

Full Court Press: Judicial Perspectives on Impaired Driving



JUDGE ROBERT ANCHONDO, ABA REGION 6 JOL

JUDGE KATE HUFFMAN, ABA NATIONAL JUDICIAL FELLOW

Learning Objectives

After this session you will be able to:

- Determine the impact of dangerous driving, including impaired driving, speeding, seat belt usage, and distracted driving, on tribal communities
- Understand the role of judicial officers in promoting public safety on the roads
- Explain the role of criminal justice stakeholders in informing judicial officers regarding critical facts and plea negotiation considerations in impaired driving cases





CANADA

ATLANTIC OCEAN

PACIFIC OCEAN

Northwest Region

Rocky Mountain Region

Great Plains Region

Midwest Region

Western Region

Southwest Region

Pacific Region

Eastern Region

Southern Plains Region

Alaska Region

MEXICO

GULF OF MEXICO

Region	Director	Deputy Director	Chief of Staff	Administrative Services	Business Services	Customer Service	Finance	Human Resources	Information Technology	Legal	Operations	Public Affairs	Regulatory	Special Services
Alaska
Northwest
Rocky Mountain
Great Plains
Midwest
Western
Southwest
Pacific
Southern Plains
Eastern

Map of the United States showing the ten regions of the Bureau of Indian Affairs. The map is color-coded by region and includes state boundaries and major cities. The Alaska Region is shown in an inset map in the bottom left corner.



All preventable deaths



Identifying the
traffic safety issues
in Indian Country:

What are the
primary concerns?



Did you know?

Drivers impaired by alcohol are more likely to engage in other high-risk behaviors, such as speeding and not wearing seat belts





