

Putting a Wedge  
in the Revolving Door  
of Recidivism:  
DUI Pretrial and Re-Entry Treatment  
Requirements

# Presenters

- Honorable Michael J. Barrasse
  - Member, Pa. Supreme Court Advisory Board on Adult Treatment Courts
  - Member, Board of Directors, National Association of Drug Court Professionals
  - Judicial Fellow, National Drug Court Institute
  - President Judge, Lackawanna Court of Common Pleas
- Jerry L. Spangler
  - DDAP DUI Treatment Compliance Project Manager
  - District Attorney-Somerset County 1996-2011
  - Past President, Pa. District Attorneys Association

# Topics to be covered

- DUI is still a serious problem
- A brief history of treatment and DUI Statutes
- Recidivism data
- Current DUI Statute Requirements
- DA DUI Survey Results
- DUI Court
- CARS

# DUI is still a serious problem

“Most people think we’ve solved the problem of impaired driving, but, in fact **it’s still a national epidemic**. On average, every hour one person is killed and 20 more are injured.”

NTSB Chair Deborah Hersman

# DUI is still a serious problem

- “In the last 30 years, 440,000 people have perished in this country due to alcohol-impaired driving. What will be our legacy in 30 years?”

NTSB Chair Deborah Hersman

# DUI is still a serious problem

## National Statistics

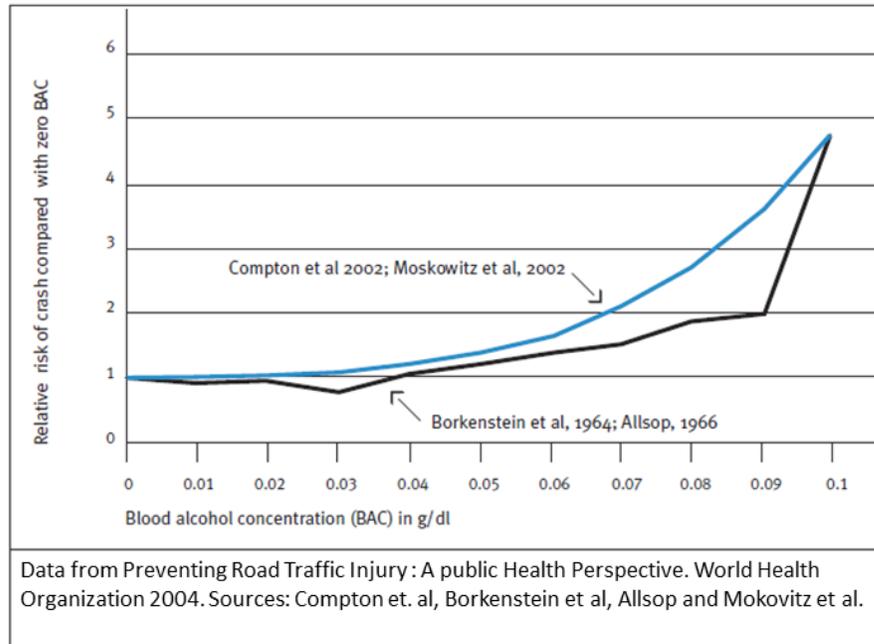
- over 1.1 million people were arrested in 2014 for DUI;
  - Every day, people drive drunk more than 300,000 times but only 3200 are arrested;
  - Adults drank too much and drove 121 million times per year;
  - Every day in America, another 27 people die as the result of DUI related crashes;
  - Drunk driving costs the U.S. \$132 billion a year;
  - On average, two in three people will be involved in a drunk driving crash in their lifetime.

