RESEARCH BRIEF

Properly and Effectively Adjudicating Drugged Drivers: The Development of Online Curricula

As law enforcement and prosecutors increasingly bring drugged driving cases to court, judges need to understand the current status of research in this field and to increase public safety by applying effective sentencing parameters and evidence-based sentencing practices. The availability of training in drugged driving adjudication has varied among states and some training, such as in-person courses, can be costly and require out-of-state travel, limiting judges' participation. In order to expand access to such training, the National Judicial College (NJC) produced a six-week online blended learning course for judges across the country on the topic of drugged driving with financial support from the AAA Foundation for Traffic Safety (AAAFTS). A "blended" program is one that combines live faculty-led sessions with corresponding periods of self-study. The AAAFTS also funded the tailoring of the judges' curriculum for an online drugged driving course for prosecutors, which was produced by the National District Attorneys Association (NDAA). The current report describes the process through which the curriculum and related materials were developed for the judges' course and tailored for the prosecutors' course. An overview of a pilot for the judges' course, along with the outcomes of a course evaluation, are also provided.

CURRICULUM DEVELOPMENT FOR THE JUDGES' COURSE

The first step was to identify members for and convene a curriculum development committee to provide expertise on the subject of drugged driving. Specifically, committee members were sought who were on NJC's faculty and who either presided over drugged driving cases as judges, litigated them as prosecutors or defense attorneys or worked with the defendant population on addiction issues and had expertise on psychopharmacology and toxicology. The individuals selected also had experience with developing educational programming and had contributed to curriculum development in the past.

A curriculum development meeting was held on June 16, 2016, at the NJC. In attendance were the Honorable Peggy Hora, the Honorable Earl Penrod, the Honorable Peggy Davis, the Honorable Jason Ashford, the Honorable Mary Jane Knisely (remotely), Carl Dawson, Duane Kokesch (then at NDAA) and NJC Program Attorney Ramon Acosta.

Based on the meeting discussion, the recommendation from the committee was that the modules should help a judge understand his or her role in drugged driving cases as well as some fundamentals of how drugs affect the body, the brain and driving. The group voted on the various brainstormed topics and prioritized the themes of ethics, drugs and the brain, drug testing and technology, sentencing and recidivism, the role of the judge, and prosecution/defense arguments.

Ultimately, the curriculum development committee recommended that the curriculum include:

- Information on drug recognition experts (DREs) and the types of testimony that come into play;
- Information from both the prosecution and defense perspectives;
- Risk assessment tools and programs available to courts;
- Applicable legal standards for impairment;
- Available technologies for detection;
- How drugs affect the brain, the body and driving;
- The role of the judge in drugged driving cases;
- Judicial ethics around procedural fairness and ordering medication-assisted treatment;
- Information about recidivism and appropriate sanctions and interventions for this population; and
- Admissibility and weight of evidence in these case types.

The committee agreed that the modules needed to be focused and practical. Each of these key outcomes and recommendations was integrated into the final curriculum and modules.

The second step of the process was to complement the initial groundwork of the curriculum development committee in identifying the training needs of new and experienced judges in adjudicating cases of driving under the influence of a drug(s) other than, or in addition to, alcohol. This particular task had several components, including a literature review, interviews with partners and faculty and a survey of key stakeholders. Additionally, the Honorable Peggy Hora, Superior Court of California (ret.), and the Honorable Jason Ashford, Houston County, Georgia, conducted a review of existing online courses, in-person courses and publications related to judicial training on drugged driving to see what types of content they contained and what was effective and ineffective.

This process helped identify other pressing issues facing judges in drugged driving cases. Those interviewed noted that the most pressing issues in drugged driving adjudication included enforcement and prosecution tools such as DREs, oral fluid testing at the site of arrest, discerning impairment by drugs or medical conditions, concentration levels for impairment, discovery and expert witnesses (funding) and training for both prosecution and defense. Upon further questioning, interviewees noted there were very few resources to promote informed and effective drugged driving adjudication, underscoring the need for such a course. The helpful resources that were noted included DREs; however, their possible unavailability during investigation was a noteworthy barrier.