Dangerous Driving Behaviors

Speeding

Distracted driving

Seat belt use

Impaired driving

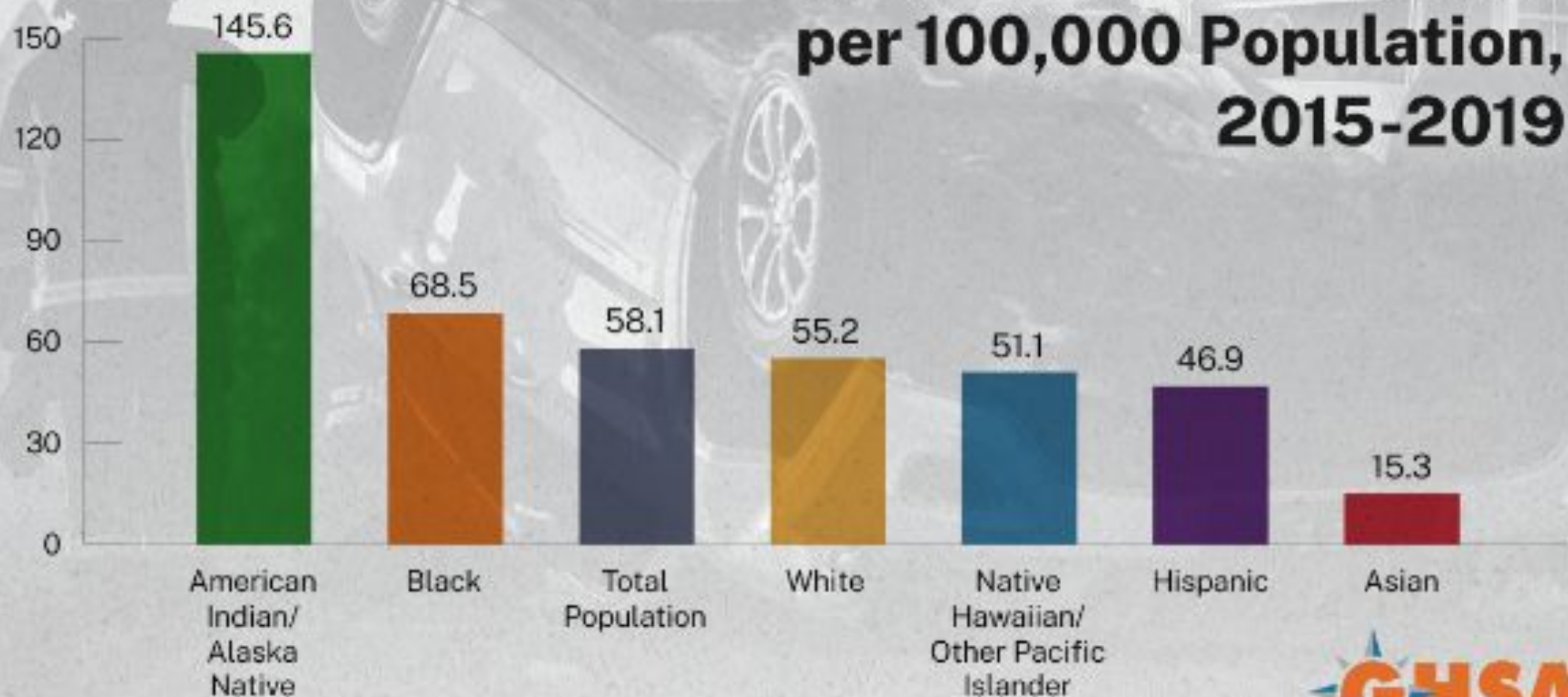


Impaired Driving By the Numbers

- 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



Total U.S. Traffic Deaths per 100,000 Population, 2015-2019



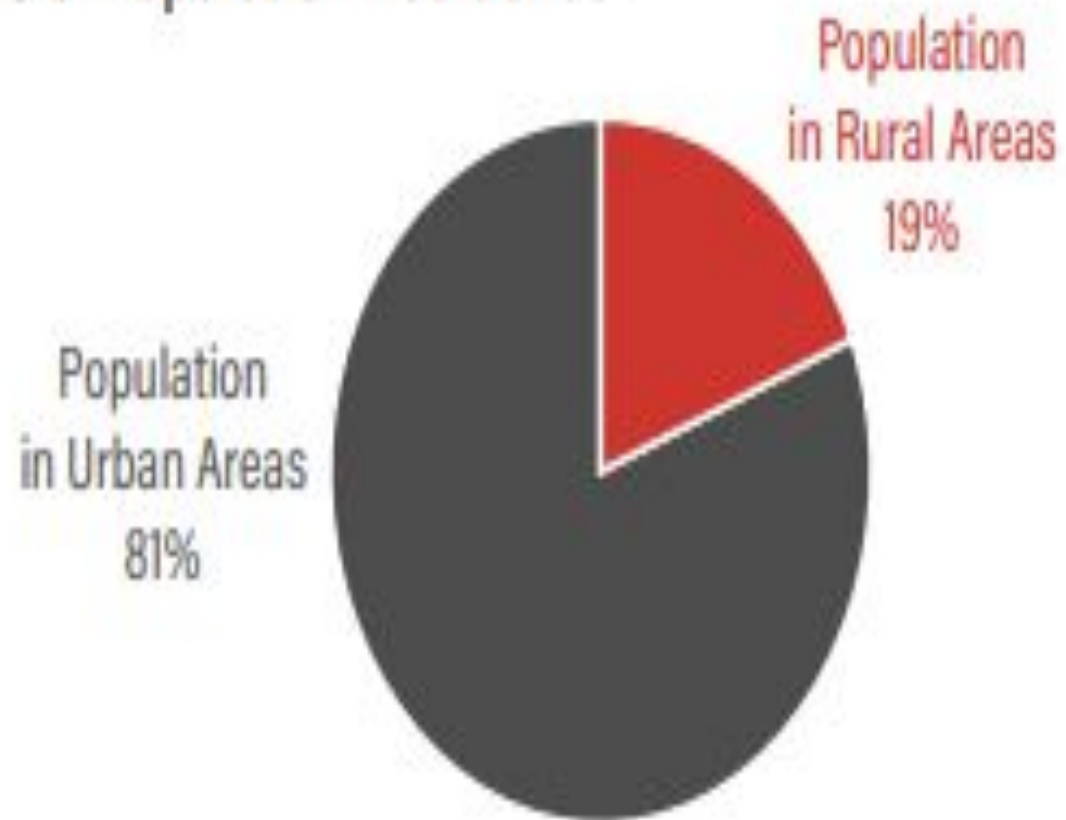
The Numbers Identify the Concerns

- ✓ 65% of AIAN passenger vehicle occupants killed in crashes were unrestrained in 2021
- ✓ AIAN people had the highest proportion of alcohol-impaired driving fatalities at 43% in 2021
- ✓ In 2021 AIAN people had the highest proportion of speed-related traffic fatalities at 33%
- ✓ AIAN people have a significantly higher pedestrian fatality rate than any other race or ethnicity
- ✓ AIAN people had a higher proportion of traffic fatalities in rural rather than urban areas in 2021

