

Full Court Press: Judicial Perspectives on Impaired Driving

JUDGE ROBERT ANCHONDO
REGION 6 JOL
JUDGE KATE HUFFMAN
ABA NATIONAL JUDICIAL FELLOW



Learning Objectives

- Determine the impact of dangerous driving, including impaired driving, speeding, seat belt usage, and distracted driving, on the community
- Understand the function of judicial officers and court staff in promoting public safety on the roads
- Explain the important role played by criminal justice stakeholders in informing judicial officers regarding critical facts, plea negotiations and sentencing considerations in impaired driving cases

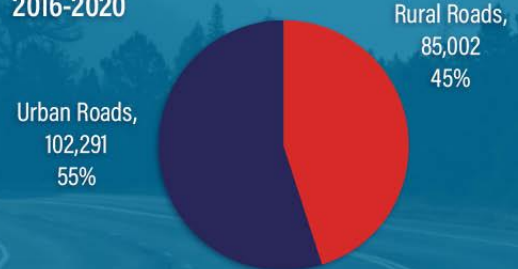


Rural and Urban Proportions of U.S. Population and Proportions of Crash Fatalities

Where We Live:
U.S. Population Residence



Where We Die:
Lives Lost on U.S. Roads, 2016-2020

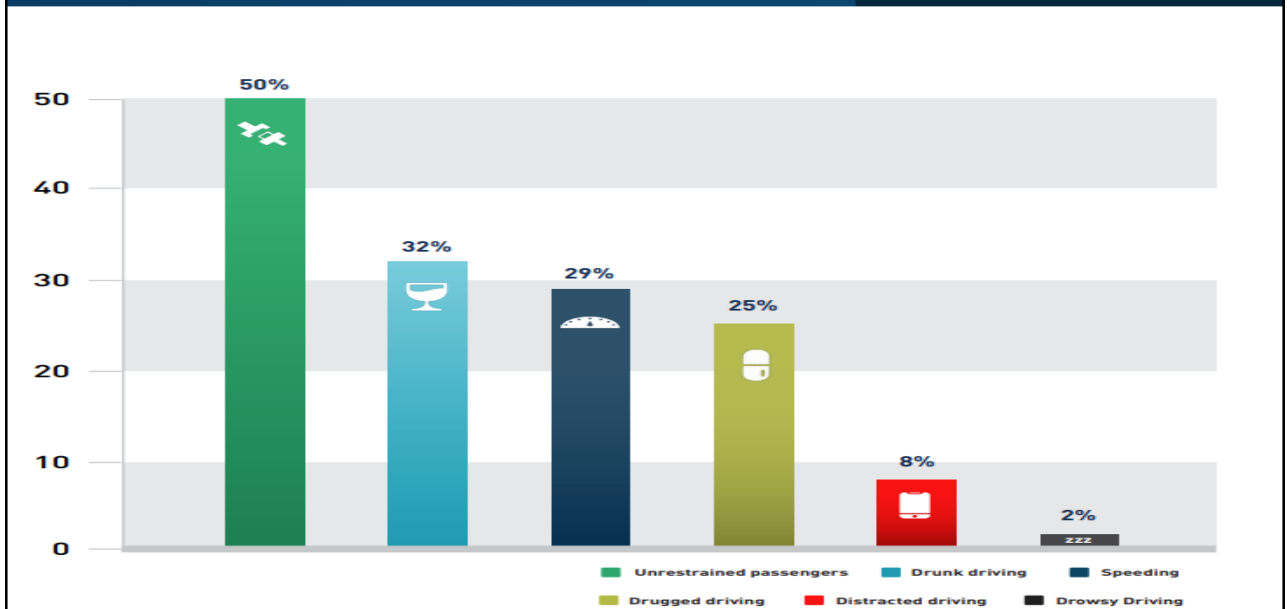


Source: Fatality Analysis Reporting System 2016-2020, U.S. Census Bureau American Community Survey 2018



Fatal Motor Vehicle Crashes in 2022 Involved a Variety of Human Factors

In 2022 three behavioral factors – alcohol-impaired driving, speeding and seat belt non-use – were the leading contributors in fatal traffic crashes.



