

HIGHWAY TO JUSTICE

Summer 2015

From The ABA and The National Highway Traffic Safety Administration

THE COMPUTERIZED ASSESSMENT AND REFERRAL SYSTEM, (CARS): IDENTIFYING MENTAL HEALTH DISORDERS THAT PLACE A DEFENDANT AT RISK FOR FUTURE IMPAIRED DRIVING

By Hon. Phyllis McMillen

State of Michigan Sixth Circuit Court, Oakland County, MI

Dramatic decreases in impaired driving fatalities over the last four decades has still left us with too many injuries and deaths attributable to impaired driving. Alcohol impaired driving fatalities continue to account for 31 percent of all traffic fatalities in the United States in 2013¹.

As more research is accumulated on the precipitating factors in repeat impaired driving, we are developing a greater understanding of interventions necessary to reduce the likelihood of re-offense. New tools are being developed that allow us to identify our target population, allowing an application of supervision and resources which results in better outcomes i.e. a reduction in impaired driving.² (Marlowe, 2011)

As the judicial system grapples with how to respond to persons charged with impaired driving, it is important for judges and other criminal justice practitioners to understand the benefits of risk assessment and treatment as a means of reducing recidivism. Research now shows that assessing offenders for risks and needs and matching them with appropriate interventions can accomplish this goal and increase public safety. (Bonta 2002; NIDA 2006; Oglaff and Davis 2004)³

When identifying characteristics that are potential indicators of future impaired driving, research has found that neurocognitive deficits can play a role. Executive cognitive function involves the ability to select behavior appropriate to a situation, including the ability to inhibit inappropriate behaviors and to focus on a specific task in spite of distraction. Repeat offenders are likely to possess cognitive impairments including poor impulse control, lack of problem solving skills, perception and memory deficits and reduced ability to change. Ouimet et al. (2007)⁴

Research has also looked for a link between these neurocognitive deficits, psychiatric disorders and DUI offenders. One of the first

studies to assess psychiatric disorders among DUI offenders, Lapham et al. (2001) used a sample of primarily first-time offenders. The results showed that 85% of women and 91% of men met the diagnostic criteria for alcohol dependence or abuse; 32% of the women and 38% of the men had a drug use disorder. For offenders with alcohol use disorders, 50% of women and 33% of men had at least one additional psychiatric disorder, primarily posttraumatic stress disorder or major depression. Other studies have shown that psychiatric disorders tend to decrease the efficacy of substance abuse treatment and increase relapse (Albanese, 2001; Albanese & Shaffer, 2003; Bradizza et al., 2006).

To test the theory that repeat offenders exhibited psychiatric disorders at rates higher than the general population, Schaffer et al., (2007)⁵ set about to measure the prevalence of psychiatric disorders in repeat DUI offenders, using the CIDI Comprehensive International Diagnostic Interview created by the World Health Organization. This tool has been well validated and found to be reliable. The results of the study advance the theory that unrecognized psychiatric disorders limited the effectiveness of treatment interventions with DUI offenders. Their study found that more than 60% of the sample qualified for a diagnosis of a lifetime mental disorder in addition to alcohol-related problems. Almost half of the sample (45%) met criteria for a lifetime diagnosis of a mental disorder that was not substance related. These figures are considerably elevated when compared with the general population for 10 of 12 disorders tested for. In particular they found that repeat offenders had elevated rates of posttraumatic stress disorder, and were more likely than was the general population to have a lifetime diagnosis of conduct disorder or of bipolar disorder. An interaction was also shown between alcohol and anxiety disorders among repeat DUI offenders.

When discussing the treatment implications of their findings, the Schaffer group felt their research outcomes supported the proposition that conventional DUI interventions that focus primarily on education and on punishment are likely to be insufficient to deal with the high level of psychiatric comorbidity among repeat DUI

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We would like to hear from other judges. If you have an article that you would like to share with your colleagues, please feel free to submit it for inclusion in the next edition of *Highway to Justice*.