# DUI is still a serious problem

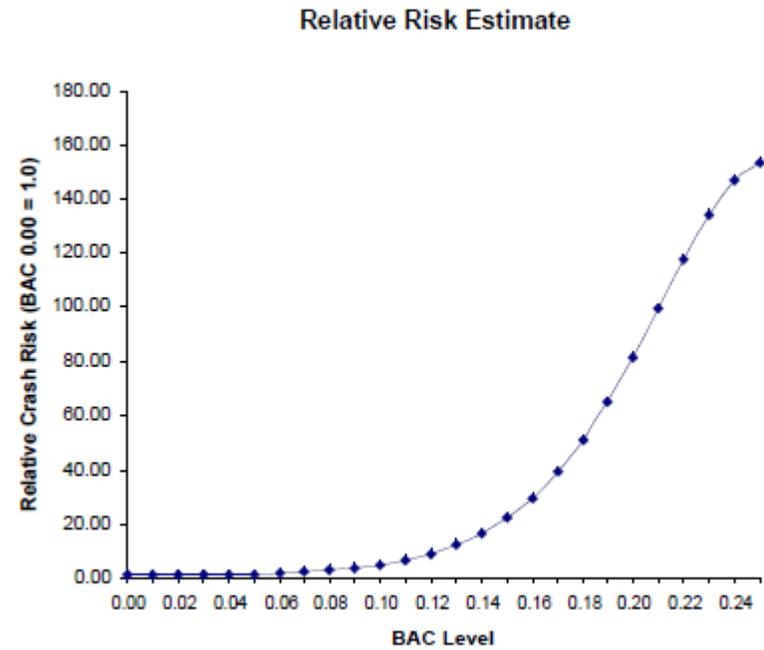
- Pennsylvania statistics
  - Alcohol-related crashes: 2014--10,550; 2015--10, 541;
  - Alcohol-related crash fatalities: 2014--333; 2015—337;
  - Alcohol-related crash injuries: 2014--7,265; 2015—7,049;
  - 2003-2015—5,614 alcohol related crash fatalities.
- **These are not “accidents.” They are crimes!**

# Fast Facts

Relationship between blood alcohol concentration (BAC) and relative risk of crash



# Fast Facts



# A Brief History of Treatment and DUI Laws

# 1950's

- Principal tools
  - Fines
  - License suspension
  - Jail [primarily applied to multiple offenders or offenders who cause injury or death].

# 1960's

- U.S. Department of Transportation founded in 1966
- Congress authorizes 35 Alcohol Safety Action Projects [ASAP]

# 1970's

- DUI Phoenix program—re-education program for people convicted of DUI [1970];
- Screening tests:
  - Michigan Alcoholism and Screening Test [MAST] 1971;
  - Mortimer-Filkins Questionnaire (Court procedures for identifying problem drinkers) 1971.

# 1970's

- Act 63 of 1972 “Pennsylvania Drug and Alcohol Abuse Control Act” creates Pennsylvania Advisory Council on Drug and Alcohol Abuse
- Vehicle Code of 1976
  - DUI a misdemeanor of third degree; maximum one year, no mandatory minimums;
  - Establishes Alcohol Highway Safety School
  - Requirement for second or subsequent offenders to undergo examination under Mental Health and Mental Retardation Act of 1966 to determine whether the person needs or would benefit from treatment for alcohol or drug abuse;
  - Implied consent for blood test.

# 1970's

- 4 Pa Code Chapter 254 adopted July 15, 1979.
  - “the Council has determined that the problem of drug and alcohol abuse and dependency are community problems. It is the position of the Council that no central authority may determine precisely what services are necessary in each of the 67 counties....[t]he emphasis is on community-based drug and alcohol prevention, intervention and treatment service. In order to carry this basic policy of community involvement, a system of Single County Authorities is hereby developed.” 4 Pa §254.1 (a), (b).

# 1980's

- Effective lobbying by Mothers Against Drunk Drivers [MADD]
- Act 289 of 1982
  - Increases grade of DUI from misdemeanor 3 to misdemeanor 2;
  - Mandatory sentences-first offense 48 hours
  - Requirement of CRN and “any other additional evaluation techniques deemed appropriate to determine the extent of the person’s involvement with alcohol or controlled substances and to assist the court in determining what sentence, probation or conditions of Accelerated Rehabilitative Disposition would benefit the person or the public.”
  - Requirement to attend Alcohol Highway Safety School

# 1980's

- Act 289 of 1982 (continued)
  - “Based on the result of evaluations and any additional information or evidence, the court may in addition to any other requirements of the court of this title determine and require, as part of a sentencing or condition of parole, probation or Accelerated Rehabilitative Disposition or other preliminary disposition, that the person successfully complete a prescribed program of individual or group intervention or supervised inpatient or outpatient treatment or any combination of these programs or treatment for a period of up to two years in duration. Any program or individual or group intervention or supervised inpatient or outpatient treatment shall be of a type approved by the Department of Health. Based on periodic review of the person’s progress, the court may alter, modify or shorten or extend the duration of the requirements.”

