

**2013 OHSO FORUM
BREAKOUT SESSIONS
TRACK 2: ADJUDICATION/PROSECUTION**

PANEL PRESENTATIONS

Members:

**Laura Yates, Assistant Municipal Counselor, City of Oklahoma City
Gary Ackley, Assistant District Attorney, Oklahoma County DA's Off.
Patrick Boulden, Bixby City Attorney
Judge Michael Tupper, Special Judge of the Dist. Crt. Cleveland Co.**

Session 1: 1:00 pm – Approximately 24 in attendance, to include monitor, speakers, and facilitator.

Welcome, housekeeping issues, announcements: Sam Harcrow

Patrick Boulden, Bixby City Attorney

- Bixby Municipal Court is "Not of Record"
- Discussed all NHTSA recommendations from perspective of municipal court not of record. (Powerpoint presentation provided)
- State level actions can dramatically affect courts that are "not of record".
- Statutes limit fines and jail time for courts "not of record". (Limited sentencing)
- DUI cases may not receive maximum sentencing due to statutory limitations of courts "not of record".
- If strict policies regarding plea negotiations and deferrals are established by the state consequences as this level could include interference with prosecutor discretion in particular cases which in turn interferes with the adjudication process. (Most prosecutors do not like having their discretion removed).
- Alcoholics Anonymous cannot be required, only suggested, because it is a faith based program.
- There is very little uniformity among courts "not of record".
- Stricter policies can increase cost of prosecution and over burden courts "not of record" with limited resources.

Laura Yates, Assistant Municipal Counselor, City of OKC

-Discussed NHTSA recommendations from perspective of municipal court **OF RECORD**. (Powerpoint presentation provided)

Regarding NHTSA assignment and training recommendations:

- May not be practical to use most experienced prosecutors because they get the Murder trials. (More serious cases).
- Training would be great and would be valuable in assisting even a novice prosecutor to be better prepared for DUI cases.
- Enhanced penalties may be very difficult for most courts due to lack of resources. (Added costs)
- A state task force should not be telling prosecutors who should go to jail, because the prosecutor knows the particulars of the case.
- Filings for DUI drugs are only being used if .08 or more alcohol does not exist, (which is filed as alcohol only), and in the event impairment must be proven by showing enhanced by drug use, (combination filing). However, penalties for drugs may be dramatically different than those for alcohol.
- Most prosecutors would prefer guidance only policies, not strict guidelines which limit options for negotiations.
- Most prosecutors are in agreement that 1st, 2nd, and 3rd, offenses should not be treated the same.
- A better system of record keeping would greatly benefit all courts.
- Record system must provide timely information to be beneficial for aggressively prosecuting offenders.

Gary Ackley, Assistant District Attorney, Oklahoma County

- NHTSA recommendations were discussed. (Powerpoint presentation provided).
- Most District Attorney's are elected and are beholden to their constituency. These elected officials are less likely to follow any sort of "strict rules".
- Although a specific "deterrent" chosen for a specific offender may serve to keep the offender from re-offending, it may not appear to be a benefit to the general public. Prosecutors know their specific cases and what the public may deem a general "deterrent" in terms of strict policies, may be overkill as a specific deterrent in some cases, and not enough in other cases.

Judge Michael Tupper, Special Judge of the District Court in Cleveland County

- General discussion of NHTSA recommendations. No powerpoint or reference documentation.
- Judiciary Recommendations:
 - There is a problem with lack of involvement in the case prior to the plea. Rarely is the judiciary familiar with the facts of the case unless it is part of a jury trial.
 - Courts should be responsible, and be more proactive, in supervision with sentencing.

- There should be a push to focus on assessments. However, the language of assessments is not always easily interpreted.
- There should be improved consistency in sentencing. A DUI should be a DUI no matter what jurisdiction it occurs in.
- There is a lack of tools available to deal with DUI sentencing. Options have not expanded.
- Court has a lack of resources to give appropriate time and attention to DUI cases. Some other case is always more important.
- Judge Tupper advocates specific "DUI Courts", with delineated statutory guidelines. (As we already have "Drug Courts")
- Drug Courts are used for felonies, not misdemeanor DUIs.
- The DUI issue would be easier to manage if there were specified "DUI Courts". This court would have greater ability to supervise offenders, particularly in the short term.

Session 2: 2:45pm – Approximately 18 in attendance with speakers, facilitator, and monitor.

Question and Answer Session

-New law requires municipal courts "not of record" to file 2nd or subsequent offense DUI in District Court. The new law is beneficial and should be helpful to lower courts.

*The new law is beneficial however, not all lower courts are aware and are complying with the law.

-There is still limited information available on OSCN. Not all courts are available.

*Information regarding some arrests, particularly in smaller courts, is vague. Out of state arrests also provide very few details of the arrest. With information unavailable or incomplete, the court must rely on the defendant's statement.

-Implied Consent arrests provide limited information regarding the facts of the arrest in most cases and is not considered a "conviction" for purposes of charging 2nd subsequent offenses.

-To find out if an offender was ever charged, prosecutors must contact the previous prosecutor directly since there is no access to this information. The previous prosecutor may have no memory of the case and it takes time to reference the file.

-Some courts grant continuances as defense attorney's wait for the result of the implied consent hearing. Implied consent appeals sit waiting for the result of the charge in criminal court. It is sometimes beneficial for the defense to extend this process as it tends to work in favor of the offender. Particularly, if the offender is still drinking and driving there remains the possibility of another arrest. (2nd offense)

-Criminal charges in which offenders are allowed to plea "nolo contendere" (no contest), can increase the burden of proof in the implied consent case. Since the arrest has not yet been proven valid, the official first consideration surrounding the events of the arrest, will occur in the implied consent case. No contest is considered a conviction, but since the offender has not admitted guilt, guilt must be proven in the implied consent case. Prosecutors are more likely to negotiate a nolo plea because it is still a conviction, offenders like it because they do not have to admit guilt, much easier to negotiate.

-It was discussed that addicts are individuals that DO NOT want to take responsibility for their actions, thereby the no contest plea continues to allow individuals to deny guilt/responsibility. No contest is used regardless of whether it is a misdemeanor or felony charge.

-Basic agreement of the discussion was that the municipal court in particular, does not agree with NHTSA recommendations.

-The NHTSA recommendation of "strict policies" on plea negotiations and deferrals in DUI cases is vague in meaning without further explanation. Are they recommending guidelines, or do they want to control the course of the prosecutor's negotiations?

-Traffic records are not readily available to some municipal court prosecutors. OLETS and NCIC files are heavily regulated. Without a record, how can a prosecutor effectively negotiate? They have no idea if the offender is being truthful regarding their past, former convictions, and pattern of behavior. Some municipal courts have remedied this situation by monitoring access to records.

-There is a consensus among those involved with adjudication and prosecution that there is a need for a "DREAM DATABASE" of information. A one stop shop.

-Who would put the "Dream Database" together? No obvious recommendation. DPS? DUIs are handled through DPS. OSCN? A central registry is needed. Should a new one be created? Who would provide

oversite? OSBI?

-Future training and better practices should recommend standardized records that are easily interpreted.

-DUIs still remain low in the felony pecking order in most felony dockets. So there are still continuances. A special court like a "DUI Court" might eliminate this issue.