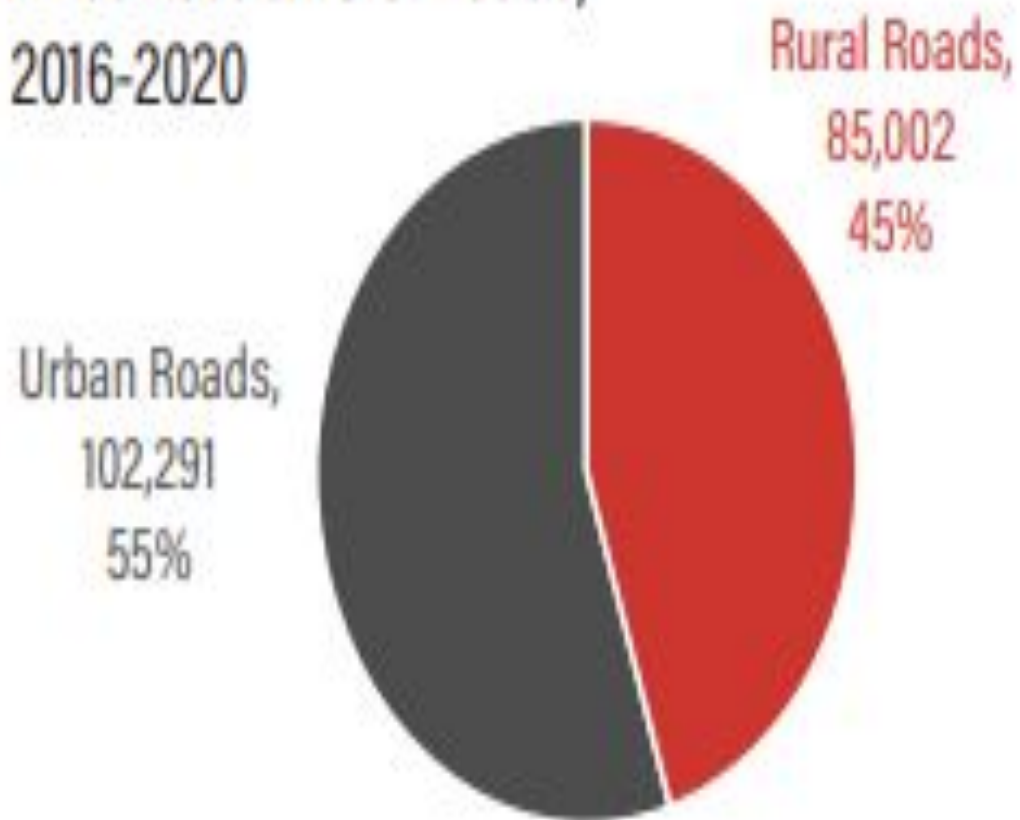
The Danger on the Roads

- ✓ AIAN people have by far the highest traffic fatality rates per mile and per population
- ✓ AIAN people are five times more likely to die walking than white people and close to three times as likely to die in passenger vehicles, on a per-mile basis
- ✓ Almost half of AIAN driver fatalities and over half of pedestrian fatalities resulted from a BAC of .08 or above, the largest percentages across race-ethnicity groups

Where We Live: U.S. Population Residence



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



Rural communities
experience arrests rates
for DUI at 2x the rate of
urban communities

643.7 per 100,000 rural

332.2 per 100,000 urban



Why?

- ✓ Rural nature of the roadways
- ✓ Roadway conditions
- ✓ Limited vehicle ownership
- ✓ Relatively high number of pedestrians
- ✓ Sidewalk conditions/lack of sidewalks



PRESS RELEASE

Fatal Traffic Crash On Menominee Indian Reservation Leads to 12-Year Prison Sentence



What is the judge's goal?

Michigan family killed by apparent drunk driver in wrong-way crash on I-75 in Kentucky

Family was returning from Florida



Abbas family. (City of Dearborn)



DRAPER POLICE OFFICER:
You're on probation right now you got an ankle monitor do we need to call your probation officer.

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



Who influences court decisions in traffic cases and how is the influence asserted?

Drug Impaired Driving

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



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



National
Transportation
Safety Board

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%)



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



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:

