SOUND JUDGMENT

Hello Judges

By Judge Rod Ring, (Ret.) OBA/OHSO Judicial Outreach Liaison

I have never been as pleased to say Happy New Year to friends and family as I am this year. 2020 is a year most of us are happy to see gone. Traditionally, the new year is a time to look back in gratitude and forward with hope. We have survived the year and remember those who have suffered and have lost loved ones in 2020.

I want to thank all who have helped our program survive the past year. In November, our Judicial Education Zoom Program had wonderful speakers from around the country and was successful thanks to them and to the judges who attended. Janet Johnson from the OBA and Tammy Reeves from the AOC were especially valuable and made everything run smoothly under the circumstances. I look forward to working with them in 2021 and hope by fall we are ready to have a face-to-face program.

I have included some information about our program in this newsletter for the new judges who have joined in the last year. I encourage new judges to seek out educational opportunities from a variety of sources.



I will include information about programs from the National Judicial College, The National Center for State Courts, the American Bar Association, and others. Most of these programs are free and may meet the requirements for MJCLE credits.

Our goal is to provide you with the latest information about impaired driving and traffic safety. We can do that best if you let us know what you would like for us to present. I am beginning planning for the July Judicial

INSIDE PAGES

Handling Traffic Cases:

An Eight-Part Webinar Series

These programs provide many of the basics for judges new to the bench to identify the issues that arise in handling traffic dockets and the tools to manage their courtrooms.

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Underage Drinking Levels Off in 2020

While fewer American teens are consuming alcohol underage, the longer-term declines noted over the past few decades have leveled off.

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The House plans historic vote.

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Conference and for our program with the OBA Annual meeting in November. Please let me know if there are speakers or subjects you would like me to include.

Happy New Year and Welcome 2021!

Welcome New Judges

To those of you who have come to the bench in 2020 I want to Congratulate you and wish you the best in your new role. I want to introduce you to the Oklahoma Judicial Education Program. The program is funded by the National Highway Traffic Safety Administration through the American Bar Association. The Oklahoma Highway Safety Office is the state grant administrator and the Oklahoma Bar Association and I work through them to fulfill the grant requirements. I am the Oklahoma Judicial Outreach Liaison (JOL). You will find the details of the program in the Announcement from NHTSA.

See JUDICIAL OUTREACH on Page 2



Judicial Outreach Liaisons: A Working Relationship

Judges are responsible for sentencing impaired drivers, and therefore, are in a unique position to impact offenders who are over-represented in fatal crashes. Arrest and conviction alone have proven insufficient to deter repeat impaired drivers. Using newly-developed screening tools, Judges can identify those persons most likely to re-offend, and direct interventions and technology that have been proven to reduce

recidivism.

The Judicial Outreach (JOL) program was established to inform this process by bringing the latest research to judges on the frontline through peer-to-peer interactions. As part of a cooperative agreement between the National Highway Traffic Safety Administration (NHTSA) and the American Bar Association (ABA), JOLs function as educators, writers, consultants and liaisons, to share the latest research with the judges of their region or state. In addition to informing sentencing and interventions in this manner, JOLs can, upon request, also provide important insight to policy makers attempting to improve impaired driving traffic safety. JOLs currently exist in 8 of 10 NHTSA Regions, and in 12 States.

Here's what they do:

REGIONAL JOLS:

- Work with NHTSA Regional Offices to identify areas of focus within the region
- Review & distribute current data, studies, caselaw, & other information throughout the region
- Seek opportunities to assist in judicial training on highway safety issues
- Identify barriers that hamper effective training, education or outreach to courts, and recommend alternative means to address these issues
- Work with national organizations to identify & disseminate current best practices in the adjudication of impaired driving cases
- Provide assistance to State JOLs to facilitate, promote and enhance their work

STATE JOLS:

- Seek opportunities to assist with judicial training on highway safety issues
- Serve as liaison between the courts and other state agencies
- Provide support for existing or future DWI Treatment Courts
- Meet with State officials to develop strategies to promote traffic safety
- Establish peer-to-peer relationships within the local judicial community
- Provide technical assistance to judges & courts, upon request, regarding impaired driving & other traffic safety issues
- Provide judges with up-to-date information regarding impaired driving laws & the sentencing

HERE'S HOW THEY WORK TOGETHER

- Regional JOLs serve as a link between national organizations & State JOLs to provide current research, best practices & other information on highway traffic issues
- Regional JOLs provide resources and support to State JOLs by sharing traffic safety research, information and current trends
- Regional JOLs coordinate with and assist State JOLs in planning and presenting peer-to-peer training for judges on highway safety issues
- State and Regional JOLs consult on a regular basis regarding outreach efforts and opportunities to network and share best practices within the traffic safety community
- State JOLs develop a network of contacts with judges, judicial educators, DWI Court coordinators & others to provide educational materials and information pertaining to impaired driving and other important highway safety issues
- Together, JOLs improve the delivery of justice in impaired driving and other traffic safety matters through education, communication, and community outreach activities

For additional information, contact your State Highway Safety Office or NHTSA regional office. The NHTSA publication, Best Practices

for Creating State Judicial Outreach Liaisons, can be found online at: www.NHTSA.gov

NJC Courses



FREE WEBINAR SERIES on Handling Traffic Cases funded by the National Highway Traffic Safety Administration. The first week has passed but by enrolling you will be able to see all the materials. There is a registration link on this page.

Handling Traffic Cases: An Eight-Part Webinar Series

To effectively and responsibly handle traffic cases, judges must not only weigh evidence and apply legal principles, but also provide meaningful access to the courts for all parties. This program will pro-

After taking this series, participants will be able to:

- Develop strategies to effectively and effciently handle all aspects of a traffic case in the courtroom;
- Recognize the important role judges play in eciently, ethically, and effectively handling impaired driving and other traffic cases;
- Discuss current issues that arise in impaired driving cases; and
- Develop strategies for imposing effective sentences to reduce recidivism in traffic cases.

Jan. 13, 2021: Judge's Role in Traffic Cases

Jan. 20, 2021: Access t o Justice Issues in Traffic Cases
Jan. 27, 2021: Controlling the Courtroom (Self-Represented Litigants/Sovereign Citizens) & Docket/Case Management
Feb. 3, 2021: Impaired Driving: An Overview
Feb. 10, 2021: DRE Qualications, Protocol, & Admissibility in Impaired Driving Cases
Feb. 17, 2021: Commercial Motor Vehicles / CDL Masking
Feb. 24, 2021: Toxicology Essentials in Impaired Driving Cases
Mar. 3, 2021: Sentencing to Reduce Recidivism vide many of the basics for judges new to the bench to identify the issues that arise in handling traffic dockets and the tools to manage their courtroom with respect and with dignity.

THE NATIONAL M JUDICIAL COLLEGE

The NJC **Experience**.

Beginning Jan 13, 2021

Time: 10 a.m. Pacific Duration: 75 minutes

This series is presented free of charge for qualifying judges.

Click on the title of the webinar for complete descriptions, faculty information, and to register.

You may also visit: judges.org/courses/

This 8-part webinar series is being presented through generous funding from the National Highway Trac Safety Administration (NHTSA).

For additional information, please contact our registrars office at (775) 784-6747

Underage Drinking Levels Off In 2020, But With Substantial Progress Over the Long-Term

By Maureen Dalbec on Dec 15, 2020 www.responsibility.org

ARLINGTON, Va. - The prevalence of underage drinking did not significantly change in 2020 for American teens according to the just released 2020 Monitoring the Future survey. While fewer American teens are consuming alcohol underage, the longer-term declines noted over the past few decades have leveled off. In 2020 there were no further significant declines observed in any of the three grades under study in the prevalence of lifetime, annual, 30-day, or daily use, or in binge drinking (defined as having five or more drinks in a row in the past two weeks). Year over year prevalence rates increased slightly from 2019 to 2020 among students in 8th, 10th and 12th grades, but all rates remain significantly lower than peak years.

