

A Prevailing Problem of Pretrial Sentencing of DUI offenders:

Impact on Health & Rehabilitation

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The lower court, as the conduit for judicial engagement in criminal offenses, is tasked with the day to day responsibility of balancing fair and impartial court outcomes with individual system decision-making; while weighing the independent needs of offenders, such as with Driving Under the Influence (DUI) offenders, in the pretrial phase of adjudication. Presently, within the Justice of the Peace Court, DUI offenders present to the Court in the county of jurisdiction by local police agencies and endure a hearing of the initial presentment of charges, prior to the setting of bail. Unfortunately, in the pretrial phase, mechanisms that potentially affect the sociological and mental health of DUI offenders is often a road untraveled. This speaks to the notion of necessary prison reform and perhaps the need to introduce evidenced-based sentencing as a pretrial alternative. Based on statistics collectively provided by the National Institute of Justice (1984) and Carson and Sabol (2012), between 1980 and 2011 the national incarceration rate has increased 397%.¹ Absent the obvious reasons for incarceration, there are many factors that contribute to the colossal increase of incarcerated individuals, but according to Brinkley-Rubenstein, they are challenging to identify. This commentary will focus on DUI offenders and how the pretrial sentencing process potentially impacts health.

Newly written and adopted prison reform in Delaware has birthed a framework for rendering bail decisions for most criminal offenses, including DUI charges. The matrix utilized, *The DELPAT (Delaware Pretrial Assessment Tool)* is a guideline tool used to set bail based on history of failure to appear for court and expected future recidivism. Use of the bail decision model is intended to reduce the “unnecessary pretrial incarceration of defendants who do not have sufficient means to pay money bail”. The model further “reduces potential loss of employment, the pressure to plead guilty, the economic toll on non-affluent defendants and their families, and other substantial harm that results from excessive use of money bail” (Chief Justice C. Seitz on Bail Reform Act - adopted by DE General Assembly on the 13th of December 2018).² Public safety remains a weighted factor.

Often, DUI offenders are ordered to pay a secured money bail, which means detainment within a correctional institution in the absence of posting bail for release. In many cases, pretrial incarceration causes a snowball effect. The DUI offender will experience loss of employment and pay, which can create a potential hardship for the offender’s family, in addition to them bearing future court costs. Using a heuristic lens, the economic position of the offender is potentially disturbed, perpetuating a downward spiral in their mental health status, and eventually triggering relapses of overindulgence and/or irresponsible consumption of alcohol, while awaiting an arraignment or preliminary hearing. The likelihood of DUI offenders living with psychosocial issues and co-occurring disorders that exacerbate use is not uncommon and is particularly prevalent amongst military veteran offenders. The State of Delaware houses the first statewide veterans’ treatment program in the country. The program firmly stands on the following premise:

“Stressful combat duty in Iraq and Afghanistan do not necessarily end for veterans after they return home. Many return with post-traumatic stress syndrome or other mental health issues. In addition, there may be drug or alcohol abuse caused or exacerbated by their military service. Now home, they may have difficulty with readjustment to civilian life and become involved in criminal activity. The U.S. Department of Justice estimates that approximately 10% of adults arrested have served in the military”.³

Presently in the lower court, the judicial system inherently overlooks the causally related factors impacting recidivism for DUI offenders. The responsibility of the Magistrate Judge is to fairly and impartially make pretrial decisions in the interest of public safety, and to minimize the risk of re-offending. The root cause of the addiction is not addressed at this level and substance abuse interventions are not imposed during pretrial, unless ‘clear and convincing’ evidence of the need for treatment/intervention is a valid claim proffered by the sitting judge. The prison walls, while unmoved in expansion, are forced to house non-convicted offenders awaiting adjudication, substantially adding weight to the systemic issue of overcrowded prisons as described by Brinkley-Rubenstein.¹