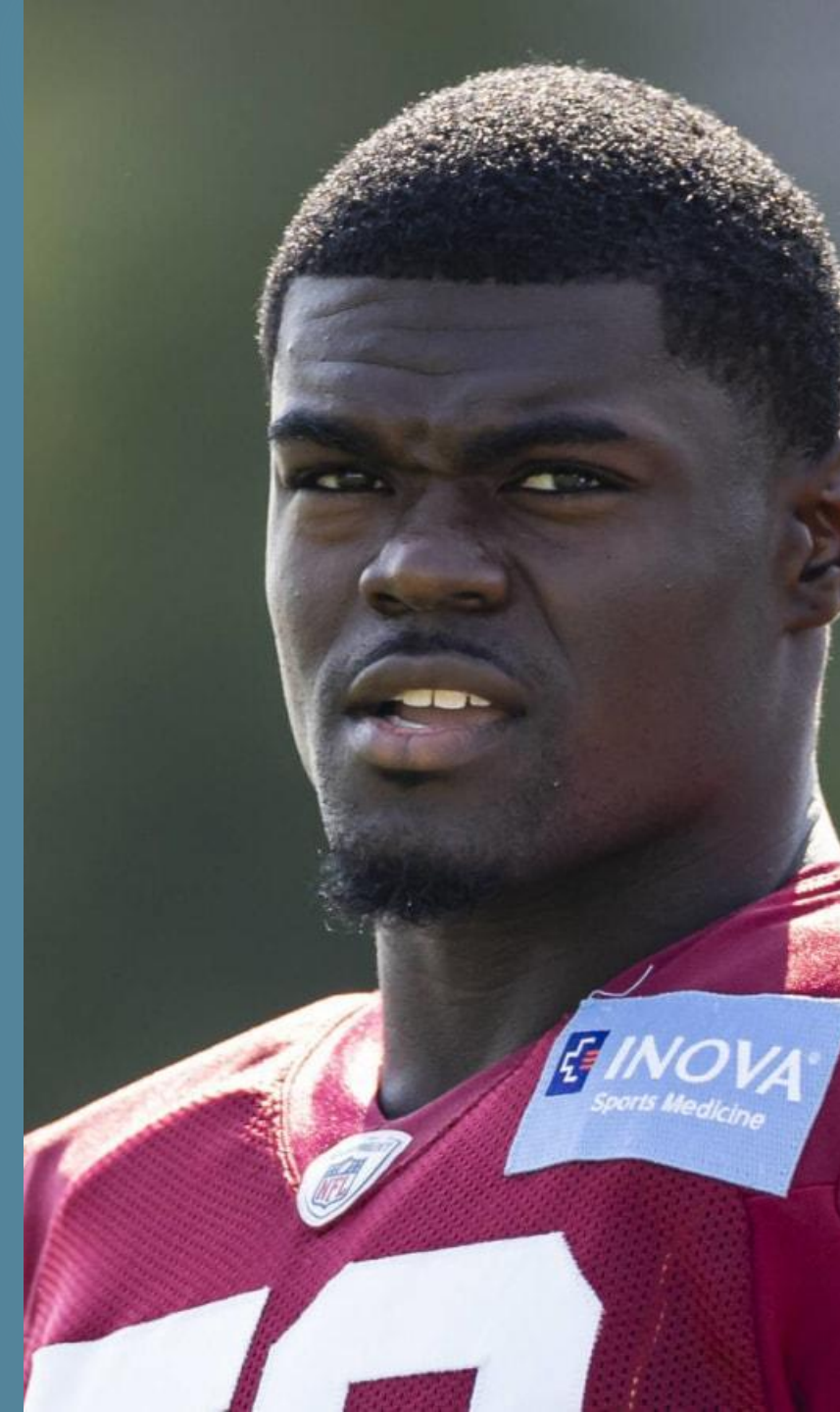
Depression, bipolar disorder, conduct disorder, anxiety, anti-social personality, PTSD

Dangerous Speeding

Washington Commanders linebacker Jamin Davis was charged with reckless driving for driving 114 miles per hour in a 45 mph zone. He had another citation just two months before for driving 84 mph in a 65 mph zone.

The judge assigned to the case rejected two plea deals offered by the State to Davis. The second proposed plea deal would require Davis to serve a minimum of four days in jail with a maximum of eight days; six months mandatory suspended license; supervised probation of 12 months or longer; a maximum fine of \$2,500; and 114 hours of community service, a driving course, and an essay on reckless driving.

The reckless driving conviction is punishable by up to 12 months in jail and a maximum \$2500 fine.



The 2022 Facts About Speeding:

- ✓ Twenty-eight percent of fatal crashes, 12 percent of injury crashes, and 8 percent of property-damage-only crashes were speeding-related
- ✓ There were 12,151 fatalities in speeding-related crashes, representing 29 percent of total traffic fatalities for the year
- ✓ An estimated 300,595 people injured in speed-related traffic crashes
- ✓ Thirty-five percent of male drivers and 21 percent of female drivers in the 15- to 20-yearold 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



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, since technically this is defendant's first DUI conviction and he is attending a 6-week alcohol education program



