

The Danger on the Roads: Courts and Impaired Drivers

Judge Eric Mehnert

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Learning Objectives

- Explain the dangers associated with impaired driving
- Determine who is at risk for an impaired driving offense
- State the evidence-based practices applicable to drug and alcohol impaired drivers
- Determine how to incorporate an impaired driving tract into an existing Healing to Wellness Court

Why address impaired driving?

The value to
the individual

The value to
the
community

Why is it important?

Driving is “a complex activity requiring alertness, divided yet wide-ranging attention, concentration, eye-hand-foot coordination, and the ability to process visual, auditory, and kinesthetic information quickly.”

P. Larkin, *Medical or Recreational Marijuana and Drugged Driving*, 52 Am. Cr. L. Rev. 454 (2015)

The Numbers

In 2019, 1,024,508 drivers arrested for DUI, with 121 million drunk driving episodes

Less than 5% of drivers account for about 80% of the impaired driving episodes

In 2020, there was a 14% increase in DUI fatalities over 2019, despite a significant decrease in miles driven

Every day, about 32 people in the U.S. die in impaired driving crashes - that's one person every 45 minutes

The Numbers

40% of fatally injured impaired drivers have a history of repeat DUI offenses

2/3 of first time DUI offenders self-correct and never incur an additional impaired driving arrest

50% of first-time DUI offenders may have an alcohol use disorder; the other half probably compromise individuals who made a poor decision to drink and drive

The Cost of Impaired Driving

- 14,219 fatalities resulting from alcohol-related crashes
- 497,000 non-fatal injuries
- \$68.9b in economic costs
- Crashes involving drivers with a BAC of .08 or higher accounted for 84% of the total economic cost of all alcohol-related crashes

The Economic and Societal Impact of Motor Vehicle Crashes, 2019

NHTSA (December, 2022)

Some Data

About 30% of all traffic crash fatalities in the U.S. involve drunk drivers with a BAC of .08 or higher

In 2020, 68% of the alcohol-related traffic fatalities occurred in crashes where one driver had a BAC of .15>

Impaired Driving by the Numbers

- In 2021, there were 13,384 alcohol-related traffic fatalities, including 294 children
- The alcohol-related traffic fatalities in 2021 represented 31% of all traffic fatalities
- The 2021 alcohol-related traffic fatalities represented a 14% increase over 2020

The Evolving Efforts to Address Impaired Driving



1906

New Jersey enacts first laws against operating a vehicle while intoxicated



1936

Dr. Rolla Harger patents the Drunkometer



1953

Robert Borkstein invents the Breathalyzer

1933

Post-prohibition most states set drinking age at 21

1969-1976

30 states lower purchase age to 18 primarily in response to the reduced voting age

1976-1988

Several states raise purchase age to 19 to combat impaired driving

1984

Congress passed the National Minimum Drinking Age Act, requiring states to raise age of purchase and public consumption to 21 or lose 10% of allocated federal highway funds

The .08 Standard

- Largely influenced by efforts from M.A.D.D./S.A.D.D.
- 2001 Department of Transportation Appropriations Bill required states to pass a .08 or lower standard for impairment or lose federal highway construction funds
- All states quickly complied



The Movement Toward a .05 Standard

In 2016 the NTSB began urging states to reduce BAC level for impairment to .05



Dec. 30, 2018 - Utah reduced BAC level for impairment to .05



Resulted in an 18% reduction in the crash death rate per mile driven in the first year after implementation

Views on Impaired Driving

Drivers perceive the use of marijuana and alcohol differently

95% of survey respondents believe it is dangerous to drink and drive

69% of the same respondents believe it is dangerous to use marijuana and drive

Driving Under the Influence of Drugs (DUID)

- DUID offenders 5x more likely to reoffend as compared to DUI offenders
- DUID where a scheduled prescription was the impairing drug reoffend much less frequently ($\approx 17\%$) compared to those consuming illicit drugs (68%)

Limitations on Drug Impaired Driving Data

- Data unreliable/incomplete
- Testing for drugs infrequently completed, particularly if the driver had a positive alcohol test
- Testing for drugs inconsistent or incomplete as to the spectrum of drugs
- No evidence-based methods to differentiate the cause of impaired driving between substances