Dangerous Driving Behaviors

- Speeding
- Distracted driving
- Seat belt use
- Impaired driving

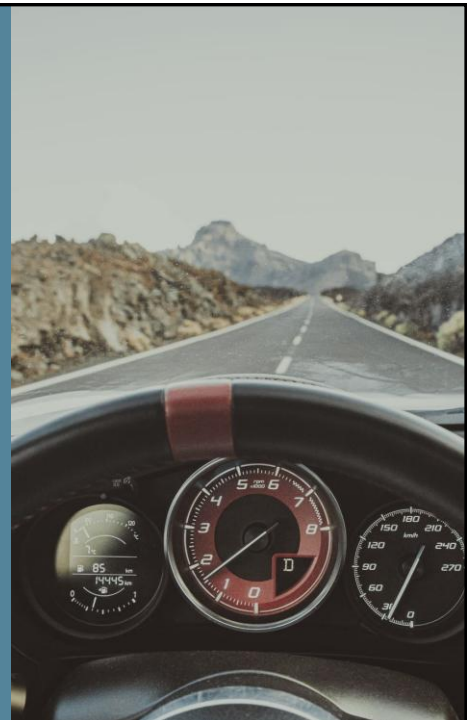
Did you know?

Those who drive under the influence of alcohol are more likely to engage in other high-risk behaviors, such as speeding and not wearing seat belts



Impaired Driving By the Numbers

- In 2022, there were 13,524 alcohol-related traffic fatalities in the U.S, representing 32% of all traffic deaths
- 32 people in the U.S. die every day in impaired-driving crashes - one person every 45 minutes
- In 2019, 1,024,508 drivers arrested for DUI, with 121m impaired driving episodes
- An impaired driver gets behind the wheel and drives between 300 (urban) and 1,200 times (rural) before first arrest



Co-Occurring Disorders

Study of repeat impaired drivers found 45% have a lifetime major mental health disorder

Mental health issues linked to impaired driving include:

Depression, bipolar disorder, conduct disorder, anxiety, anti-social personality, PTSD

Drug Impaired Driving

- Chronic, heavy recreational cannabis use associated with worse driving performance
- In 2022, daily or near daily marijuana use exceeded daily alcohol use





A bad combination

- Alcohol use alone consistently associated with elevated motor vehicle collision risk, but cannabis use alone (at all levels) not consistently associated with elevated motor vehicle collision risk
- Combining marijuana with alcohol results in impairment even at doses which would be insignificant were either drug used alone
- Alcohol and cannabis in combination consistently associated with elevated motor vehicle collision risk

Struggling with Drug Data

- Labs may not test for drugs if driver has reached an illegal/per se blood alcohol level because there is already enough evidence to support an impaired driving charge - stop limit testing
- Many drivers who cause crashes have both drugs and alcohol/more than one drug in their system, making it difficult to know which substance had the greater effect
- Data is reported inconsistently and difficult to correlate
- Some drugs stay in the system for days or weeks after use, making it difficult to determine when the drug was used, and how and if it impaired driving

What we know



2022 NTSB Report

Analyzed toxicology data from four labs including drivers arrested for DUID and fatally injured drivers:

Between 71% and 99% of drivers tested positive for one or more potentially impairing drugs

Approximately 50% of the drivers had more than one drug category present on toxicology screen

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 (about 17%) compared to those consuming illicit drugs (68%)

The 2022 Facts About Speeding:

- ✓ 28% of fatal crashes, 12% of injury crashes, and 8% of property-damage-only crashes were speeding-related
- ✓ 12,151 fatalities in speeding-related crashes, representing 29% of total traffic fatalities for the year
- ✓ 35% of male drivers and 21% of female drivers in the 15- to 20-year-old age group involved in fatal traffic crashes were speeding, the highest among the age groups
- ✓ More than half (52%) of speeding drivers in fatal crashes were unrestrained at the time of the crash
- ✓ Among speeding drivers involved in fatal traffic crashes, 29% did not have valid driver licenses at the time of the crashes, compared to 15% of non-speeding drivers
- ✓ Speeding drivers involved in fatal traffic crashes had BAC of .08 or greater in 38% of the incidents, and a BAC of .15 or higher in 26% of the incidents

Distracted Driving

NHTSA broadly defines driver distraction as *anything* that can take visual, manual or cognitive resources away from the driving task





Seizing the Opportunity

“An encounter with the criminal justice system provides a valuable opportunity to intervene in an individual’s life by identifying the clinical needs of substance abusers and then confronting them with the consequences of their own drug and alcohol use.”

Responding to Substance Abuse: The Role We All Play, 1999



Did You Know?

90-95% of all state and federal criminal cases are resolved by plea bargain

Bureau of Justice Statistics

Barriers, Challenges and Obstacles in Traffic Court

- Heavy caseloads
- Plea agreements - what is the basis?
- Incomplete information
- Lack of system coordination
- Reporting systems/procedures
- Lack of financial resources
- Inadequate pretrial and/or post-sentence supervision



Plea Agreements:

- Is the judge required to accept the sentencing recommendation or a plea agreement?
- Does the judge follow the recommendation or the plea agreement?
- What more would the judge like to know before considering a recommendation or plea agreement?



What and who influence court decisions in traffic cases?

Should the Judge Accept the Plea Agreement?

- Prosecutor announces plea agreement where defendant will plead as charged to DUI
- Defendant has two prior DUI arrests that resulted in reckless driving convictions
- Prosecutor recommends a fine and unsupervised probation, and no treatment required since technically this is defendant's first DUI conviction and he is attending a 6-week alcohol education program


**not so
much**

What does the judge typically know and the case-specific facts?