"Today's data highlights that our work to eliminate underage drinking is not done. While the perceived ease of access to alcohol among our nation's youth continues to decline is good news, it is unfortunate to see alcohol consumption has leveled off from a very long historical decline," said Maureen Dalbec, COO and senior vice president of research and data analysis at <u>Responsibility</u>. <u>org</u>.

The majority of American teens have never consumed alcohol; among students in grades 8, 10, and 12 combined, 56 percent report they have never consumed alcohol in their lifetime. Over the past decade the number of combined students reporting they have consumed alcohol decreased 15 percent, proportionally, and 45 percent from its peak of 80 percent in 1991, clear indications of the success in delaying the onset of underage drinking.

"After a long period of decline, the consumption of alcohol among our nation's youth appears to have stabilized. In 2020, 22 percent of teens reported they had been drunk in the past year – this is too many and we can and must do better. <u>Responsibility</u>. org will redouble our efforts to do our part to eliminate underage drinking and to work alongside parents, teachers and caregivers to continue making the prevention of underage

LIFETIME UNDERAGE DRINKING



drinking a priority," said Chris Swonger, president and CEO of the Distilled Spirits Council of the United States (DISCUS) and Responsibility.org.

One in five teens report consuming alcohol in the past 30 days. Current alcohol consumption among students in all three grade levels combined increased significantly in 2020 with 21 percent reporting drinking in the past 30 days, up nearly three percent proportionally from 2019. These numbers are down 18 percent since 2011 and 47 percent since its peak in 1991. At the individual grade levels there were no statistically significant increases in past month consumption between 2019 and 2020.

Comparable to the other measures of consumption, after years of steady decline, the historical declines in binge drinking have leveled off while year over year increases were reported in 2020. Among 8th, 10th and 12th graders combined binge drinking increased more than one percent in 2020 but has declined 26 percent proportionally from 2011 to 2020 and 54 percent from a record high in 1997.

Perception of harm in consuming one to two drinks every day or binge drinking of consuming decreased significantly among 8th and 10th graders, however, disapproval of underage drinking at these levels remains high in 2020 (data not available for 12th graders). On a positive note, the ease of obtaining alcohol continues to decline, reaching record low levels among 8th and 10th graders. Each of these variables plays a contributing role in the long-term trends in underage alcohol consumption, and the changing attitudes about perceived harm and disapproval of underage drinking are concerning. Responsibility.org has made significant contributions to these long-term trends and will continue to invest in effective risk and prevention interventions that help delay the onset and ultimately eliminate underage drinking.

Principles of an Effective Criminal Justice Response to the Challenges and Needs of Drug-Involved Individuals

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This is an 8-year-old article but is still a good introduction for judges dealing with drug-involved individuals and is full of valuable reminders of the role judges can play. It is over 40 pages long so I have included the Table of Contents and a link to the Article.

CLICK HERE

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Legal Sidebar

The MORE Act: House Plans Historic Vote on Federal Marijuana Legalization

November 25, 2020

In December 2020, the House of Representatives plans to vote on H.R. 3884, the Marijuana Opportunity Reinvestment and Expungement Act of 2019 (MORE Act). The MORE Act is also pending before the Senate. Among other things, the MORE Act would remove marijuana from the schedules of controlled substances under the Controlled Substances Act (CSA), legalizing many marijuana-related activities at the federal level. Commentators have noted that a vote on the MORE Act would be the first time the full House voted on a proposal to deschedule marijuana. This Legal Sidebar briefly summarizes the legal status of marijuana in the United States. It then outlines key provisions of the MORE Act before discussing selected considerations for Congress related to the bill.