# 1980's

- 1984—Uniform Drinking Age Act tied federal aid highway construction funds to raising Minimum Legal Drinking Age [MLDA] to 21.
- Zero tolerance laws for underage drinkers.
- Culture shift—
  - Prior to 1980's, drunk driving was considered unfortunate but socially acceptable.
  - With efforts of MADD, drunk driving considered to be a serious problem.
  - Designated Driver a recognized practice.

# 1990's

- Emergence of monitoring technologies reduce need for jail facilities
  - Electronic monitoring for home confinement;
  - Portable GPS to monitor location of criminal offenders;
  - Vehicle alcohol ignition interlock;
  - Act 201 of 1990, Intermediate Punishment;

Sobriety checkpoints

# 2000's and Beyond

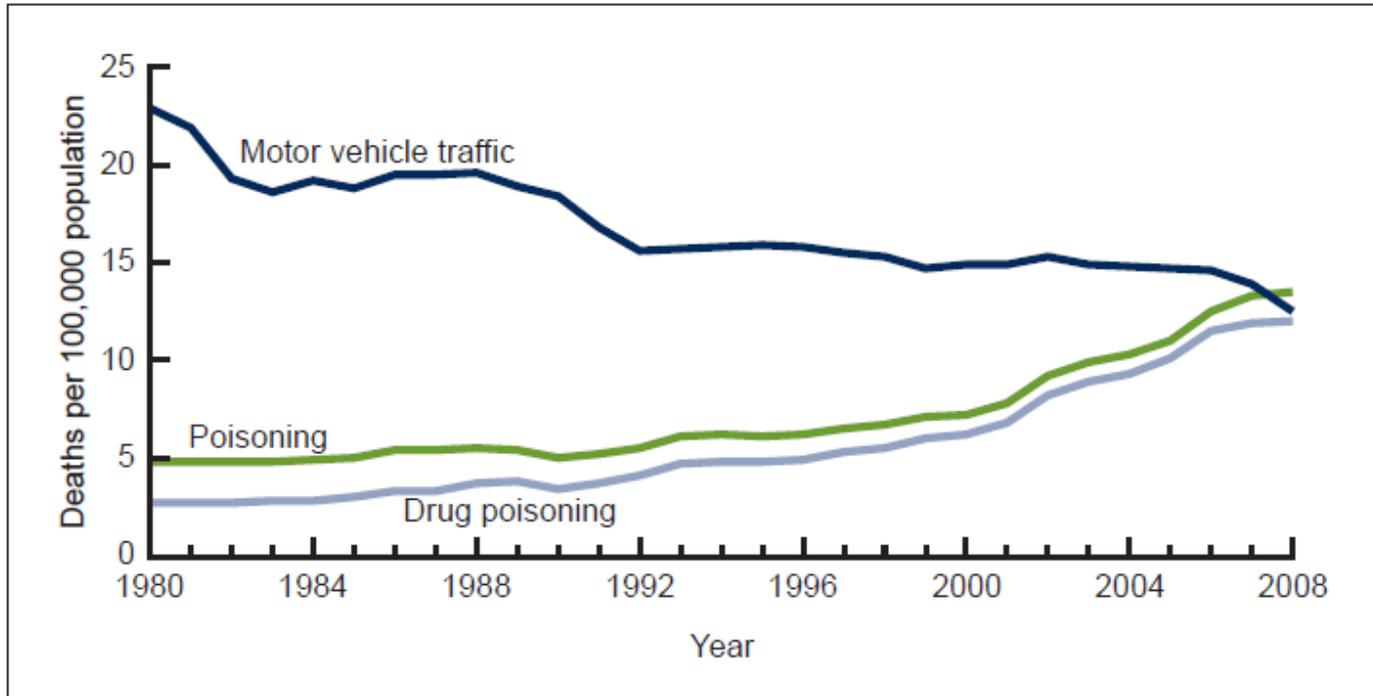
- Advances in monitoring technology
  - Transdermal alcohol monitoring technology;
  - Advances in ability to monitor alcohol consumption in urine, oral fluids, hair and blood;
  - Portable alcohol testing equipment allows for multiple daily tests.

Lower legal limit from 0.10 to 0.08

Act 122 of 2003 [described in more detail below]

DUI Courts

# Good News/Bad News: Death rates for Motor Vehicles, Poisoning and Drug Poisoning.



NOTE: In 1999, the *International Classification of Diseases, Tenth Revision (ICD-10)* replaced the previous revision of the ICD (ICD-9). This resulted in approximately 5% fewer deaths being classified as motor-vehicle traffic-related deaths and 2% more deaths being classified as poisoning-related deaths. Therefore, death rates for 1998 and earlier are not directly comparable with those computed after 1998. Access data table for Figure 1 at [http://www.cdc.gov/nchs/data/databriefs/db81\\_tables.pdf#1](http://www.cdc.gov/nchs/data/databriefs/db81_tables.pdf#1).