Drug Impaired Driving

Recreational cannabis use
associated with increased motor
vehicle crashes

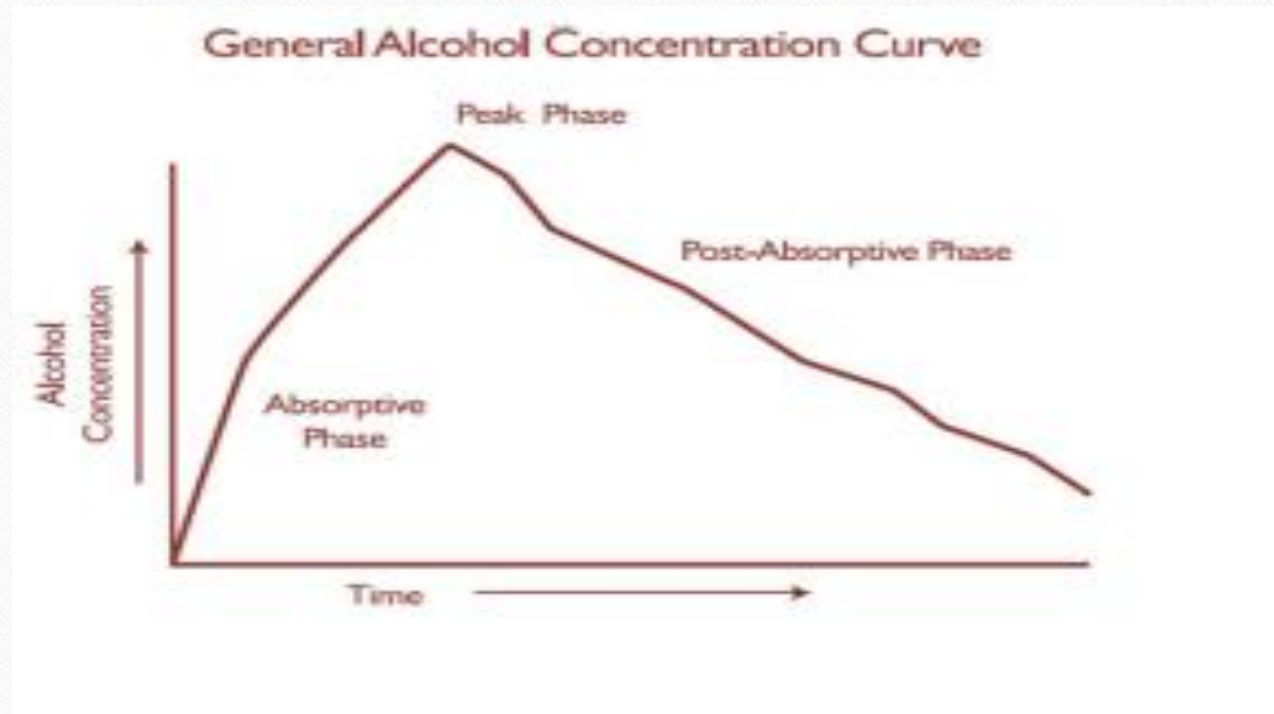
Pre-pandemic 21% of drivers
involved in fatal crashes tested
positive for THC at the time of the
crash

During the pandemic rate rose to
33% of drivers positive for THC in
fatal crashes

Harmful Intoxicants

- Common household items
- Purchased legally with little to no regulation
- No age restriction on purchase
- Inexpensive
- Produce a high
- Impair motor function
- Detection difficult
- May result in an impaired driving conviction

Blood Alcohol Concentration



What makes cannabis and alcohol use different?

THC concentration cannot be correlated to specific impairment

THC dissolves in fatty tissue, which acts like a sponge to reduce measurable amounts in blood, saliva or breath

THC rapidly moves from the blood stream to the brain, yet has a long half-life to metabolize

As a result, impairment does not uniformly rise and fall based upon how much THC is present in bodily fluids

Frequency of use impacts blood drug concentration over time

Peak effects occur *after* peak blood concentration

Method of consumption matters

Any test similar to BAC for THC?

- Standardized field sobriety tests (SFSTs) validated only for alcohol impairment
- No current validated test to verify drug-impaired driving

Detecting Drug Impairment

- Drug Recognition Experts
- Police officers trained to recognize impairment in drivers under the influence of drugs other than, or in addition to alcohol
- Began in Los Angeles in the early 1970s
- Administered by NHTSA and the International Association of Chiefs of Police
- Now a nationally standardized DRE protocol
- Identifies seven different categories of drugs and the physical symptoms associated with each

DRE - Three Critical Phases

The person's impairment
inconsistent with alcohol
intoxication

Ruling in/out medical conditions
that could be responsible for the
signs and symptoms