The Legal Status of Marijuana

Under federal law, the plant Cannabis sativa L. and products derived from that plant are generally classified as *marijuana*, with a couple of exceptions. (The statute uses an archaic spelling, "marihuana," that was more common when Congress enacted the CSA in 1970, but this Sidebar uses the currently accepted spelling, "marijuana.") One key exception relates to *hemp*, a legal classification that includes cannabis and cannabis-derived products containing very low levels of the psychoactive cannabinoid delta-9 tetrahydrocannabinol (THC). Hemp is not a controlled substance subject to the CSA, though it remains subject to other federal laws.

Congress classified marijuana as a Schedule I controlled substance when it enacted the CSA, meaning that marijuana is subject to the most stringent level of federal control. Congress's decision to place marijuana in Schedule I reflects a legislative finding that marijuana has a high potential for abuse, no currently accepted medical use, and "a lack of accepted safety for use . . . under medical supervision." Under the CSA, it is legal to manufacture, distribute, and possess Schedule I controlled substances such as marijuana only in the context of federally approved research studies, subject to exacting regulatory requirements designed to prevent abuse and diversion. Unauthorized activities involving marijuana are criminal offenses; depending on the activity at issue and the amount of marijuana involved, such offenses may give rise to large fines and lengthy prison sentences.

In sharp contrast to the strict federal control of marijuana, many states take a more permissive approach to marijuana regulation. While every state once banned marijuana, in recent decades many states have

Congressional Research Service

https://crsreports.congress.gov LSB10556

CRS Legal Sidebar Prepared for Members and Committees of Congress — repealed or limited state marijuana prohibitions. As of November 2020, all but three states have changed their laws to permit at least some use of cannabis for medical purposes. In addition, 15 states and the District of Columbia have removed state prohibitions on recreational marijuana use by adults age 21 or older.

Notwithstanding these changes to state laws, any activity involving marijuana that is not authorized under the CSA remains a federal crime anywhere in the United States, including in states that have purported to legalize medical or recreational marijuana. Thus, when states "legalize" a federally controlled substance such as marijuana, the sole result is to repeal or limit criminal controls of the substance *under state law*. The Department of Justice (DOJ) deprioritized prosecution of individual activities involving state-legal marijuana under the Obama Administration. But, in 2018, DOJ issued guidance reaffirming the authority of federal prosecutors to exercise prosecutorial discretion to target federal marijuana offenses "in accordance with all applicable laws, regulations, and appropriations." Various practical considerations and appropriations limitations prevent DOJ from prosecuting all violations of the CSA. However, even absent criminal prosecution or conviction, individuals and organizations engaged in marijuana-related activities that violate the CSA—including participants in the state-legal cannabis industry—may face other legal consequences arising from the federal prohibition of marijuana. These collateral consequences may affect areas such as financial aid eligibility, gun ownership, bankruptey, tax deductions, and immigration. Overall, the growing gap between federal and state marijuana regulation has led to confusion about the legal status of marijuana and raised numerous legal and policy issues.

The MORE Act

The MORE Act aims to "decriminalize and deschedule cannabis, to provide for reinvestment in certain persons adversely impacted by the War on Drugs, [and] to provide for expungement of certain cannabis offenses." Although the expungement provisions focus on federal offenses, the bill generally defines a "cannabis offense" to include both federal criminal offenses that are no longer punishable pursuant to the MORE Act and state criminal offenses that are no longer punishable (or that are designated as lesser offenses or subject to a reduced penalty) under any "State law authorizing the sale or use of cannabis." Key provisions of the MORE Act include the following:

- Federal legalization of marijuana. The MORE Act would remove marijuana and THC from the CSA and direct the Attorney General to promulgate a rule removing those substances from the schedules of controlled substances. The bill would apply retroactively, requiring expungement of "each conviction or adjudication of juvenile delinquency for a Federal cannabis offense" entered by a federal court before the MORE Act's enactment. It appears the MORE Act would require expungement of all CSA offenses involving cannabis, ranging from possession of small amounts of marijuana for personal use to large-scale trafficking. Individuals convicted of cannabis offenses in addition to other federal crimes would be resentenced as if they had been convicted only for the non-cannabis offenses.
- Removal of some collateral consequences for marijuan a-related activities. As noted above, federal law currently imposes various collateral consequences arising from marijuana's Schedule I status. The MORE Act would limit those consequences by removing marijuana from Schedule I and would also expressly prohibit the federal government from denving certain benefits based on a would-be recipient's "use or possession of cannabis, or on the basis of a conviction or adjudication of juvenile delinquency for a cannabis offense." Specifically, it would prohibit the denial of any "Federal public benefit"—a defined term that includes federal loans, grants, and contracts as well as benefits such as welfare, unemployment, and food assistance—or any "benefit or protection under the immigration laws." The bill would also bar certain federally-

funded programs from declining to provide services or financial assistance to an otherwise eligible small business because the business operates in the cannabis industry.

- Cannabis tax and grant programs. The MORE Act would impose a five percent tax on cannabis products (excluding prescription medications derived from cannabis). Revenues from the tax would be appropriated to several grant programs:
 - A Community Reinvestment Grant Program providing services for "individuals most adversely impacted by the War on Drugs," including job training, health education, mentoring, literacy programs, and substance use treatment programs;
 - A Cannabis Opportunity Program providing funds for eligible states to make loans to assist small businesses in the cannabis industry that are owned and controlled by socially and economically disadvantaged individuals; and
 - An Equitable Licensing Grant Program providing funds for eligible states to develop and implement equitable cannabis licensing programs that "minimize barriers to cannabis licensing and employment for individuals most adversely impacted by the War on Drugs."
- Cannabis industry participation. The MORE Act would direct the Bureau of Labor Statistics to gather demographic data about cannabis business owners and employees.

Considerations for Congress

The MORE Act raises multiple legal considerations related to marijuana regulation and controlled substances law more generally. First, the MORE Act would decriminalize marijuana at the federal level but would not directly alter the status of cannabis under state law. Under the CSA, states are free to regulate substances that are not subject to the CSA or other federal law provided there is no "positive conflict . . . such that the [CSA and state law] cannot consistently stand together." Several states currently ban the use of marijuana for both medical and recreational purposes. Others permit the use of some cannabis products for medical purposes while banning recreational use. The MORE Act would not alter those state legal regimes; nor would it affect prior state law criminal convictions for cannabis-related offenses. Thus, if the MORE Act became law, it could create a new divide between federal and state law—essentially the reverse of the current marijuana policy gap, since federal marijuana law would become less strict than some state laws. The MORE Act could also highlight the inconsistency between marijuana laws in different U.S. jurisdictions by repealing the uniform federal prohibition and leaving in place a patchwork of varying state laws.

Congress may be content to allow states to experiment with varying approaches to marijuana regulation. In the alternative, Congress might prefer a more uniform approach, whether that approach is to criminalize or decriminalize marijuana, or something in between. However, while Congress can pass legislation creating a uniform federal policy, there are limits to its ability to affect state law. Congress lacks the constitutional authority to alter state criminal law, though it is possible Congress could preempt state law through Commerce Clause legislation (as it did in the 2018 farm bill with regard to the interstate transportation of hemp). As an alternative, Congress might be able to encourage states to change their laws through the use of the spending power. Funding conditions in the MORE Act might indirectly encourage states to minimize state law criminal consequences related to cannabis. The Act would make certain federal funds available only to "eligible States" that have taken steps to expunge cannabis convictions automatically and eliminate "penalties for persons under parole . . . or other State or local criminal supervision for a cannabis offense." Congress could also invoke its spending power to encourage states to regulate marijuana more stringently, and has previously used the spending power to shape drug policy in targeted ways. For instance, since the District of Columbia decriminalized marijuana in 2014,

Congress has annually enacted an appropriations rider that prohibits the District from expending federal funds "to legalize or otherwise reduce penalties associated with the possession, use, or distribution of any schedule I substance under the Controlled Substances Act[.]" While that rider applies only to the District of Columbia, other appropriations riders more generally prohibit the use of any federal funds "to legalize or otherwise reduce penalties associated with" any Schedule I controlled substance or, with limited exceptions, "for any activity that promotes the legalization" of any Schedule I controlled substance.