Of the topics identified during the interviews and the curriculum development meeting, the five most requested by survey respondents were:

1. How prescription drugs (lawfully prescribed) affect the case;
2. Discerning between impairment by drugs versus medical conditions;
3. The way that different drugs affect driving (when is a person impaired; concentration levels);
4. Evaluating expert testimony, including drug recognition experts; and
5. Scientific or forensic evidence procedures, including drug testing.

All of this information was provided to faculty of NJC to consider as they developed their individual modules. The final set of six modules, which covered the breadth of topics identified by the curriculum development committee and the ensuing interviews, were:

1. How drugs affect the brain;
2. Drug testing and technology;
3. Prosecution and defense arguments;
4. The role of the judge;
5. Recidivism and sentencing; and
6. Judicial ethics.

The third step was to select the faculty and have each faculty member develop two hours of material for their assigned module. Faculty were selected based on the topics taught on behalf of NJC and their specific expertise. The draft curriculum and modules were iteratively reviewed by AAAFTS and subsequently revised. Following this, experts from NDAA assisted in the filming of segments for the curriculum. Selected clips were sent to AAAFTS for review. Finally, NJC staff built an offline version of the program into NJC's learning management system (LMS). The LMS programming reflects the readings, quiz questions, and other background material (approximately one hour's worth of work) to be completed prior to each week's one-hour webcast with faculty.

The course was held each week for six weeks beginning Oct. 30, 2017 and concluding on Dec. 8, 2017 (see Appendix A for syllabus). Each week's course was comprised of one hour of self-paced readings and quizzes to orient the judge to the week's content and one hour of live faculty-led webcast to review, discuss, and answer questions about the week's content.

Information about the availability of the course was included in NJC's course catalog, in its *Judicial Edge* e-newsletter and on its website.

PILOT AND PROGRAM EVALUATION OF THE JUDGES' COURSE

NJC engaged in two evaluations of the curriculum – one pilot evaluation before the program was released to the public, to ensure the program was on track with quality and quantity of content, and one final evaluation for each participant in the full program.

For both the pilot and the actual program, participants were asked to rate how well each module met its learning objectives. Participants also evaluated ease of use, the most useful aspects of the course and whether any topics should be added, lengthened, shortened, or deleted in future iterations of the course. Lastly, participants were asked which information from the course they anticipated incorporating into their on-bench behavior and practice.

In July 2017, judges from 12 jurisdictions reviewed the offline modules. In addition, judges from one jurisdiction, North Dakota, participated in a full pilot (both online readings and faculty-led webcast) of Module 1, *How Drugs Affect the Brain*. Based on the pilot, some additional changes were made to the course content, including:

- Further clarifying the effects of drugs on motor and behavioral skills;
- Distinguishing between alcohol detection (and evidence) and drug detection (and evidence);
- Adding discussion questions, whether in the self-study portion of the program or in the live webcast of the program;
- Adding additional information about bodily fluid drug testing;
- Adding information and rewriting portions of our prosecutor/defense module with the assistance of the Traffic Safety Resource Prosecutor who was added as faculty;
- Adding scenarios and information on recidivism risk to the sentencing module;
- Adding video scenarios with interactive questions relating to judicial on-bench behavior; and
- Adding information on procedural fairness and implicit bias.

The launched course in October 2017 had evaluations for each module (six in total) and a final evaluation. The results of the evaluations suggested that program was successful on all of its points of measurement:

- On average, the online portion took participants about an hour to complete;
- 91% of respondents agreed that the amount of content and the expectations for the course were appropriate;
- 100% of respondents agreed that the technology was reasonably accessible and easy to use; and
- 100% of respondents agreed that the activities were useful and well aligned with the learning objectives.

Anecdotally, the key takeaways for judges were the ways in which drug impairment differs from alcohol impairment and the ways in which evidence may come into court. Respondents indicated that they planned to consider some of the course material, including the implementation of staggered sentencing, the ethics components and a judge's gatekeeping functions. In terms of lengthening, shortening, or deleting information in future iterations, there was no clear consensus. In the week-by-week evaluations, the participants found the scenarios and self-tests to be most useful; some would have preferred a greater synthesis and summary of the highly technical readings.

