

**Testimony of
Honorable Michael R. Fields
Presiding Judge
Harris County Criminal Court of Law #14**

Good morning Chairman Lautenberg, Ranking Member Vitter and other members of the Subcommittee. Thank you for inviting me to testify before you today on the issue of drunk driving prevention. It is an honor to be here.

I want to thank the United States Senate for including state incentives for judicial education efforts and DWI courts in the 2005 SAFETEA-LU bill. I also want to commend your commitment to fully fund U.S. Department of Justice efforts to expand DWI courts across the nation. Your Congressional leadership will foster the development and adoption of programs that show great promise in addressing this complex issue.

Each year more than 13,000 people in this country are killed in alcohol-related traffic crashes involving a driver or motorcycle operator with an illegal blood alcohol concentration (BAC) of .08 or higher. The majority of these deaths are caused by hardcore drunk drivers, those who drive at high BAC levels (.15 and above) and repeat offenders. Over the last 10 years, progress in reducing alcohol-related traffic fatalities has generally remained unchanged and the percentage of fatalities involving hardcore drunk drivers has not decreased.

The judiciary plays a pivotal role in the effort to reduce drunk driving. Of all types of criminal cases, drunk driving cases are among the most complicated in terms of legal and evidentiary issues, and hardcore drunk driving cases are often especially challenging. Judges need judicial discretion in order to effectively deal with these offenders who vary greatly in their response to specific deterrent efforts. In order to adequately address the individual needs of drunk driving suspects and convicted offenders, judges require greater flexibility in sentencing options. This is especially true as it concerns the hardcore offenders. Research has shown that alternative sentencing methods, tailored to each offender, such as staggered sentencing, the imposition of ignition interlock devices as well as other forms of technology geared at stopping the addictive behavior commonly associated with hard core drunk drivers can have a profound effect on an offender's ability to avoid re-offending. In contrast, drunk driving sentences that do not take past criminal history and habits into consideration may actually contribute to recidivism. The judicial system can produce a significant social impact with a thoughtful, individualized combination of sanctions that force a hardcore drunk driver to change his or her behavior or face additional consequences. As important as judicial discretion and sentencing alternatives are, they alone will not change the landscape in the field of hardcore drunk driving. Judges must "take the reigns" so to speak, and adopt a greater leadership role in the effort to combat hardcore drunk driving.

For the last four years I have been working with organizations such as the National Association of State Judicial Educators, The Century Council as well as judges and

judicial educators from across the Nation on an exciting judicial education project. To date, more than 4,000 judges in nearly two-thirds of the United States have received this invaluable leadership training and the companion *Hardcore Drunk Driver Judicial Resource Guide*. However, there's still more to do. Educating judges on the issues surrounding hardcore drunk driving as well as teaching strategies to effectively reduce all drunk driving, is critical to stemming the tide of drunk driving deaths. The *Hardcore Drunk Driver Judicial Guide's* goal is to educate judges on the need for comprehensive sentencing that not only punishes the criminal behavior of driving while intoxicated but also changes the addictive behavior associated with drunk driving by rehabilitating offenders, thus reducing recidivism rates.

From the moment a person who research suggests may be a hardcore drunk driver first appears before a Judge or Magistrate to the time of final conviction and sentencing, the criminal justice system must immediately begin to assess and address the reason(s) for the offender's behavior and work to reduce future occurrences. Unfortunately, at times inadequate funding and resources, a lack of judicial leadership or other breakdowns in the system thwart that opportunity. That is why, in Harris County, we strive to avoid such system failures by utilizing efficient docketing of cases, coupled with the logical use of both technology and treatment in an effort to stop drunk driving. Evidence, both anecdotal and real, suggests that the sooner a person identified as a hardcore drunk driver begins the process of rehabilitation, the greater the likelihood that they will not re-offend in the future.