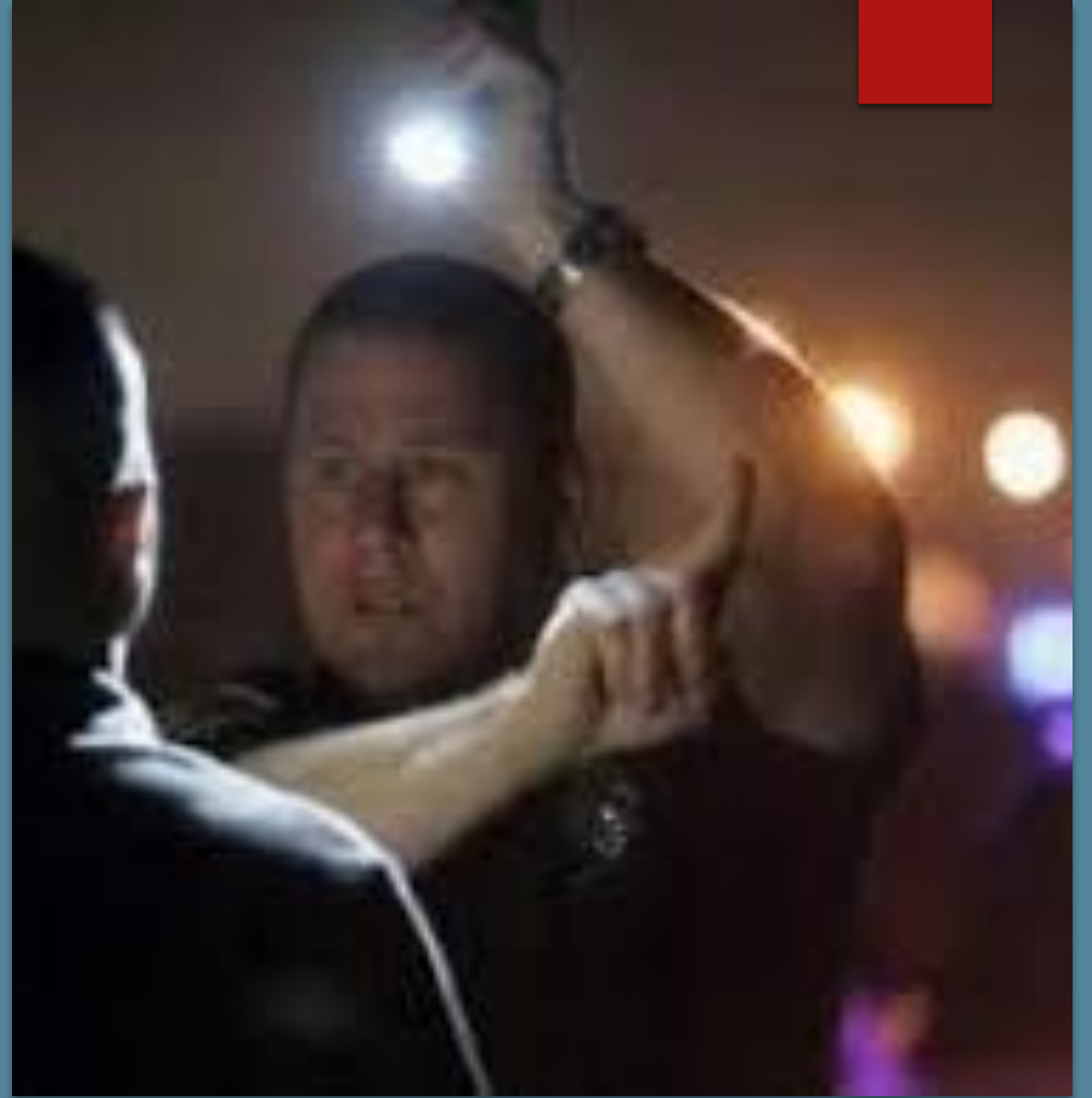
**not so
much**

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

Barriers, Challenges and Obstacles in Traffic Court

- Heavy caseloads - what it takes to manage?
- Plea agreements – what is the basis?
- Incomplete information - what is lacking?
- Lack of system coordination
- Lack of financial resources - how to reach out?
- Inadequate pretrial and/or post-sentence supervision - what happens when they walk out the door?

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



What does the judge want to know?

- 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



What is the role of the tribal community in the case?

Should the Judge Accept the Plea Agreement

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- Defendant has two prior DUI arrests that resulted in reckless driving convictions
- Prosecutor recommends a fine and unsupervised probation, since technically this is defendant's first DUI conviction and he is attending a 6-week alcohol education program
- After requesting additional information from counsel, Judge learns that Defendant was driving 90mph in a 45mph zone when first observed by arresting officer, who also noticed the strong smell of burnt marijuana coming from the vehicle, and in his two prior DUI arrests resulting in reckless driving convictions, Defendant failed to complete a court-ordered assessment for treatment

Did You Know?

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

Bureau of Justice
Statistics



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?

Plea Bargaining Considerations

- ✓ Lack of resources to go to trial
- ✓ Prosecution or Defense seeks a specific outcome
- ✓ Cost of investigators, experts, etc.
- ✓ Prosecutors have too much discretion
- ✓ Plea bargaining can be coercive – consequences of not accepting an offer
- ✓ Prosecutor may reflect a bias in the negotiations
- ✓ Rights may be negatively impacted if exercised
- ✓ Pretrial detention a strong influencing factor

Bureau of Justice Statistics



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

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



Shifting Paradigms

- Increased focus on community supervision and early interventions
- Release based on objective criteria of risk
- Consideration of one's ability to pay
- Minimize unnecessary detention