SOURCE: CDC/NCHS, National Vital Statistics System.

# Recidivism Data

Does treatment work?

# Reasons for DUI Sanctions

- Retribution for breaking laws—punishment that expresses social disapproval and exacts “justice”;
- Incapacitation—separating offenders from society so they cannot reoffend;
- General Deterrence—quick, certain, sufficient sanctions to deter the general public from drinking and driving;
- Specific Deterrence—quick, certain, sufficient sanctions to deter the defendant from re-offending.
- Rehabilitation—creating long-term change in offender behavior.

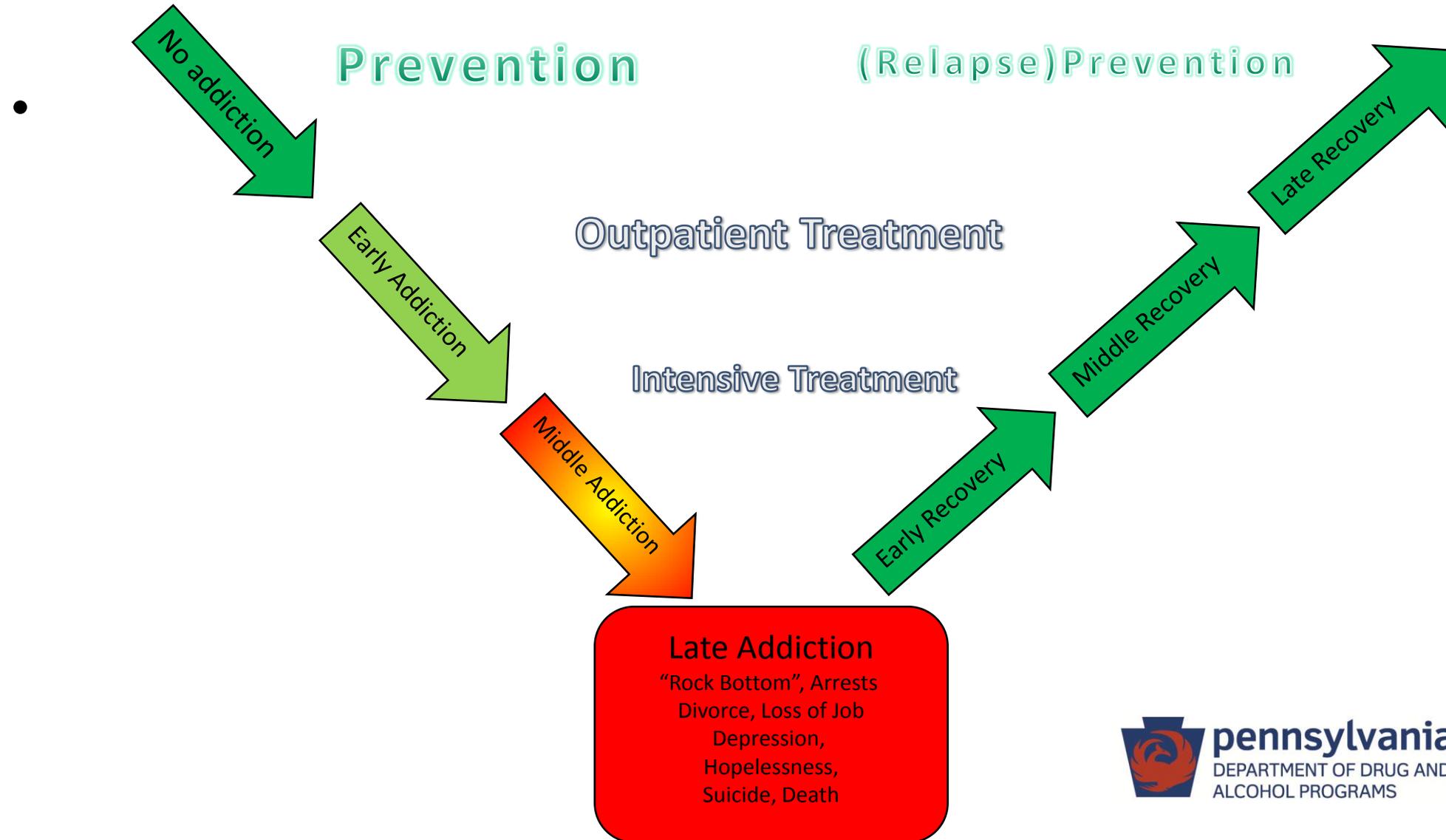
# Sanctions Available for DUI Offenders

- *Incarceration*
- *Driver's License Suspension*
- *Vehicle Impounding*
- *Monitoring-ignition interlock*
- *Fines*
- *Mandated substance abuse treatment*
- *DUI Courts*
- *Intermediate Punishment*
- *Victim Impact Panels*

# Factors in Evaluating Effectiveness

- More than one type of offender
  - First time vs. repeat offender;
  - Underage vs. adult;
  - BAC level;
  - Presence of controlled substance;
  - Type of drinker—social, alcoholic, problem driver;
  - Presence of comorbid factors—depression, anxiety disorder, mood disorder, PTSD;
  - Progression of disease and recovery

# Progression of a Disease and Recovery



# Factors in evaluating effectiveness

- Programs vary from state to state, and county to county within a state;
- Multiple definitions of “effectiveness” based on chosen outcome measures;
- Multiple types of sanctions/deterrents, sometimes used in conjunction—difficult to separate out individual factors;
- Failure to complete program

# Recidivism

- Pew Center/Association of State Correctional Administrators 2011 study:
  - Three-year return-to-prison rate for all prisoners released in 1999 and 2004.
  - 1999—45.4%
  - 2004—43.3%

National Highway Traffic Safety Administration 2014 DWI Recidivism Study:  
median DWI recidivism prevalence:

25% for arrests

29.5% for convictions

# Recidivism

- PennDOT annual report to legislature—10 year look-back

• 2010--	Second and subsequent offense pleas	31.5%
• 2011--	Second and subsequent offense pleas	31%
• 2012--	Second and subsequent offense pleas	31.5%
• 2013--	Second and subsequent offense pleas	31.3%
• 2014--	Second and subsequent offense pleas	32.3%

# Recidivism

- Restrictive Intermediate Punishment Program
- DOC 1 year recidivism rate-25.9%
- RIP 1 year recidivism rate—overall 13.7%