Identify the drug responsible for
the impairment

Zero Tolerance Laws

Also referred to as “Not a Drop” laws

Apply to individuals under the age of 21

In place in all 50 states

Set BAC levels between 0.00 and 0.02

The Impaired Driver

Impaired drivers are overwhelmingly male (70-80%) and between the ages of 20-45

Often lack an extensive criminal history

High degree of denial - drinking is legal, highly prevalent, and socially encouraged

Tend to be employed and have a stable social network

Do not experience a self-view as a criminal

Repeatedly engage in behavior that is dangerous

Gender Differences

Between 1980 and 2020, the number of incarcerated adult women increased by >475%

Between 2000 and 2010 arrests among women increased 29% compared to 7% for men

Arrests for impaired driving among women increased by 92.6% between 1998 and 2012

Arrests for men increased by 8.6% during the same period

In 2019, women made up 25% of the alcohol-impaired drivers involved in fatal crashes

Repeat Impaired Drivers

- Overwhelmingly male (90%); ages 20-45
- More often single, separated, or divorced
- Tend to have lower levels of education/income and higher levels of unemployment compared to first offenders
- More likely to have BACs exceeding .20 or refuse to provide a chemical sample
- Age of onset of drinking, family history, and alcohol misuse as additional risk factors

Personality and Psychosocial Factors

Many offenders have personality and psychosocial concerns that can increase risk

- ✓ Irritability
- ✓ Aggression
- ✓ Thrill-seeking
- ✓ Impulsiveness
- ✓ External locus of control (blaming others)
- ✓ Anti-authoritarian attitudes

Repeat Impaired Drivers

- Likely to have cognitive impairments (executive cognitive functioning) due to long-term alcohol dependence
- More likely to have a higher disregard for authority and show greater indications of anti-social personality characteristics
- May result in lack of motivation which can affect willingness to engage in treatment

It's Not Just About the DUI...

- It's about the individual who committed the DUI
- Treat the individual, not the offense

A Comprehensive Approach

- Assessment
- Supervision
- Monitoring
- Treatment

Understanding the Target Population

Risk

HIGH

LOW

HIGH

High Risk
High Need

Low Risk
High Need

Need

LOW

High Risk
Low Need

Low Risk
Low Need

Major Risk - DUI Recidivism

Prior involvement in the justice system specifically related to impaired driving

Prior non-DUI involvement in the justice system


Prior involvement with alcohol and other drugs

Mental health and mood adjustment problems

Resistance to and non-compliance with current and past involvement in the justice system

First Steps

Identify through screening those drivers not likely to reoffend and supervise accordingly



Identify through screening and assessment the high-risk offenders/those likely to reoffend and supervise appropriately

Assessment

- Ideally, screening and assessment occur at the beginning of the process
- Results can be used to inform sentencing decisions, case management plans, supervision levels, treatment referrals/plans
- Assessments can/should be repeated at multiple points throughout the individual's involvement in the justice system - identifies progress and informs changes to existing plans as needed

Assessment can occur at multiple intercepts:

- Post-arrest
- Pre-trial
- Pre-sentencing
- Post-conviction
- Community supervision
- Treatment program

What instrument should be used?

- Validated through research
- Reliability; predictive value
- Standardized
- Appropriate for the target population
- Easy to use
- Informs decision-making
- Cost

Screening and Assessment

DUI-RANT

Impaired Driving
Assessment (IDA)

Computerized Assessment
and Referral System (CARS)

Monitoring Devices

Interlock - attached to vehicle, must submit to breath test prior to vehicle ignition

Continuous alcohol monitor - similar to an ankle monitor

Portable breathalyzer - randomly signals client to immediately complete test

The Frightening Statistics on Recidivism

According to the Bureau of Justice Assistance in 2014

67.8% of released prisoners were re-arrested in 3 years

76.6% of released prisoners were re-arrested in 5 years

76.9% of drug offenders were re-arrested in 5 years

We cannot incarcerate our way out of the problem!