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

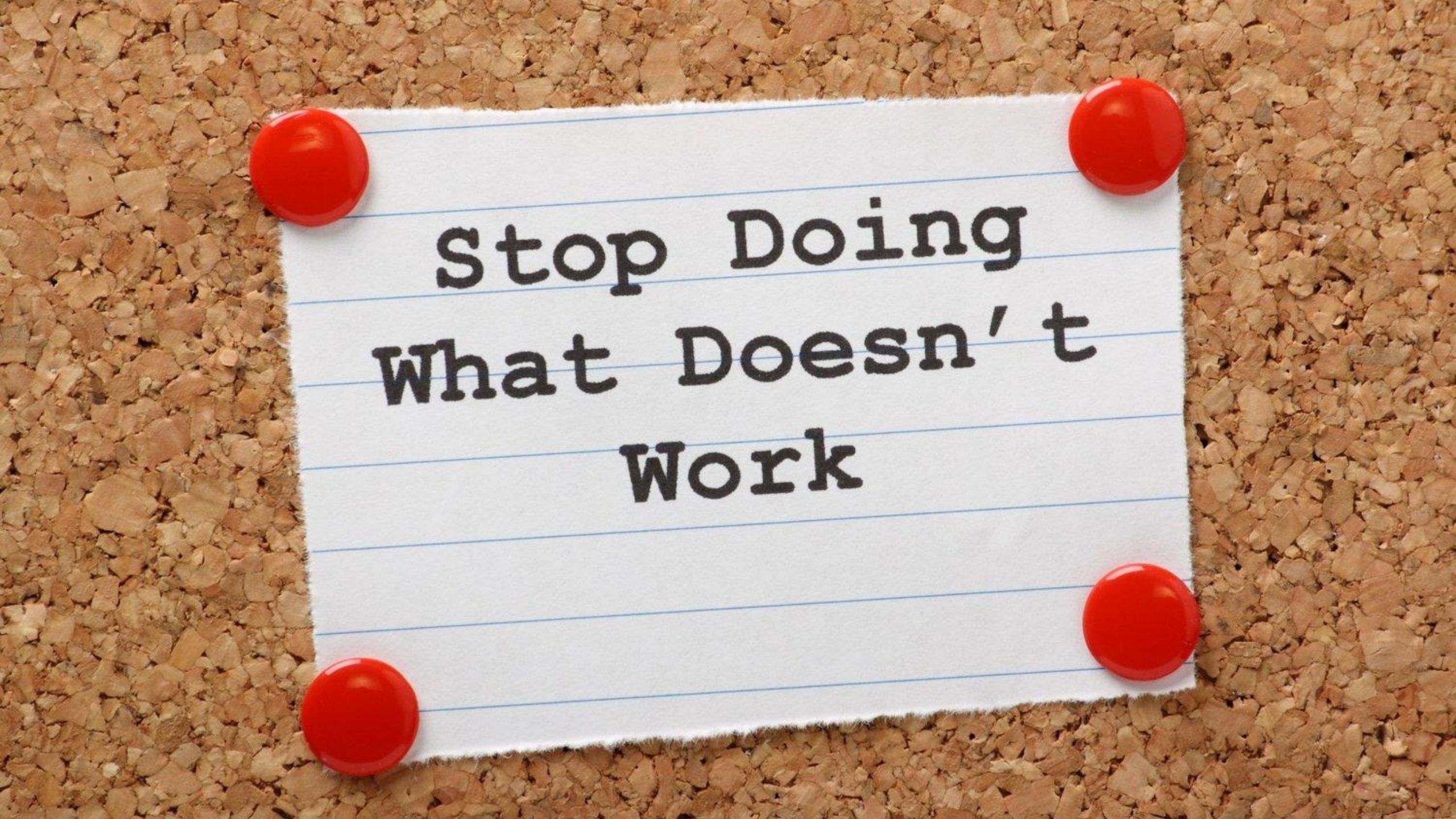
- ✓ Basis for plea bargain
- ✓ Case assessment
- ✓ Prior record, including dismissals, reductions, speeding, distracted driving, seat belt violations, other dangerous driving
- ✓ Why this case, this defendant?
- ✓ Is public safety served by the plea bargain or case disposition?