# Early Identification and Intervention is Key

- Studies in the United States have found that outcomes were significantly better for Drug Treatment Courts that reduce the delay from arrest to treatment to less than 50 days, and ideally less than twenty days.
- 50 day study—Carey, S.M., Mackin, J.R., & Finigan, M.W. *What works” The 10 key components of Drug Court: Research based best practice.* Drug Court Review, 8, 6-42.
- 20 day study—Carey, S.M., Finigan, M.W., & Pukstas, K. *Exploring the key components of Drug Courts: A comparative study of 18 Adult Drug Courts on practices, outcomes and costs.* (2008). Portland, Or: NPC research.

# Early Identification is Key-Screening

- In the criminal justice system, the use of validated and standardized screening and assessment instruments is imperative to identify offenders who have alcohol and substance dependence/addiction.
- Without accurate identification of the presence of these disorders, practitioners miss an opportunity to address an underlying cause of offending and, subsequently, reduce future recidivism.
- At this stage, offenders who do not have substance dependence/addiction issues are identified and those who may have those issues can be sent for a more in-depth assessment.
- Screening is a way to strategically target limited resources by separating offenders into different categories.

# Early Identification is Key-Assessment

- An assessment is a more formal process that uses instruments that are standardized, comprehensive and explore individual issues in-depth.
- It evaluates not only the presence of a substance use disorder, but also its extent and severity.
- Ideally, screenings and assessments should occur at the beginning of the process (pre-trial) so that the results can be used to inform sentencing decisions, case management plans, supervision levels and treatment referrals/plans.
- Assessments can be repeated at multiple junctures to identify progress and to inform changes to existing plans as needed.

# Pennsylvania Driving After Imbibing/Ingesting

- CRN evaluation-a preliminary screening
- All DUI offenders must have CRN evaluation *prior to* ARD placement or sentencing
- Full D&A Assessment must be done *prior to* ARD placement or sentencing if:
  - Offender has a prior DUI conviction ten years prior to current offense;
  - Offender has a BAC of 0.16% or above; or
  - CRN evaluation shows need for full assessment.