Second, the MORE Act amends the CSA but does not address other existing federal regulatory regimes that apply to cannabis. For instance, the Food and Drug Administration (FDA) currently regulates certain cannabis products under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The FD&C Act applies to all prescription drugs and prohibits the "introduction or delivery for introduction into interstate commerce of any . . . drug . . . that is adulterated or misbranded." Because chemicals found in cannabis are used as active ingredients in certain prescription drugs, FDAhas taken the position that cannabis and cannabis-derived compounds including THC and cannabidiol (CBD) are drugs that require FDA approval before they may be added to foods, sold as dietary supplements, or marketed for therapeutic use. Nonetheless, unapproved cannabis-derived products, especially those containing CBD, are widely commercially available, and FDA has focused enforcement actions on products that pose the greatest risk to consumers. If Congress chooses to deschedule marijuana under the CSA, it could also consider whether to alter the regulatory regime under the FD&C Act. In addition, or in the alternative, Congress could decide to impose new federal regulations specific to cannabis. As an example, legislation has been introduced that would impose new federal licensing requirements on marijuana businesses.

Third, it is possible that any legislation relaxing the CSA's restrictions on marijuana could implicate the United States' international treaty obligations. As discussed in greater detail in a recent CRS report, the United States is a party to drug control treaties including the Single Convention on Narcotic Drugs of 1961 and the Convention on Psychotropic Substances of 1971. Both treaties require signatories to take various steps to control cannabis, including criminalizing unauthorized manufacture, sale, and possession and strictly regulating any legal cultivation. The two treaties are not self-executing—meaning that they do not have the same status as judicially enforceable domestic law—but failure to abide by its treaty obligations could expose the United States to international legal consequences. However, it is also possible that the status of cannabis under the applicable treaties could change. Based on a recommendation by the World Health Organization, the United Nations Commission on Narcotic Drugs plans to vote in December 2020 on a proposal to reschedule cannabis under the drug control treaties.

Finally, the MORE Act decriminalizes cannabis at the federal level but does not apply to controlled substances other than marijuana and THC. Some have called for the general decriminalization of personal drug use, and in November 2020, Oregon passed a ballot initiative to decriminalize the personal use of certain Schedule I and II controlled substances. The same day, District of Columbia voters passed a ballot measure placing prosecution for the use and sale of certain psychedelic plants and fungi "among the Metropolitan Police Department's lowest law enforcement priorities." (Both jurisdictions had previously decriminalized marijuana use for medical and recreational purposes. The 2020 D.C. ballot initiative was tailored to comply with the appropriations rider discussed above that limits the District's ability to decriminalize Schedule I controlled substances.) The recent reforms in Oregon and the District of Columbia created a divergence that falls well short of the divide between federal and state marijuana laws. How ever, current trends suggest that there may be a broader movement toward decriminalizing controlled substances. Comprehensively addressing such changes is outside the scope of the MORE Act, but Congress may wish to monitor developments in this area when considering future legislation.

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PLEASE TELL US WHAT YOU WANT



The purpose of the State Judicial Outreach Liaison program administered through the Oklahoma Highway Safety office and the OBA is to increase judiciary knowledge of challenges in adjudication Impaired Driving cases. We do this through peer-to-peer judicial education, technical assistance and links to resources.

We try to review and distribute current research, data and information on evidence-based sentencing practices, DUI Courts, Ignition Interlocks, caselaw and offender assessment and treatment.

But we can't meet our goal without help from you. Please let us know about interesting issues, facts and arguments you have encountered in your courts. Share your successes and failures and tell us what you want to learn more about.

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