To submit an article, please send it to the editor, Hon. Earl Penrod penrod26d01@msn.com with a copy to the staff liaison, Cheronne.Mayes@americanbar.org. Please contact Ms. Mayes for editorial guidelines.

The deadline for submission of articles for the Fall issue is September 2.

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offenders. In a variety of clinical settings clients often do not undergo comprehensive screening for psychiatric disorders. An absence of systematic screening tools often leads to inaccurate attempts to estimate the extent of psychiatric disorders, particularly when the staff lacks expertise in identifying the signs and symptoms of mental health issues. Consequently, standardized and automated assessment and diagnosis tools are essential to the widespread adoption of mental health screening for impaired drivers.

The Division on Addiction at Cambridge Health Alliance, a Harvard Medical School Teaching Affiliate, has stepped up to the challenge of creating a mental health screening tool to be used with this offender population. Informed by the aforementioned research, and a concern that clinics providing traditional substance abuse interventions needed an easy to use, standardized and automated tool, this organization, with initial funding from the NIAAA⁶, has developed the Computerized Assessment and Referral System (CARS). The primary purpose of this assessment instrument is to identify mental health and substance use disorders that place a defendant/offender at risk for future offending.

To create the tool, CARS adapted the pre-existing World Health Organization CIDI (discussed above). Shaffer et al. collaborated with one of the founders of the CIDI, Dr. Ron Kessler and his team at the Harvard School of Public Health, to modify the instrument for DUI offenders. The resulting assessment consists of various modules and can provide diagnostic information for up to 15 major DSM-IV Axis I disorders (e.g., depression, bipolar disorder, post-traumatic stress disorder, etc.).

The report generated by CARS at the conclusion of the assessment includes individualized diagnostic information about the mental health disorders for which a person qualifies or is at risk, his or her experience of symptoms, as well as a summary of bio-psycho-social risk factors. The assessment also includes a module specific to DUI behavior and drinking and driving patterns and motivations. The data obtained from the questions in this section are integrated with other risk factors to generate an overall DUI recidivism risk score.

What separates CARS from other assessment instruments is the built-in referral database that offers geographically targeted referrals to treatment interventions that are matched to the assessment findings. CARS is also fully electronic and is available on open source software (i.e., Java, Drools, and MySQL), ensuring that the instrument will be freely available to interested practitioners.

To ensure that the instrument was user-friendly, five agencies were recruited to use the CARS tool for three months. During those three months, users completed online surveys about their experiences with CARS, including the time it took to administer. As a result of the feedback, an enhanced screener module has been created that can be administered in less than a half hour. A self-administered version is also being tested.

Cambridge Health Alliance has now partnered with the Foundation for Advancing Alcohol Responsibility (Responsibility.org) to conduct randomized control trials in two Massachusetts DUI programs. This research will seek to validate both the enhanced screener module and self-administered screener. In addition, it will determine whether CARS can serve as a brief intervention. It is anticipated that results from this validation study will be available by the end of 2015 and that CARS will be available for use in 2016.

For a live demonstration and more information on this very promising tool, you can view an archived National Center for DWI Court (NCDC) webinar at: <https://nadcp.webex.com/nadcp/lsr.php?RCID=3de42f5a001d818ce742cf21691311af>

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- 5 Shaffer, H. J., Nelson, S. E., LaPlante, D. A., LaBrie, R. A., Albanese, M. J., & Caro, G. (2007). The epidemiology of psychiatric disorders among repeat DUI offenders accepting a treatment sentencing option Journal of Consulting and Clinical Psychology, 75(5), 795-804.
- 6 National Institute on Alcohol Abuse and Alcoholism

THE NATIONAL LAW ENFORCEMENT LIAISON PROGRAM

A Partnership Between the Governors Highway Safety Association and the National Highway Traffic Safety Administration

By *Vernon F. Betkey, Jr.*

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Successful crash reduction countermeasures contributing to the **Toward Zero Deaths** (TZD) vision are due in large part to the collaborative efforts of the “Four E’s” (engineering, enforcement, education and emergency medical services). But, there is an additional “E” that plays a critical role in reducing fatalities—**EVERYONE!** No one person, network, or organization can reach the TZD goal alone.