# Pennsylvania Driving after Imbibing/Ingesting

- Full D&A assessment must be done by:
  - Single County Authority (SCA) or SCA's designee
  - Clinical personnel of a treatment facility licensed by Pa. Department of Drug and Alcohol Programs (DDAP)
- Assessment must contain:
  - Determination of need for treatment
  - Recommendation as to level of care
  - Recommendation as to length of stay
  - Recommendation as to follow-up care and monitoring.

# Pennsylvania Driving After Imbibing/Ingesting

- Sentencing:
  - CRN and, if needed, full D&A assessment must be completed prior to ARD placement/sentencing;
  - Sentencing judge must consider recommendations of D&A assessment in determining terms of ARD/probation/parole;
  - If assessment shows a need for treatment, the sentencing judge “shall impose a minimum sentence as allowed by law *and a maximum sentence equal to the statutorily available maximum.* 75 Pa.C.S. §3804(d). The intent is to allow the maximum allowable term of supervision to monitor treatment.
  - It shall be a condition of parole that the offender “participate in and cooperate with drug and alcohol addiction treatment in accordance with the statute.” 75 Pa.C.S. §3815(b)(2)(ii).

# Treatment requirements

- Treatment ordered by court-
  - Must be in conformity with recommendation set forth in full D&A assessment;
  - Must be in a drug and alcohol addiction treatment program licensed by DDAP;
  - Treatment provider shall give periodic reports to assigned probation/parole officer on progress in treatment and must promptly notify if defendant fails to comply with treatment requirements, refuses to constructively engage in treatment or terminates participation.

# Court sanctions for non-compliance with treatment

- If treatment provider notifies probation/parole officer of defendant's noncompliance with treatment, a petition for revocation shall promptly schedule a revocation hearing and, if the court finds a violation, the court shall revoke parole until such time as the offender is permitted to be readmitted into the program.
- The probation/parole officer is to notify PennDOT of the status of treatment. Until successful completion of treatment is reported to PennDOT, the defendant is ineligible for restoration of operating privileges.

# Common Goals Shared by Treatment Providers and Criminal Justice Administrators

- Integration of drug and alcohol treatment services with criminal justice system case processing;
- Early identification and prompt placement of offenders in need of treatment;
- Access to a continuum of drug and alcohol treatment and rehabilitation services;

# Common Goals Shared by Treatment Providers and Criminal Justice Administrators

- The use of practices that have been empirically tested and have been shown to reduce recidivism among offenders, including:
  - Conducting a screening evaluation of offender risk and needs using approved evaluation tools and delivered by trained staff;
  - Conducting a full Drug and Alcohol assessment, when indicated, that is performed with clinical integrity and makes a determination of the level of care, length of stay and follow-up requirements based on the specific needs of the individual;
  - Providing treatment by DDAP licensed providers that aligns with the recommendations of the D&A assessment;
  - Coordinating treatment and criminal justice services;
  - Monitoring and enforcing treatment recommendations through use of criminal justice supervision and sanctions;
  - Identifying, measuring and monitoring performance indicators.

# Mutually Beneficial Partnership

- **Criminal Justice System**

- Provides structure
- Improves compliance with treatment
- Especially valuable for resistant individuals
- Helps improve length of stay
- Improves compliance so that there is less risk of criminal recidivism harming society

- **Treatment System**

- Reduces recidivism
- Provides treatment expertise
- Gives individuals tools needed to succeed
- Helps reduce risky behavior
- Improves compliance with supervision
- Helps return individual to functioning as productive member of society

For the evidence-based treatment practices set forth in Pennsylvania's DUI statute to work, they must be enforced. The passage of a statute is merely the starting point in implementing change. Laws provide the foundation for policy, strategies and programs. The implementation process build upon this foundation and creates a framework that is refined and expands over time. How laws are implemented or translated into practice determine whether they will effectively accomplish their intended purpose.

A recent Supreme Court case and survey by the Pennsylvania DUI Association and Pennsylvania District Attorneys Association have raised concerns as to whether the requirements of the statute are being enforced.

# Commonwealth v. Taylor, 74 A.3d 122 (Pa. 2014)

- Terry Lee Taylor, a repeat DUI offender, pled guilty to one count of DUI in violation of 75 Pa.C.S. §3802(b). He was later sentenced to a minimum of 45 days incarceration and a maximum of 6 months. The sentencing court noted that Taylor had failed to obtain a full D&A assessment prior to sentencing and directed him to do so after sentencing.