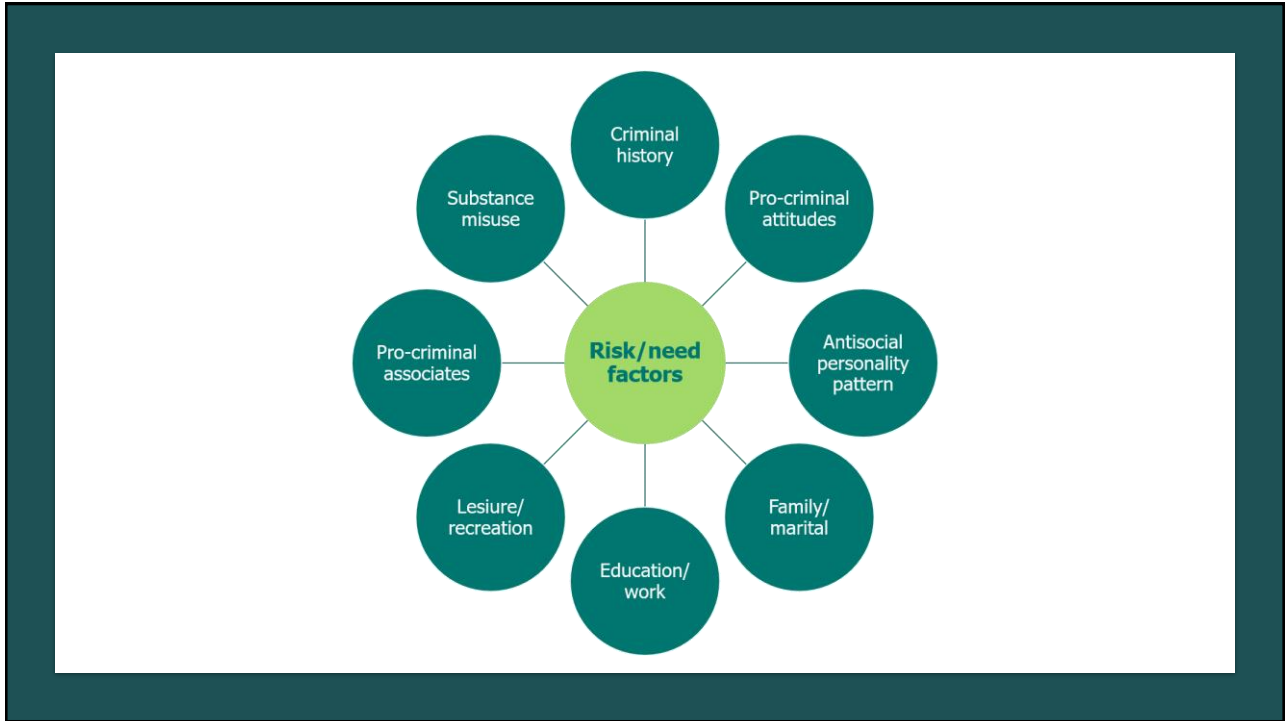


**Evidence
Based
Practice**

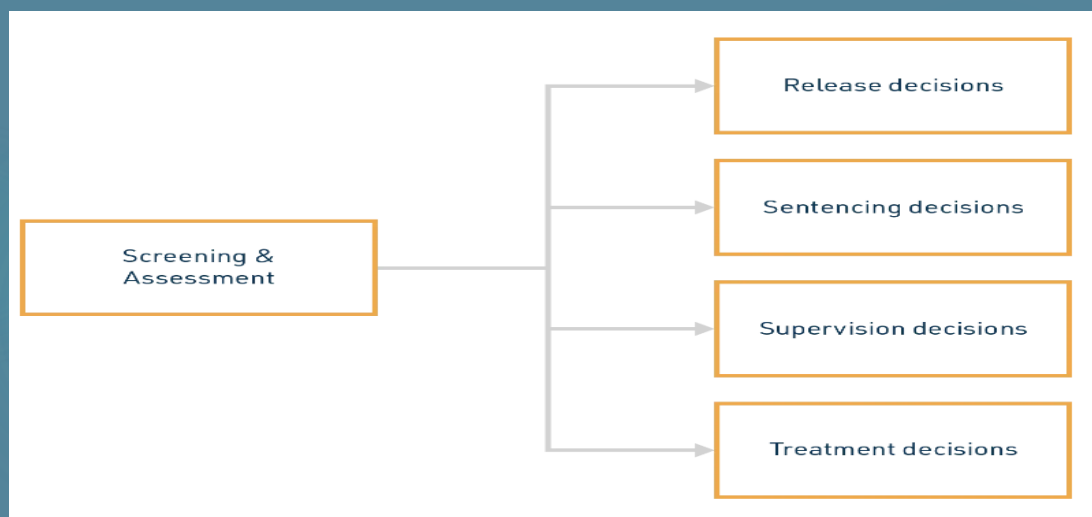
“Corrections practices that have been proven through scientific corrections research to work to reduce offender recidivism.”



**Stop Doing
What Doesn't
Work**



Screening and Assessment



		PROGNOSTIC RISKS	
		HIGH	LOW
CRIMINOGENIC NEEDS	HIGH	<ul style="list-style-type: none"> • Status calendar • Intensive treatment • Pro-social & adaptive habilitation • Supervision & treatment are proximal • Restrictive consequences • Positive reinforcement • Self-help groups • Prescribed medication 	<ul style="list-style-type: none"> • Noncompliance calendar • Intensive treatment • Adaptive habilitation • Treatment is proximal • Positive reinforcement • Self-help groups • Prescribed medication
	LOW	<ul style="list-style-type: none"> • Status calendar • Pro-social habilitation • Abstinence & supervision are proximal • Restrictive consequences 	<ul style="list-style-type: none"> • Noncompliance calendar • Prevention services • Abstinence is proximal