The recent declines in traffic deaths and serious injuries over the past decade demonstrate how high levels of success can be achieved by implementing innovative countermeasures. More than 10,000 lives were saved from 2004 to 2013. The reductions in the number of motor vehicle crash fatalities are a result of several contributing factors supporting the 4E’s. One of the strategies is evidence-based High Visibility Enforcement (HVE) initiatives. HVE continues to be a cornerstone countermeasure for local, state, and national highway safety programs.

An effective resource for rallying law enforcement agencies for HVE initiatives is through the Law Enforcement Liaison (LEL) program at the local, state and federal levels. LELs work closely with State Highway Safety Offices (SHSO) and National Highway Traffic Safety Administration (NHTSA) Regions to provide law enforcement expertise, encourage involvement in traffic safety initiatives, and act as a liaison between the state’s law enforcement agencies and the highway safety community.



There are 222 state LELs covering 46 states, the District of Columbia, Puerto Rico, and the Indian Nation, as well as nine LELs working directly with the NHTSA region offices. (The LEL Directory may be found on NLELP website). The LEL encourages law enforcement officers and leaders to support the enforcement of traffic safety laws, particularly those dealing with impaired driving, occupant protection, distracted driving, and speed management. Additional activities include collaboration with other highway safety partners and stakeholders, and:

- Leading evidence-based efforts to reduce motor vehicle crashes, fatalities, and serious injuries;
- Communicating and coordinating law enforcement highway safety activities in collaboration with the

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State Highway Safety Office and allied highway safety organizations;

- Supporting development and implementation of highway safety plans, programs, and budgets;
- Recruiting law enforcement participation in highway safety activities and programs.

The Governors Highway Safety Association (GHSA) and NHTSA recognized the potential of increased highway safety involvement by law enforcement and joined together to provide additional resources to support LEL programs and traffic law enforcement across the US. The partnership resulted in the creation of the National Law Enforcement Liaison Program (NLELP). Its vision is to enhance support for the LEL network through the implementation of the following activities:

- Actively support state and national traffic safety goals by promoting LEL involvement in local, state, and national traffic safety initiatives;
- Build a stronger national LEL communications network;
- Share proven strategies and best practices for engaging more law enforcement agencies in traffic safety activities;
- Create and support LEL training and guidance workshops to increase the knowledge and skills of LELs;
- Provide technical assistance to LELs, SHSOs, NHTSA Regions, and other traffic safety partners;
- Represent the LEL community at national conferences and on national traffic safety committees;
- Promote the use of new technology to improve data quality, program delivery, and document success; and
- Promote the secondary benefits of traffic safety as a public safety tool deterring and suppressing crime, reducing social harm, and improving quality of life issues in a community through proven business models such as the Data Driven Approaches to Crime and Traffic Safety (DDACTS).

As previously noted, no one person, network, or organization can reach the TZD goal alone. It's an "everyone" project and that is why the LEL network strives to build relationships, partnerships, and friendships that will help contribute to the reduction in crashes, deaths, and associated injuries. The Judicial Outreach Liaison (JOL) network plays a key role in the "everyone" category. LELs and JOLs have a lot to share that can contribute to effective highway safety, and collaboration between the two networks will go a long way toward achieving the zero goals. JOLs have valuable insight to impart to LELs, both

individually and collectively, such as traffic safety from the judge's perspective, what the judicial community expects from an officer's testimony, and the application of the rules of evidence.