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



**Stop Doing
What Doesn't
Work**

One size
does NOT fit all



Pre-Trial Release

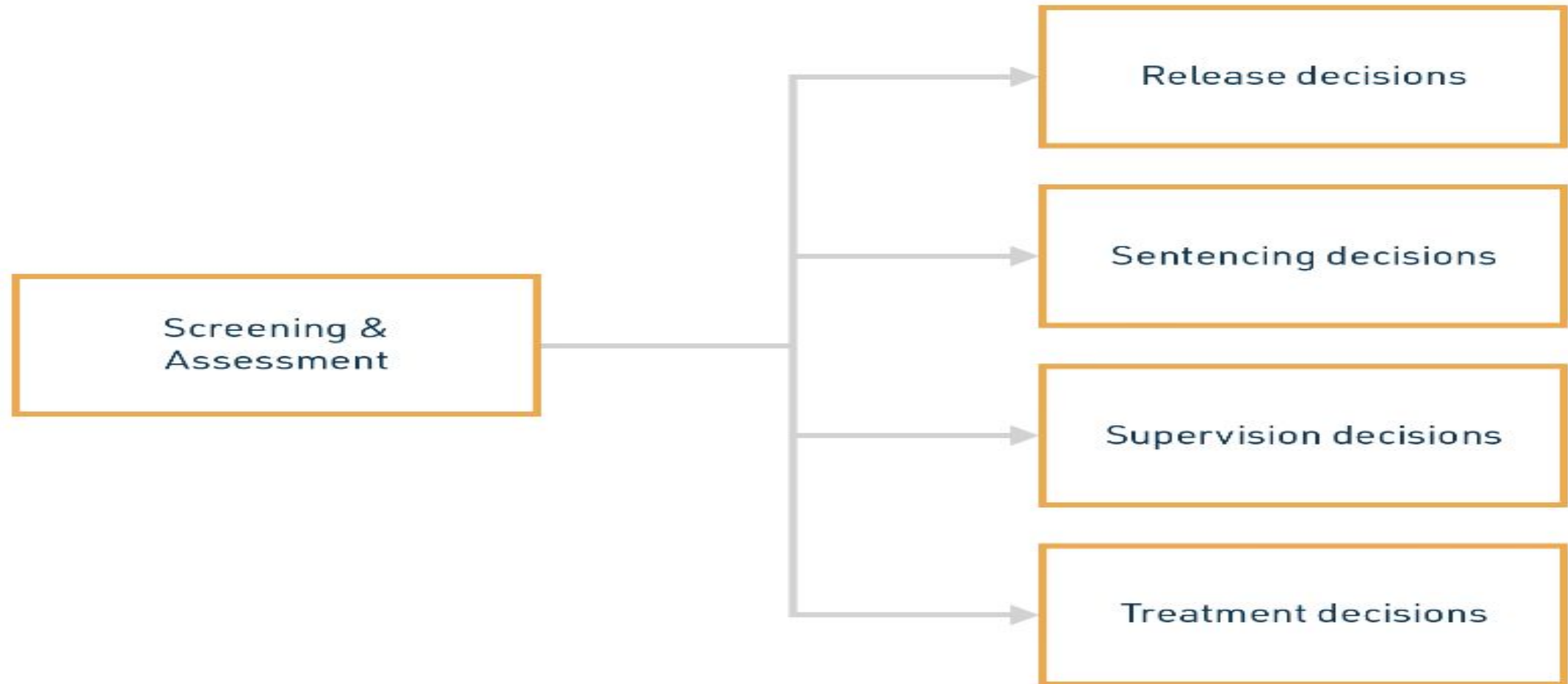
What should the judge do?

- 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

Screening and Assessment



Risk and Need

		Risk	
		HIGH	LOW
Need	HIGH	High Risk High Need	Low Risk High Need
	LOW	High Risk Low Need	Low Risk Low Need