# Commonwealth v. Taylor-continued

- Taylor appealed the sentence raising these issues:
  - Whether a court has authority to sentence on a DUI before completion of the assessment?
  - Whether the provisions of §3814 dealing with the assessment are mandatory sentencing provisions? And
  - Whether the defendant can waive preparation of an assessment prior to sentencing.

# Commonwealth v. Taylor-continued

- In essence, Taylor was arguing that the sentence was illegal not because of its duration but because of its procedural inadequacy.
- The Commonwealth contended that the sentence was not illegal if it fell within the applicable guideline ranges and did not exceed the statutory limits.

# Commonwealth v. Taylor-continued

- Justice Baer, writing for the majority, asserted that the legality of the sentence challenge implicates more than its duration.
- He interpreted the use of the word “shall” in §3814(2) as mandating an assessment before a repeat DUI offender’s sentencing.
- The legislative intent was that treatment recommendations developed through a D&A assessment should be implemented as part of the offender’s sentence.
- A sentencing court has no discretion or authority to impose a sentence for a DUI violation prior to the completion of the Assessment.

# Implications

- The ultimate aim of the statute is to ensure that DUI offenders in need of treatment get that treatment with clinical integrity. Doing the CRN and assessment add little value if their results are not considered and addressed by the court at the time of case disposition and treatment compliance is not enforced by the probation/parole department.
- Failure to comply with the provisions of the law constitutes both a systemic noncompliance *and* a significant lost opportunity for our criminal justice and treatment systems, with adverse impacts on public health and safety.

# PA DA DUI Compliance Project

- Determine current status of compliance with provisions of DUI statute regarding pre-disposition CRN evaluations and full D&A assessments;
- Identify innovative local practices;
- Identify obstacles to implementation;
- Share information from other counties;
- Identify obstacles to reporting requirements of the Act;
- Begin to develop quality assurance measures to ensure that effective treatment is being provided.

# DA DUI Compliance Survey

- Survey responses from all 67 counties;
- 37 of 67 report compliance with provisions requiring pre-disposition CRN evaluations and full D&A assessments;
- 30 of 67 report partial compliance:
  - 24 report that CRNs are completed prior to ARD placement-6 report they are not;
  - 7 report that full D&A assessments are completed prior to ARD placement—23 report they are not;
  - 22 report that CRNs are completed prior to sentencing—8 report they are not;
  - 9 report full D&A assessments are completed prior to sentencing—21 report they are not.

# Obstacles to Compliance

- Priority given to prompt processing of cases to get offenders under supervision as soon as possible;
- Un-cooperative defendants;
- Lack of resources—back-log in scheduling CRNs;
- In many cases, dealing with second or later generation administrators—“This is the way it’s always been done.” Not aware of issue until *Taylor* decision;
- Volume of caseload.

# Common Traits of Counties in Compliance

- Intentional design of processes and procedures through collaboration of both treatment and criminal justice stakeholders;
- Early notice to offenders of requirements of DUI statute:
  - Notice included with summons/criminal complaint;
  - MDJ collaboration with CRN evaluators to schedule CRN at time of preliminary arraignment;
  - Bond condition requiring CRN to be scheduled within given time period.
- Early identification and tracking of offenders needing CRNs and continual monitoring of status. Some done by Probation—others by SCA.

# Common Traits of Counties in Compliance

- Procedures in place and capacity for early scheduling
- Training and cooperation of criminal defense bar
- Collaboration and information sharing among probation/parole, CRN evaluators, D&A assessors with regular updates

# Bail Condition option

- Issues to be addressed:
  - Notice to defendant of requirements
  - Procedures in place to schedule CRN
  - Capacity to conduct CRNs
  - Procedures in place to get necessary information to CRN evaluator [BAC, accident/no accident, prior record, etc.)
  - Procedures in place to monitor status and report to stakeholders
  - Sanctions for non-compliance

# DUI Courts: Description

- Provide coordinated actions by judiciary, prosecution, defense counsel, probation, law enforcement, social services, mental health and treatment;
- Includes:
  - Regularly scheduled judicial status hearings;
  - Sanctions and rewards;
  - Collaborative treatment;
  - Legal team decision making;
  - Individualized alcohol treatment
  - Regular alcohol testing

# 10 Guiding Principles of DWI Courts

- 1. Determine the population.
- 2. Perform a clinical assessment.
- 3. Develop a treatment plan.
- 4. Supervise the offender.
- 5. Forge agency, organization and community partnerships.
- 6. Take a judicial leadership role.
- 7. Develop case management strategies.
- 8. Address transportation issues.
- 9. Evaluate the program
- 10. Ensure a sustainable program.