TAILORING THE CURRICULUM FOR THE PROSECUTORS' COURSE

Given the relevance for prosecutors who are increasingly bringing drugged driving cases to court, the NDAA sought to leverage some of the content that was in development for the judges' course. As part of a joint partnership, the NDAA participated as a member of the curriculum development committee for the judges' course.

Throughout the development process, NDAA carried out a needs assessment of their constituents in parallel. The needs development at NDAA resulted in a focus on designing a video series that would support the existing *Prosecuting the Drugged Driver* course designed with the National Highway Traffic Safety Administration (NHTSA), which was already in the process of being updated. Next, the NDAA worked to help secure faculty to develop video modules based on the selected focus areas. These areas included:

1. Admissibility of Expert Testimony
2. Drug Toxicology
3. Courtroom Issues
4. Refusals

Ten videos were created (see Appendix B for a complete list) and shot in conjunction with the NJC video recording. The NDAA videos were aimed at a particular audience of new prosecutors, prosecutors recently assigned to impaired driving cases and law enforcement officers, so they can better understand the work of prosecutors. The videos were designed to be short enough to use in roll call situations or for prosecutors who have downtime in court.

To publicize the video series, NDAA included a description in the *Between the Lines* newsletter, a quarterly newsletter with distribution to 24,000 prosecutors, law enforcement officers and various safety advocates. The new video series has also been shared with the Traffic Safety Resource prosecutors and other groups. The videos have been made available online at: http://www.ndaa.org/e_learning_home.html.

NEXT STEPS

NJC will make this program available to the judiciary through *NJC OnDemand*, its web-based resource center. The program will be self-paced and self-study, with the original webcasts in recorded form. The availability of the program will be announced throughout 2018 and into 2019.

Because of the impact that this program will have on judges who hear drugged driving cases in addition to those involving alcohol, and because impaired driving cases can be some of the most technically difficult and evidence-heavy matters that judges hear, NJC would like to continue to develop programming on this topic in the future. At last count, a total of 82 judges had signed up for this program – unprecedented numbers for a faculty-led web-based course. Prospective future work could include:

- Developing additional modules based on the expressed interests of the curriculum development committee and the needs assessment, such as judicial leadership, the role of drug courts and DUI courts, thorny evidence issues and hard-core offenders;
- Updating the existing program with new research and best practices and redelivering it in its entirety in early 2019; and
- Conducting an impact evaluation six months after the end of the 2017 program to see which practices were implemented and which behaviors were changed.

NDAA will make the course videos available through its *Between the Lines* newsletter for prosecutors, law enforcement and other safety advocates. In addition, the videos will be shared with the Law Enforcement Liaison network and Drug Recognition Expert networks. They will also be used in NDAA webinars in 2018.

NDAA would like to continue to develop this video series by adding videos for experienced practitioners. Such videos would explain studies, toxicology and successful practices in more depth. In addition, NDAA would also like to include videos that would help laypeople who supervise workforces in trucking and bus companies to help them avoid putting people who are impaired behind the wheel of commercial motor vehicles. Finally, NDAA would like to work with other traffic safety partners to include these videos in their training regimens.

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ABOUT THE AAA FOUNDATION FOR TRAFFIC SAFETY

The AAA Foundation for Traffic Safety is a 501(c)(3) nonprofit, publicly supported charitable research and education organization. It was founded in 1947 by the American Automobile Association to conduct research to address growing highway safety issues. The organization's mission is to identify traffic safety problems, foster research that seeks solutions and disseminate information and educational materials. AAA Foundation funding comes from voluntary, tax-deductible contributions from motor clubs associated with the American Automobile Association and the Canadian Automobile Association, individual AAA club members, insurance companies and other individuals or groups.

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APPENDICES

A. Abbreviated Syllabus for *Properly and Effectively Adjudicating Drugged Drivers* (Judges' Course)

Course Objectives

There are fewer tools in the field to detect impairment and concentration levels in the body for drugged driving than for alcohol-impaired driving.

Drugged driving cases require a judge to utilize a variety of judicial tools to effectively adjudicate these cases. In addition to the ability to determine which kinds of drugs an individual may be using, it is important to know how these drugs affect the individual and their ability to operate a vehicle. It is also imperative that a judge knows how to effectively craft sentences that include treatment options, in order to provide a participant with the most beneficial mode of recovery.