According to Brinkley-Rubenstein’s article “Incarceration as a catalyst for worsening health”, research over time demonstrates the seismic increase in federal prisons due to stricter and mandatory sentencing for drug offenders compared to a rise in criminal offenses committed.^{4,5} In other words, an increase in the number of federal prisons is not tied to an increase in criminal behavior; rather, it is more directly tied to changes in sentencing guidelines. Often, following adjudication of DUI cases in the higher court, sentence orders might include treatment, such as in-prison programs like *Reflections*, to be completed during the sentence term. The *Reflections* program is a direct result of 2011 legislation, developed to strengthen consequences of DUI entanglement. At its core, the program fosters the belief that DUI offenders should realize that responsible use of alcohol trumps driving a vehicle under the influence. Further, participants are forced to face individual personal stimuli or factors that affect overindulgence, such as existing mental health issues.⁶ What remains problematic and counterproductive is that, depending on staffing and space, inmates are waitlisted indefinitely, and possibly untreated prior to a release date. Unsurprisingly, the mental health issue(s) is simply not addressed. This ultimately decreases the likelihood of successful community reintegration for the DUI offender.

The construct of the pretrial sentencing phase is critical to tangible court outcomes and offender success. A prevailing problem that undermines sound judicial decision-making is the element that causes systemic contradictions...implicit bias. When use of boiler plate orders for secured bail are made in DUI cases, without viable pretrial possibilities for intervention and due to predisposition of DUI offenders, the system overtly crafts a re-cycle of systemic bias. Shaking a finger at “the deviant,” metaphorically speaking, is for naught, if the deviant behavior is not causally and effectively addressed. Overall, non-specialty court judges reasonably would not be armed with the technical knowledge to evaluate addiction, relapses, and appropriate intervention, as would other specialty court settings. A possible solution to this problem is DUI Court, a form of Community Court.

Community courts or problem-solving courts around the country are court venues driven to address “quality of life or nuisance cases, and to take a more proactive approach to public

safety.”⁷ Problem-solving courts further seek to address the underlying problems of criminal offenses and deviant behavior, by casting a net to involve community stakeholders, public health officials, law enforcement, social service agencies, and faith-based organizations to realize offender success and reduce recidivism. Shaping of this court concept through funding and community/stakeholder involvement is necessary to advance transformation of court outcomes for offenders with underlying issues that attribute to criminal behavior. The subjective thought behind the creation of this DUI Court model is to form a problem-solving court, to handle and manage DUI cases at the pretrial sentencing phase, and to provide intervention upon arrest rather than immediate imposition of money bail/non-money bail and detention in a correctional facility. The overall intent of the DUI Court as described by the California Judicial Branch website is “to provide individualized treatment and supervision to defendants with repeat DUI or DWI charges.”⁸ DUI courts are designed *to* provide an alternative to a traditional method of incarceration through a system of supervision, accountability, and rehabilitative treatment.

Studies on incarceration and health show incongruent results of rehabilitation caused by the stress prison culture, environment, and/or conditions offer. DUI-related incarceration is, formidably, a catalyst to decline in health. In conjunction, adding court-ordered treatment to the pallet of an existing chaotic penal structure, coupled with existing issues of offender mental health conditions, such as PTSD or anxiety, is highly problematic; and offering zero pretrial intervention to a DUI offender, who may lose basic life necessities due to incarceration and further intensify symptoms of his or her addiction and may possibly be subject to homelessness upon release, for example, is equally questionable. The prison system, in many cases, is not an institution of rehabilitation, but an agent of socialization that precipitates further dysfunction (e.g. when an inmate is ordered in-prison intervention, and upon completion of a sentence, has not received treatment). The result upon release and reintegration is not rehabilitation, but either an existing thirst for what is familiar or fear of reincarceration; perhaps unaddressed psychosocial issues, untreated physical conditions, and/or newly developed physical health problems, socially ineptness, and diminished financial health.

Amidst the opioid epidemic, alcoholism and drug addiction are pervasive problems in the U.S. The prison facilities are overwhelmingly crowded with offenders of every kind, including felony DUI offenders serving mandatory sentences, and DUI offenders serving pretrial sentences because they are not equipped financially to post bail. Fiscal planning, appropriation of funds, stakeholder involvement, and grant funding are core to the development of an effective DUI Court model. The National Center for DWI Courts (NCDC)⁹ provides a framework for the development of these types of courts and is aligned with the success of Drug Treatment courts (NADCP) National Association of Drug Court Professionals. Confronting addiction at the onset of identification, in the pretrial phase, is critical to achieving positive health outcomes for the offender. The idea is to implement least restrictive pretrial sentencing in order to promote treatment while awaiting adjudication, as well as alignment with higher court convictions and evidence-based sentencing.

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