- [www.dwicourts.org/learn/about-dwi-court/-guiding-principles](http://www.dwicourts.org/learn/about-dwi-court/-guiding-principles)

# DUI Courts-Effectiveness

- Some studies have found promising outcome results including:
  - Reduced DUI recidivism;
  - Increased time to re-arrest;
  - Fewer traffic incidents;
  - Lower rate of drivers license suspensions/revocations
  - Reduced levels of substance abuse

# What is different about a DWI Court?

- A DWI Court is a problem-solving court dedicated to changing the behavior of DWI offenders.
- The goal of DWI Courts is to protect public safety by using the adult Drug Court model to address the root cause of impaired driving: alcohol and substance abuse.

# Are DWI offenders really that different from drug offenders?

- DWI offenders engage in behavior that is dangerous and frequently causes death or serious bodily injury.
- Repeat DWI offenders are over-represented in fatal crashes and have a greater risk to kill another person.
- Drinking alcohol is not illegal for adults, is highly prevalent, and is even encouraged in many every-day activities.
- DWI offenders are more likely to be high functioning in other areas of their lives.
- DWI offenders don't always show up as high risk on risk assessments standardized on the typical criminal justice populations.

# Are DWI Courts Effective?

- A study of 3 DWI Courts in Michigan
  - Comparison groups of eligible WI offenders prior to DWI Court implementation.
  - Examined recidivism, length of time to re-arrest, and use of criminal justice resources.
  - **CONCLUSION:** DWI Court participants were 19 times less likely to be re-arrested on DWI charge.

# Pennsylvania DUI Courts

- Allegheny 2005
- Berks 2003
- Blair 2005
- Centre 2009
- Columbia/Montour 2012
- Lackawanna 2002
- Lebanon 2008
- Lycoming 2005
- Northumberland 2007
- Philadelphia 2007
- Potter 2013
- Snyder/Union 2010
- York 2007

# DWI Court Planning Training

- National Highway Traffic Safety Administration [NHTSA] in cooperation with National Center for DWI Courts [NCDC];
- A facilitated planning process;
- The program is developed as team oriented training; individual participation is not permitted;
- 3 ½ day training for teams **not** currently operating a DWI Court.
- Deadline for application: May 9, 2016
- [www.dwicourts.org](http://www.dwicourts.org) or contact Cliff Jacobs, (571) 384-1867

# CARS—Computerized Assessment and Referral System

- A computerized clinical report generator tool that incorporates a structured diagnostic mental health assessment.
- Research has found that repeat DUI offenders commonly suffer from a number of mental health disorders (e.g. anxiety disorders, post-traumatic stress disorder, depression, bipolar disorder, conduct disorder) in addition to their substance use issues.
- In one study, in addition to their lifetime alcohol disorder, 41% of the participants had a drug-related disorder and 45% had a major mental disorder that was not alcohol or drug-related.

# CARS-Computerized Assessment and Referral System

- The basis of the Computerized Assessment and Referral System was the recognition of the high level of psychiatric co-morbidity in DUI populations.
- Historically, treatment of this offender population has consisted of alcohol education or interventions that focus solely on alcohol or other substance use disorders.
- CARS was developed to identify mental health issues that might influence DUI behaviors, facilitate additional treatment for those issues and possibly reduce future recidivism.

# CARS--Computerized Assessment and Referral System

- CARS was developed by the Division on Addiction, Cambridge Health Alliance, a teaching affiliate of Harvard Medical School, with initial support by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) and ongoing funding from Responsibility.org.

# CARS-Computerized Assessment and Referral System

- Developed specifically for DUI offender population
- Provides immediate diagnostic information for up to 15 major psychiatric disorders
- Provides geographically and individually targeted referrals to appropriate treatment services
- Generates user-friendly reports at the click of a button
- Informs supervision and treatment decisions;
- Runs on free open source software
- Can be used by non-clinicians

# Lackawanna County Pilot Project

- Defendants will participate in both CRN evaluations and CARS evaluations;
- 300 defendants or 3 months;
- Compare results.

# Questions

# Contact Information

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