Properly and Effectively Adjudicating Drugged Drivers is intended for judges and judicial officers who hear impaired driving cases but who may not have access to services that provide screening and assessment of impaired driving offenders, and who may or may not have access to probation and parole services for post-sentencing monitoring. Therefore, the curriculum emphasizes examples of promising practices and how judges and judicial officers can use these in drug-impaired driving cases over which they preside, even if pretrial and post-sentencing services are not available.

The curriculum includes six modules to be presented over a six-week period, one module per week. Each module is presented "flipped classroom" style, with at-home work to be done by the participant prior to a weekly one-hour webcast.

This is a web-based course and is composed of six content areas: (1) how drugs affect the brain; (2) drug testing and technology; (3) prosecution and defense arguments; (4) the role of the judge; (5) recidivism and sentencing; and (6) judicial ethics.

Week One: How Drugs Affect the Brain – Carl M. Dawson, M.S., MAC, LPC

Learning Objectives – After this module, you will be able to:

1. Describe how drugs affect the primary motor regions of the human brain;
2. Articulate how legal and illicit drugs potentiate human behavior and actions;
3. Compare and contrast OTC prescription and illicit medications and substances;
4. Translate scientific brain research and data into practical judicial decision-making; and
5. Discuss and recognize basic toxicological research and data.

Week Two: The Role of Drug Testing & DREs in Drugged Driving Cases – Officer Travis Herbert (CA) and the Honorable Neil Axel

Learning Objectives – After this module, you will be able to:

1. Describe what exists in regard to validated in-field drug detection and how Drug Recognition Expert (DRE) testimony comes into play;
2. Explain how bodily fluid drug detection works; and
3. Identify impaired driving laws and programs.

Week Three: Drug Recognition Expert (DRE) Admissibility: Prosecution and Defense Arguments – Marc Picker, Esq. and Sarah Garner, Esq.

Learning Objectives – After this module, you will be able to:

1. Define the role and requirements of a Drug Recognition Expert (DRE);
2. Identify the evidentiary strengths and weaknesses of DRE testimony in drugged driving cases; and
3. Anticipate general arguments asserted by the parties concerning the admissibility of DRE testimony.

Week Four: The Role of the Judge – Honorable Peggy Davis

Learning Objectives – After this module, you will be able to:

1. Articulate some trends in drug use and drug-impaired driving cases; and
2. Describe a judge's gatekeeping role in admitting evidence in drug-impaired driving cases.

Week Five: Recidivism and Sentencing – Honorable Peggy Fulton Hora

Learning Objectives – After this module, you will be able to tailor your sentences to address the risk of recidivism and implement appropriate treatment options.

Week Six: Judicial Ethics – Honorable Jason Ashford

Learning Objectives – After this module, you will be able to:

1. Determine appropriate in-court and out-of-court judicial conduct related to ethical issues that frequently arise in cases involving impaired driving.
2. Recognize practices supported by the Code of Judicial Conduct in association with procedural fairness.

B. Overview of *Drugged Driving Video Series* (Prosecutors' Course)

The course for prosecutors consists of a series of 10 roll call videos covering the topics of:

I. Introduction to the video series
   a. Tom Kimball, Director, National Traffic Law Center—"Introduction"
II. Series One: Admissibility of Expert Testimony
   a. Sarah Garner, Traffic Safety Resource Prosecutor, North Carolina—"The Expert: How to admit expert testimony"
   b. Sarah Garner—"Qualifying Experts"
III. Series Two: The Toxicologist
   a. Joseph Jones, Forensic Toxicologist—"The Toxicologist"
   b. Joseph Jones—"Tolerance"
IV. Series Three: Courtroom Issues
   a. Jeff Sifers, Traffic Safety Resource Prosecutor, Oklahoma—"DUI Defenses Generally"
   b. Jeff Sifers—"Challenges to DRE testimony"
   c. Ashley Schluck, Traffic Safety Resource Prosecutor, Wyoming—"Standardized Field Sobriety Testing with the Drug Impaired Driver"
   d. Ashley Schluck—"Missing Signs or Symptoms"
V. Sarah Garner—"Refusals after Birchfield"