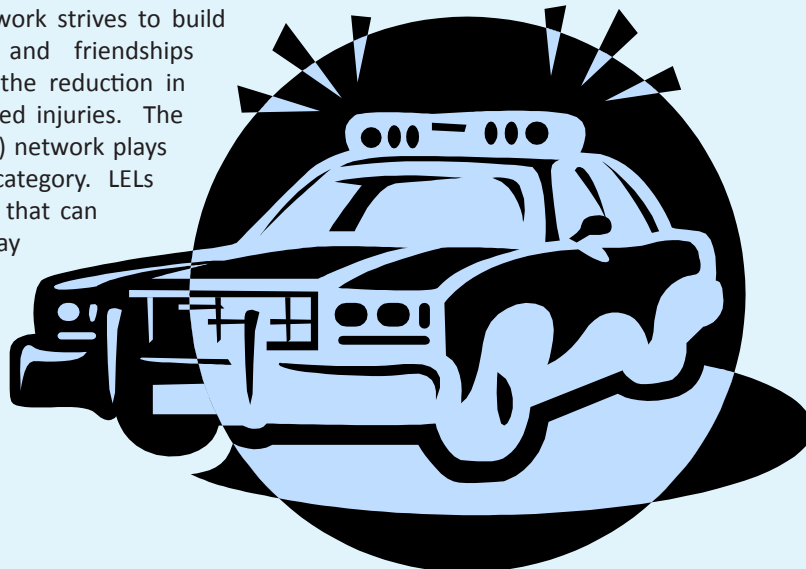
JOLs have provided their expertise to the LEL network on both the state and national level. They have brought their insightful messages to meetings, seminars, conferences, summits, newsletters, and special training sessions. And, they have shared the law enforcement feedback and needs with their colleagues to build a better, stronger, and more effective highway safety network. Having the JOL network available to the LEL for mentoring, training, and advice provides a tremendous asset for strengthening the highway safety program.

The LEL network brings a vast array of police skill and experience to the highway safety arena, and looks to capitalize on those assets through continuous education. It also has the resources to provide the judicial community with background on special programs, law enforcement countermeasures, and evidence based enforcement initiatives.

The NLELP welcomes the opportunity to enhance the LEL – JOL partnership and welcomes the judicial perspective. Let's reach out to each other. ***Together, WE can make a difference!***

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BUILDING CONSENSUS ON ALCOHOL MISUSE AND CRIME

By David Wallace

Chief Executive Officer, National Partnership on Alcohol Misuse and Crime (NPAMC)

Judges, prosecutors, criminal defense attorneys, and law enforcement officers have recognized for years that alcohol misuse is a contributing factor to many of the crimes committed. The vast majority of the public drink responsibly; however, a small percentage of individuals misuse alcohol, commit crimes, and end up in jail. Alcohol misuse is not an excuse for committing a crime, but it is a factor.

This dynamic has been true for years and as a result justice professionals, government agencies, non-profit organizations, and businesses all have ideas on what should be done to stop this cycle. They are all proponents with different perspectives but ultimately similar goals. Because of those similar goals, areas of consensus can be found. That is what the National Partnership for Alcohol Misuse and Crime (NPAMC) is all about, building consensus.

What is NPAMC?

NPAMC is an inclusive public-private partnership committed to identifying, developing, and promoting justice programs that improve public safety, reduce recidivism, and change lives for offenders who misuse alcohol. NPAMC is committed to identifying areas of agreement and promoting the most promising “best practice” solutions for alcohol misuse and crime. This means meeting with judges, prosecutors, defense attorneys, probation officers, corrections agencies, government agencies, private industry, and think tanks and listening. This means building a consensus from what is said.

Consensus Statements

NPAMC brings everyone together and builds consensus on some of the best practices. This consensus is written down and then shared. At times the agreement is on very core ideas, such as: *Alcohol misuse is a significant contributor to crime.* Other times it is action oriented:

Where feasible, the following defendants should be screened for alcohol, drug and mental health issues prior to arraignment using generally accepted tools:

- *Defendants with past histories of alcohol, drug or mental health issues*
- *Defendants arrested for felonies or violent misdemeanors*
- *Defendants under the influence of alcohol and/or other drugs at the time of the alleged offense.*

Some important agreements reached among the stakeholders on alcohol misuse and crime include:

Incarceration alone is unlikely to change the subsequent criminal behavior of offenders who chronically misuse alcohol.

Chronic alcohol misuse can impair or damage the brain’s cognitive and executive functioning. These effects may be reversible with abstinence.