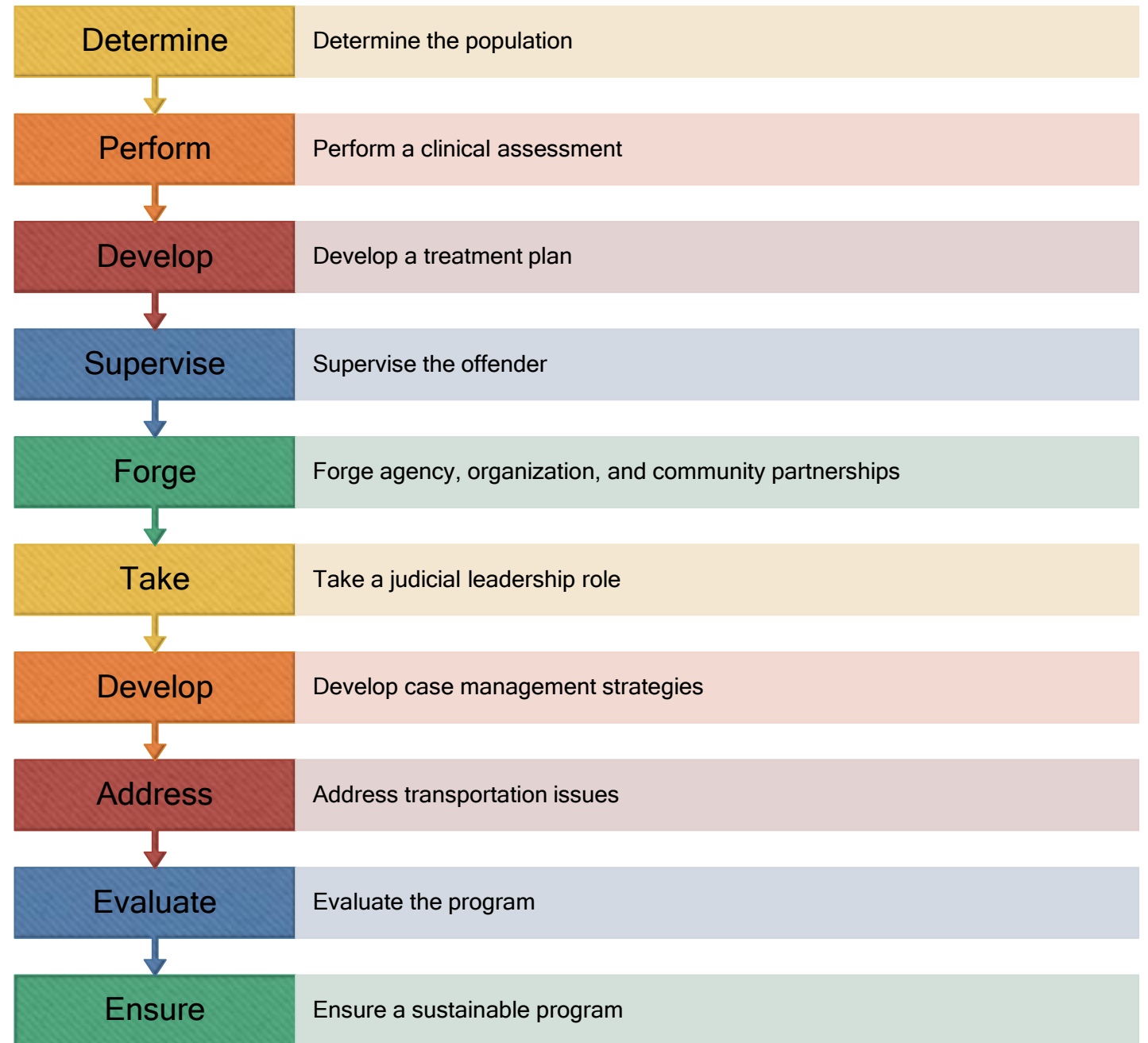
The Success of Healing to Wellness Courts

- ✓ 73% of graduates of Healing to Wellness Courts do not re-offender
- ✓ 67% of individuals who do not graduate from Healing to Wellness Courts do re-offend
- ✓ The cost to incarcerate an individual for one year is between \$21,317 and \$40,175
- ✓ The cost of participation in a Healing to Wellness Court around \$5,927.80

Incorporating Impaired Drivers into a Healing to Wellness Court

- Addresses an additional at-need population
- One size does not fit all
- Responds to community needs and concerns
- Separate conditions, sanctions, incentives
- Monitoring device a must

The Ten Guiding Principles





Mind



Body



Spirit



Community

Training

Impaired Driving Solutions (formerly
National Center for DWI Courts)

Foundational training

Operational tune-up

Academy courts

Funding to Address Impaired Driving

Adult Treatment Court Discretionary Grant Program - Bureau of Justice Assistance

Coordinated Tribal Assistance Solicitation (CTAS) - Department of Justice

Substance Abuse and Mental Health Services Administration (SAMHSA) - Department of Health and Human Services

One-time Funding BIA Tribal Justice Support/Office of Justice Systems - Bureau of Indian Affairs

Is it working?

- Many individuals do not comply with treatment requirements
- Relapse is common and to be expected
- There is no *cure* for substance use disorders; addiction is a life-long disease

Questions?