Impaired Driver Profile

- ▶ Predominantly male (70-80%)
- ▶ Between the ages of 20-45 (majority between ages of 20-30)
- ▶ Employed/educated at a higher rate than other offenders
- ▶ Personality and psychosocial factors increasing risk of offending: irritability, aggression, thrill-seeking, impulsiveness, external locus of control (blaming others), anti-authoritarian attitudes

Impaired Driving Risk Factors

Prior impaired driving offense
 Age at time of first DUI
 BAC level
 Prior traffic violations/prior justice system involvement
 Prior/current non-compliance with supervision



Repeat Impaired Drivers

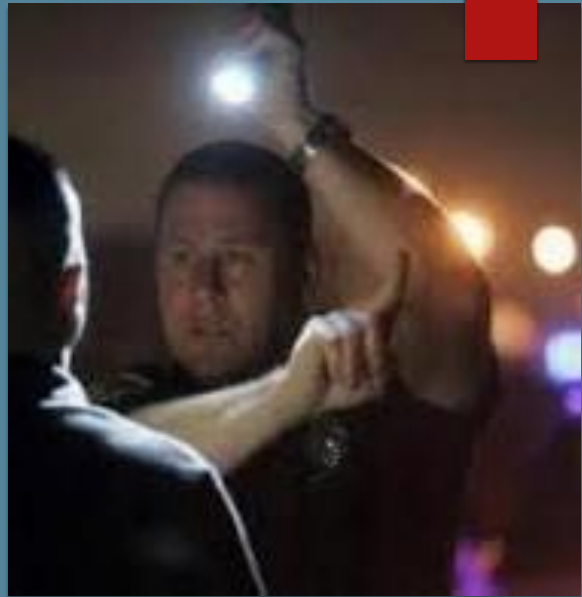
Likely to have cognitive impairments (executive functioning) due to long-term alcohol dependence

More likely to have a higher disregard for authority and show greater indications of anti-social personality characteristics

May result in lack of motivation; implications for treatment engagement

45% of repeat drunk drivers have a major mental health disorder in addition to substance use disorder

What do judges need to know about an impaired driver from prosecutors, defense, law enforcement and supervision staff?



Important Information

- Case-specific details
- Information on any testing limitations
- Traffic history, including speeding, distracted driving, reckless driving
- Impaired driving history, including any dismissals, reductions, deferrals
- Known substance use/abuse history
- Past pre-trial and post-sentencing supervision compliance
- Familial and social history

One size does NOT fit all



It Starts Roadside: Law Enforcement Reports



- ✓ Very detailed reporting
- ✓ Speed, dangerous driving behaviors
- ✓ Behaviors/observations/conduct at the scene
- ✓ Prior arrest record
- ✓ Disposition/reduction
- ✓ Other concerns limited by stop testing

Signs of Impairment

Problems in maintaining proper lane position

Speed and braking problems

Vigilance problems


Judgment problems

Post-stop clues



Prosecution

- ✓ Basis for plea bargain
- ✓ Case assessment
- ✓ Prior record, including dismissals, reductions, speeding, distracted driving, seat belt violations, other dangerous driving
- ✓ Why this case, this defendant?
- ✓ Is public safety served by the plea bargain or case disposition?



Defense

- ✓ Identified and credible problems with the Prosecution's ability to prove the case
- ✓ Specific information about client's substance use history, including treatment compliance
- ✓ Protective factors
- ✓ Impaired driving risk assessment

Pretrial and Probation Reports

- ✓ Current offense information
- ✓ Criminal history
- ✓ Demographic information
- ✓ Screening/assessment information
- ✓ Interview with offender
- ✓ Interview with victim if applicable
- ✓ Physical/mental health history
- ✓ Treatment history
- ✓ Employment history
- ✓ Income information
- ✓ Military service information
- ✓ Educational/vocational history
- ✓ Other financial information
- ✓ Transportation plan
- ✓ Compliance history with prior supervision or electronic monitoring