Jail and prison overcrowding have reached a crisis point; we must find viable alternatives.

Offenders with significant alcohol misuse issues should be required to maintain abstinence from alcohol and other drug use during the entire period of their community supervision.

The most effective way to address offenders’ alcohol misuse is through a comprehensive program of sanctions, treatment and accountability.

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Time for Smart Justice

It is a fact of life that we cannot imprison everyone who violates the law. There is no question that some individuals must be incarcerated; they must be punished, and we must be protected from them. But there are others where incarceration alone is not the answer. It is not cost effective and even more important, especially for the addicted individuals, incarceration may not change their behavior. For decades, and even centuries, we have been tough on crime. Now it is time to be smart on crime. It is time for *Smart Justice*.¹

Smart Justice recognizes that public safety is the foremost priority and victims should be treated with respect and deserve a just resolution of their case. Smart Justice also means that offenders must be held accountable for their actions. However, that does not necessarily mean incarceration. It means that we need to use the whole range of sanctions in appropriate cases, including probation, community corrections and parole/conditional release.

Criminogenic Risks and Clinical Needs

Another consensus among the stakeholders with NPAMC declared that:

Offenders who screen positive for alcohol, drug or mental health issues should be formally assessed for both clinical needs and criminogenic risk factors prior to sentencing.

Clinical needs include alcohol and other drug use, abuse and dependence, mental health problems, and functional impairments (like inability to maintain employment or relationships).

Criminogenic risk factors include risk of dangerousness, risk of re-offending, risk of violating conditions of supervision, and risk for failure in standard treatment interventions.

Every judge understands that with more information about an offender's circumstances, a sentence can be better tailored to the person to ensure he or she doesn't repeat the offense. Assessing a person's criminogenic needs and prognostic risks provides that information. That knowledge can then provide guidance on the sentence. Using those two categories a matrix can be developed that can provide important information on sentencing.² A person that is high risk and high needs should not be sentenced the same as a person who is low risk and low need.

Responding to Impaired Driving

One of the most recognized crimes involving alcohol misuse is impaired driving. There is no question that all DUI offenders are dangerous while driving impaired. Annually thousands of people are killed and tens of thousands are injured because someone got behind the steering wheel of a car after drinking too much and then drove. That behavior puts every one of us at risk of being injured or killed. Those individuals must be held accountable for their actions. The real question is how do we hold them accountable and also change their behavior? Unfortunately, people differ on the reasons for drinking and driving. Is the offender a social drinker coming from a wedding? Is the offender someone who abuses alcohol or is the person alcohol dependent? Those three situations require three different responses. People differ on the underlying reasons for committing the crime, thus the responses must also differ.

Some programs that have shown promise in dealing with non-violent offenders with alcohol, drug and mental health issues include: DWI Courts, 24/7 Sobriety Project, and HOPE (Hawaii's Opportunity Probation with Enforcement). But these programs are

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UPCOMING PROGRAMS OF INTEREST:

August

Back to School Safety Month
“Walk, Bike, and Ride to School”
www.trafficsafetymarketing.gov



August 9 - September 7

National Enforcement Crackdown.
“Drive Sober or Get Pulled Over”
www.trafficsafetymarketing.gov



September 13- September 19

Child Passenger Safety Week
National Seat Check Saturday: September 19, 2015



Every 34 seconds one child under age 13 is involved in a crash. Many times deaths and injuries can be prevented by proper use of car seats, boosters, and seat belts.

Use this toolkit to download campaign materials and get information on how to generate awareness about child car safety in your community: www.safercar.gov/parents/CarSeats/Car-Seat-Safety.htm

December 16 - January 2

National “Drive Sober or Get Pulled Over”
Impaired Driving Crackdown
www.trafficsafetymarketing.gov



not for everyone. Tools that have been successful in reducing impaired driving and also monitoring offenders include ignition interlock devices, continuous transdermal alcohol monitoring, and breath testing technology that can be used at home or work. Each tool has its benefits and its drawbacks.