As a result of my judicial training experience coupled with my own personal experiences, I believe the following strategies are effective as it relates to changing an offender's behavior and reducing recidivism:

Increased resources for judicial training and for developing effective judicial strategies such as DWI Courts, DWI tracking systems, supervised probation and treatment programs that increase sentence compliance;

Legislative recognition that high BAC levels of .15 percent and above are an indicator of a hardcore drunk driver. (The fatality risk posed by drivers at .15 BAC levels is more than 300 times that of a sober driver. Currently, these drivers are involved in 58 percent of all alcohol-related traffic fatalities);

Greater compliance monitoring and increased penalty options for non-compliant offenders (Studies show that hardcore drunk drivers often fail to comply with their sentences because they know it is unlikely they will be caught, making the conviction meaningless and increasing recidivism);

Utilization of pre-trial supervision programs for repeat offenders and first offenders who identify as potential hardcore drunk drivers so they can obtain counseling, treatment and monitoring as soon as possible following a DWI arrest. (A long-term analysis of Wisconsin's pretrial intervention program shows participants were less likely to be re-arrested for drunk driving);

Employment of pre-sentence investigations or interviews with drunk driving offenders in order to track and review the offender's record, any previous sanctions imposed, and compliance history (This will further enable judges to choose sanctions that will help protect the public while punishing and rehabilitating the offender);

Mandate an alcohol assessment for all hardcore offenders so that alcohol addiction can be identified and appropriate treatment and aftercare can be administered. (While sanctions that merely punish drunk-driving offenders can serve as necessary and useful tools, they are meaningless unless accompanied by rehabilitation efforts that deal with long-term lifestyle changes. Otherwise, recidivism will always be a looming issue);

Utilize intensive monitoring, supervision and probation during the drunk driving offender's rehabilitation program to increase the chances of sentence completion (This is another promising strategy shown to reduce drunk driving);

Consider staggered sentencing with intensive probation. (This concept is being implemented in Minnesota and staggers the repeat offender's jail sentence into three periods with probation between each period. Offenders serve the first period of incarceration but the remaining periods can be suspended if the offender succeeds in meeting rehabilitation criteria. A 2003 preliminary analysis by the Minnesota House of Representatives found a 50 percent reduction in DWI recidivism through this program);

Judicial intervention in the plea bargaining process so as to insure effective sentencing of drunk driving offenders;

Restrict diversion programs in order to prevent repeat offenders from being mistakenly identified as first offenders.

Increase measures to reduce failures to appear at hearings. (Criminal defendants should not be allowed to flee the jurisdiction of the Courts without appropriate repercussions.)

Preventing convicted drunk drivers from re-offending through the use of vehicle sanctions such as impoundment, immobilization and ignition interlocks while they are serving probation. Vehicle sanctions should be applied in tandem with alcohol assessment and treatment as required. Otherwise, the offender will likely resume his or her drunk driving behavior once the vehicle sanction is removed. Ideally, the judge should determine the amount of time a vehicle sanction remains in place based on the offender's progress in alcohol education or treatment.

Use of home confinement with electronic monitoring in tandem with other interventions such as treatment as an alternative to jail. (Numerous studies have found home confinement to be effective in reducing DWI recidivism);

Utilize dedicated DWI detention facilities that combine confinement with supervised alcohol treatment services. (In Suffolk County, New York repeat DWI offenders are

allowed to choose between 2-3 years in the state penitentiary or six months in the County DWI jail followed by a five year intensive probation program. If they violate the terms of their sentence or probation, they must return to the state penitentiary to serve their full sentence);

In conclusion, drunk driving -- particularly hardcore drunk driving -- is a very complex problem that requires comprehensive solutions. A series of mutually reinforcing interventions tailored to individual offenders will undoubtedly lead to behavioral change and reduce drunk driving recidivism. Focusing on the complexities and challenges that exist in the judicial system with regard to drunk driving should be a top priority. Many times, these challenges cannot solely be met through the passage of state legislation. It is essential that Federal and state laws aimed at reducing drunk driving carefully avoid prescriptive sanctions that limit judges from considering individual offender's needs.

Understanding the judicial system, increasing its resources and focusing on improvements in each state and locality are important steps in reducing drunk driving. In addition, understanding each DWI offender and building a set of individualized sanctions will rehabilitate offenders and reduce recidivism. In order to significantly impact the hardcore drunk driving problem, these actions are essential. In recent years, millions of Federal dollars have been allocated to highly visible enforcement efforts to identify suspected drunk drivers on our roads and several thousand laws have been passed to sanction convicted offenders, yet the drunk driving problem has remained largely unchanged.

By expanding our focus to incorporate effective sentencing strategies, increased Judicial education efforts along with appropriate judicial leadership and discretion drunk driving and its related fatalities will be dramatically reduced. Thank you.