, Colorado*.

Listen here: https://www.americanbar.org/groups/judicial/publications/gavel_talks/season-4/tackling-lethal-driving/

2022 Traffic Court Academy: October 23 – 26, 2022

The Slate Denver, Tapestry Collection by Hilton

Traffic courts affect more citizens than any other court. That's why every year, the National Conference of Specialized Court Judges Committee on Traffic Court provides traffic court judges, judicial officers, prosecutors, and defense attorneys with first-rate educational programs and resources to help improve their court operations. We are continuing that tradition with the 2022 Traffic Court Academy featuring several new and exciting presentations. Register by October 19, 2022.

Register Here: [Welcome—2022 Traffic Court Academy \(cvent.com\)](https://www.cvent.com/event/welcome-2022-traffic-court-academy/)



THE NATIONAL
JUDICIAL COLLEGE

NJC's Drugged Driving Essentials

September 12 – 14, 2022, Reno, NV (Fully Funded*)

Increases in the number of drug-impaired driving cases on our highways have added new challenges for trial judges as they deal with evidentiary challenges, emerging caselaw, and evidence-based practices in this evolving area of the law. Unlike alcohol-impaired driving, drugged driving has no bright line test for impairment. This course will highlight all aspects of drug impaired driving cases, including pretrial release, search and seizure, toxicology essentials, police investigation, scientific evidence, and effective and evidence-based sentencing practices designed to reduce recidivism.

To register: <https://www.judges.org/courses/drugged-driving-essentials/>

For more information, contact the Registrar's Office at (775) 784-6747 or email registrar@judges.org
*This course is funded by the National Highway Traffic Safety Administration (NHTSA), and offered at no cost to eligible participants. Please contact the registrar's office for eligibility.

Are Per Se Standards for Enforcing Marijuana-Impaired Driving Scientifically Legitimate?

A Lightning Course

Available Online

This "Lightning Course" is designed to take the average learner about 20 minutes to complete, and will educate judges on the science, and lack thereof, behind legislated per se limits of marijuana in impaired-driving cases. This course was funded by a grant from the State Justice Institute (SJI). The State Justice Institute was established by federal law in 1984 to award grants to improve the quality of justice in state courts, and foster innovative, efficient solutions to common issues faced by all courts.

Register here: <https://www.judges.org/courses/are-per-se-standards-for-enforcing-marijuana-impaired-driving-scientifically-legitimate/>