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

Available Technology



Potential Supervision Conditions

Drug, alcohol and/or mental health
assessment/treatment

Progress hearings/court monitoring

Real time alcohol monitoring

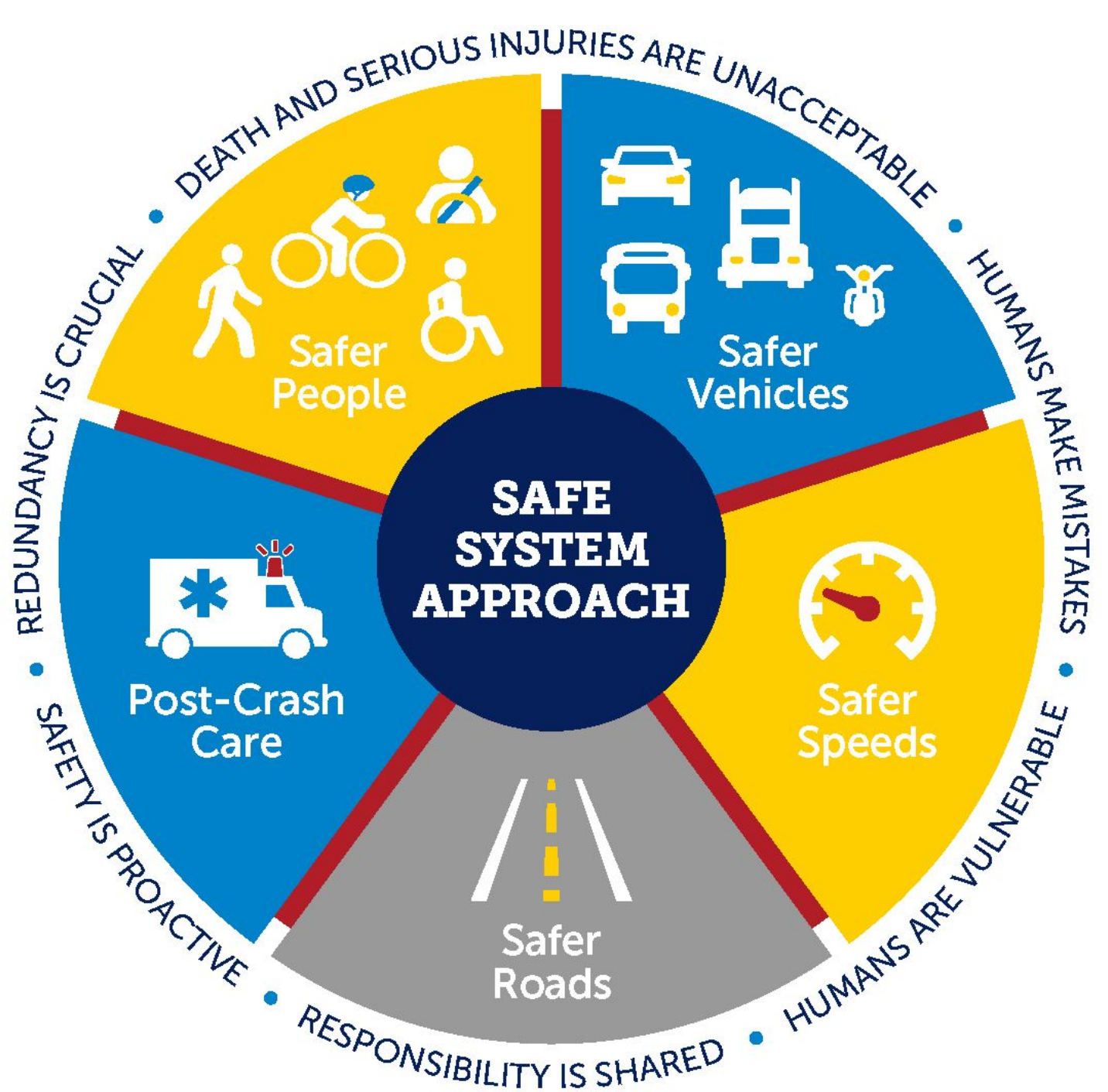
“Old people, places and things”

Healing to Wellness Courts



24/7 Sobriety Systems

Help Us Reach Vision Zero





Contact us at: roanchondo@epcounty.com
ohiojolhuffman@gmail.com

Resources

National Highway Traffic Safety Administration

Speeding – www.nhtsa.gov/risky-driving/speeding

Speeding Visualization – https://icsw.nhtsa.gov/nhtsa/fars/speeding_data_visualization/

Enforcement and Justice Services – www.nhtsa.gov/enforcement-justice-services

Research and Evaluation – www.nhtsa.gov/behavioral-research

Behavioral Safety Research Reports – <https://rosap.nhtl.bts.gov> \FHWA Safety Office,
Speed Management Safety page and links: www.safety.fhwa.dot.gov/speedmgt/

Speed Concepts: Informational Guide –
www.safety.fhwa.dot.gov/speedmgt/ref_mats/fhwasa10001/

Methods and Practices for Setting Speed Limits-
www.safety.fhwa.dot.gov/speedmgt/ref_mats/fhwasa12004/

- *Vehicles*: www.nts.gov/safety/safety-studies/Documents/SS1701.pdf

Resources

AASHTO Highway Safety Manual: www.highwaysafetymanual.org/

AASHTO Strategic Highway Safety Plan, including the NCHRP Report 500 series guides on reducing crashes: www.trb.org/Main/Blurbs/152868.aspx

Centers for Disease Control, Community Speed Reduction and Public Health. Health Resources In Action resources: www.cdc.gov/healthyplaces/healthtopics/transportation/practice.htm Crash Modification Factors Clearinghouse: www.cmfclearinghouse.org/

NCHRP Report 504, Design Speed, Operating Speed, and Posted Speed Practices: https://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_504.pdf

NCHRP Report 622, *Effectiveness of Behavioral Highway Safety Countermeasures*: www.nap.edu/openbook.php?record_id=14195

Transportation Research Board Special Report 254, *Managing Speed: Review of Current Practice for Setting and Enforcing Speed Limits*: <https://onlinepubs.trb.org/onlinepubs/sr/sr254.pdf>

Global Road Safety Partnership, *Speed Management: Road Safety Manual for Decision-makers and Practitioners*: www.who.int/roadsafety/projects/manuals/speed_manual/en/

Transportation Research International Documentation (TRID) database – bibliographic database of transportation-related research: <https://trid.trb.org>

National Transportation Safety Board, *Reducing Speeding-Related Crashes Involving Passenger Vehicles*: www.nts.gov/safety/safety-studies/Documents/SS1701.pdf