One Size Does Not Fit All

Impaired driving, like so many societal issues, is complicated. Tremendous strides have been made in reducing its deadly impact; societal attitudes have changed, laws have been strengthened, law enforcement officers are making the arrests. We have been tough on a deadly crime, but still it continues. We are not being smart. The “one-size fits all” type of sentence does not work on this complicated issue. Judges must take advantage of the new research, learn about each offender’s criminogenic needs and prognostic risks and then fashion a sentence that holds each offender accountable and changes that person’s behavior.

Providing an individualized sentence can be a judge’s greatest blessing or biggest curse. If the sentence is appropriate, the judge may never see that person in a courtroom again. On the other hand, fail to provide a sentence that changes behavior and society is put at risk. The more knowledge a judge has about the range of tools and programs available, and the criminogenic needs and prognostic risks of the offender at time of sentencing, the greater the opportunity for a successful sentence and ultimately the possibility of making our roads and highways safer.

- 1 See “S. Talpins, J. Chisolm, D. LaBahn, K. Sabet, M. Dunagan, & E. Holmes, “Smart Justice: A New Paradigm for Dealing with Offenders.” National Partnership on Alcohol Misuse and Crime. It can be obtained at: <http://www.alcoholandcrime.org/the-voice/issues/dec12/SmartJustice-TheVoice-DEC2012.pdf>
- 2 For more information on appropriate sentences based on risk and needs of offenders, see: Marlowe, D. B. (2009). Evidence-based sentencing for drug offenders: An analysis of prognostic risks and criminogenic needs. *Chapman Journal of Criminal Justice*, 1, 167–201. See also: Marlow, D. B. (Feb, 2012) Alternative Tracks in Adult Drug Courts: Matching Your Program to the Needs of Your Clients. *Drug Court Practitioner Fact Sheet*, National Drug Court Institute. It can be found at: <http://www.ndci.org/sites/default/files/nadcp/AlternativeTracksInAdultDrugCourts.pdf>

DON'T FORGET:

Valuable resources can be found at



National Center for State Courts
<http://www.ncsc.org/>



THE NATIONAL
JUDICIAL COLLEGE

National Judicial College
<http://www.judges.org/index.html>

UPCOMING NATIONAL JUDICIAL COLLEGE COURSES

Drugs in America: What Every Judge Needs to Know. August 25-27, 2015. Reno, NV:

This course will provide an in-depth analysis on the science behind drug addiction, and will offer practical solutions for the judge to manage these types of cases. The course will start with an introductory session on basic brain chemistry, and then will move to a thorough analysis of the physiological and psychological effects of specific categories of drugs. In addition, the course will provide practical skills in order to determine which type of drug(s), if any, a user might be under the influence of, and will offer different types of treatment options. The course will address several special populations, such as juveniles, those with co-occurring disorders, and veterans, and will provide examples of effective management and sentencing strategies for each group. For more information, please visit: <http://www.judges.org/drugs-in-america-today-what-every-judge-needs-to-know-1508/>

Scholarships available: A limited number of scholarships are available through generous funding from the National Highway Traffic Safety Administration. Please contact Rebecca Bluemer at Bluemer@judges.org for more information.

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Impaired Driving Case Essentials. October 26-29, 2015. Reno, NV:

This course is designed to provide judges with an overview of the impaired driving issue, and will provide insight into several pertinent areas, such as impairment detection methods, the pharmacological effects of drugs and alcohol on the human body, and effective sentencing methods. After completing this course, you will be able to analyze circumstances providing legal bases for stops, searches and seizures, and arrests; and will be able to analyze the admissibility of testimonial and physical evidence. In addition, you will be able to describe the principles of pharmacology in order to effectively evaluate expert testimony. The course will also include a trip to a local AA (Alcoholics Anonymous) meeting, in order to familiarize the judge with the inner-workings of this often-ordered part of a sentence. Finally, the course will conclude with several discussions on evidence-based sentencing practices, and tips on how to most effectively manage impaired driving cases.

Scholarships available: Please contact Rebecca Bluemer at Bluemer@judges.org for more information