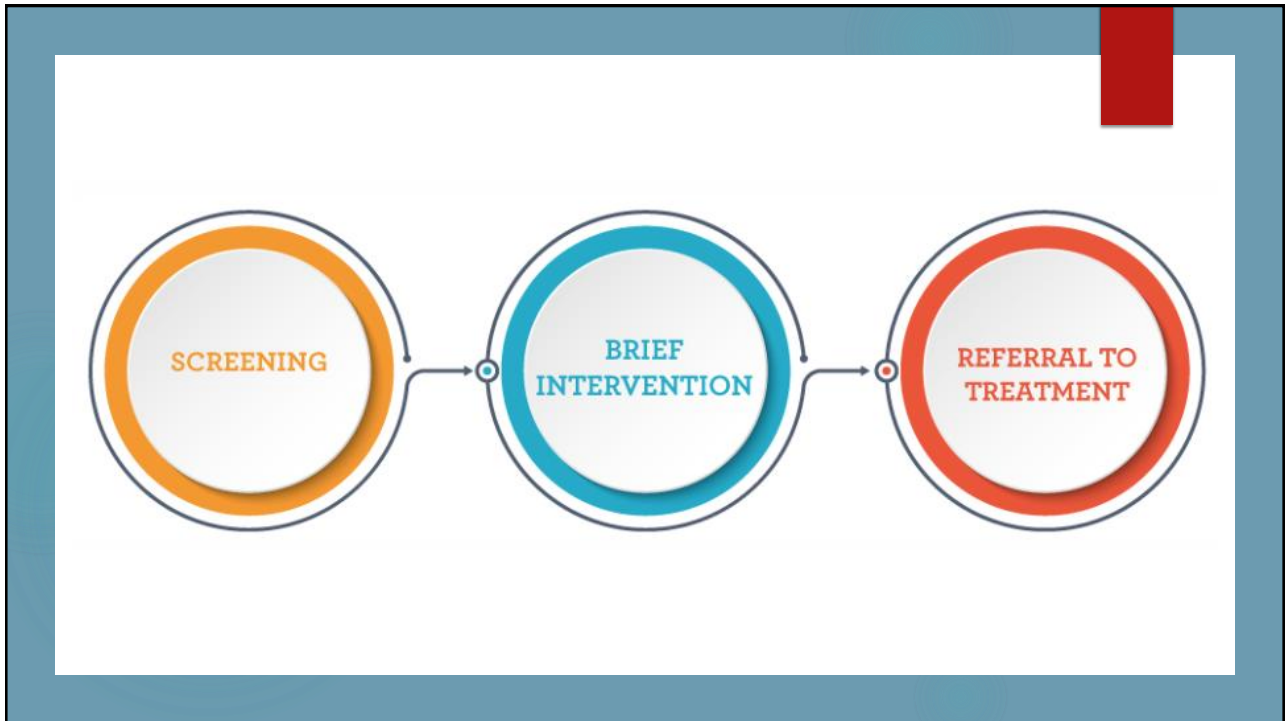
Pre-Trial Release

What should the judge do?

- Defendant is charged with his 3rd DUI (BAC - 0.18)
- 38 years old; lives with spouse and 3 children
- Has lived and worked in community for 20+ years
- Has 2 prior DUIs, and 2 drug possession convictions
- Currently on probation for DUI # 2
- Not presently in treatment
- Has never failed to appear

Possible Release Conditions

- Abstinence
- Assessment and treatment
- Drug and alcohol testing/monitoring
- No driving
- Supervised release
- Curfew
- Electronic monitoring
- Stay away from _____
- Random searches
- Remove from home



Potential Supervision Conditions

Drug, alcohol and/or mental health assessment/treatment

Progress hearings/court monitoring

Real time alcohol monitoring

“Old people, places and things”

24/7 monitoring

DUI court

Available Technology



Questions?

Judge Robert Anchondo
rsanchondo@aol.com
Judge Kate Huffman
ohiojohuffman@gmail.com