

# **DWI Task Force Meeting Minutes**

**5/21/2021**

Clay Abbott called the meeting to order at 9:10 am and introductions were made. He went over the purpose of the DWI Task Force and who the presenters will be for the meeting.

## **Covid Issues**

Opened the floor for comment regarding any new topics that are not on the agenda that are brand new or problematic due to COVID.

Jessica Frazier state that there are a lot of new officers on the road that don't have the proper training. Clay said that TCOLE has said that the number of officers retiring/leaving early over the last two years has been unprecedented which has called for a rise in new officers. Also, most officers (new or old) do not get the day off to go to a training, so they just don't attend. Clay suggested that it would help to reach out to your younger prosecutors who are new to the courtroom or filing a case and help teach them how to communicate with any officers involved in their cases whether they are new to the force or has been there for a long time.

Andrew James said that a problem they are having is most of their Troopers are being sent to the Border. James Perl said it become a problem for them because the Sheriff's Office will call on a DPS Trooper to do any DWI Investigations so with short supply of Troopers, what would they be able to do. Start spending some money comparing the number of traffic tickets and how that affects the amount of DWI cases. with the exception of the Valley, we are seeing less DWI cases. Need to make known that Traffic Tickets save lives because if traffic tickets stop being given out as often as they were, the DWI offenses will go up and fatalities will go up. The big problem about it is most people are saying that officers shouldn't be stopping someone on a traffic violation. Statistics showed that for the year 2020, the Number of miles traveled went down, number of alcohol involved fatalities went up. Waylon Thompson said that the Pre-Trial Diversion program seems to send a bad message and they are prosecuting more for fatalities then they are for DWI. Need to train the baby prosecutors better so they are ready to take on the felony cases and prosecuting DWI cases would help with that. Laura Nodolf said that they have very strict criteria to be a part of the Pre-Trial Diversion program, but prosecutors do learn a lot by trying DWI cases that make you be able to try Felony cases in the future.

Clay asked the Task Force if trying DWI's needs to remain a priority. Everyone unanimously agreed. Summarizing what was just talked about, DWI arrests are down while overall caseload is not mostly due to the increase in domestic violence arrests (mostly related to alcohol/drugs). Plus, covid ended jury trials for everyone. The priority

of the defendants in felony cases will limit the possibilities of misdemeanor juries and increase the back log and reduced offenses.

### **NTLC and National Trends**

Clay talked about National Traffic Law Center (NTLC) and went over their PowerPoint that was printed out and included in the packet given to the DWI Task Force members.

Jessica Frazier asked about the Oral Fluid slide on the PowerPoint. Oral fluid is now actively used in Michigan and Alabama. Alabama has a huge side project. Michigan legalized road side saliva testing that are admissible in court. Problem with that is the false negative rate is very, very high and someone who should be guilty is found not guilty. In Texas, Sam Houston State is doing a study and has completed the first half and now working on the second half. The first half took saliva and tested it in a laboratory beside blood and compared the test results to see if they were consistent. Clay asked the Task Force if they were interested in legalizing road side saliva tests and everyone unanimously said no. They did agree to continue lab testing to. Jessica Frazier said saliva collections would be a problem because if you don't get enough saliva, you don't have a testable sample to get a result.

Clay said that NTLC has a big database regarding experts that if you have anyone that you want to do deeper research on, you can give him the name or contact NTLC and they will give you what they have available on that person.

### **TTI Mental Health Training**

Cinthya Soares Roberto with TTI presented. DWI Task Force members completed an online survey before the meeting. Those who did not completed a paper copy. Purpose of the project is twofold, trying to identify best practices and processes are you using to screen mental health defendants and if there is anything on the back end that they can do to help with mental health services. Kristie Burnett said that you can train someone all day on Mental Health, but without the resources in their county, it wouldn't mean anything. The big problem is the resources just aren't there and there isn't any budget for them in most counties.

Prosecutors have less personal physical contact with defendants than any part of the criminal justice field. In order, Defense lawyers, Probation, Jailers Police and Judges are all in a much better position to screen defendants. Based on clear ethical limitations prosecutors simply do not have open dialog with defendants. Teaching a prosecutor to spot mental impairment of disease is not helpful. Prosecutors are well trained in legal issues like competency and insanity. It is tailoring pre-trial and probation services that is lacking. That is mainly a matter of resources.

Task Force Members said that there is screening at the jail, but defendants are bonding out to fast and can't keep professionals to keep a rotation at the jail 24/7 is a problem. If they are in custody, it's great, but if they bond out early, it's not possible to screen for mental health. Mental health evaluation starts at the Police Departments and Sheriff's

Offices. If the defense lawyer tells a prosecutor that the defendant has a mental illness, then they can request a mental health screening. Same goes if a judge requests for one or a jailer who does the screening in the jail, but this doesn't happen all the time. Jessica Frazier and April Sikes said their county partner with community mental health facility that will evaluate a defendant, but it comes at a cost to the county. Most counties don't have the money to do this all the time. Funding is an issue. Clay asked everyone if they have received some mental health training through TDCAA or otherwise regarding. Half of the Task Force raised their hands. Clay then asked if what more can we do? Jessica Frazier said training wise, everyone needs mental health training. It starts with the officers and training them and also, every county needs a mental health court. Funding for that should be made available. Kriste Burnett said they have an MHR in their county, but they are so back logged that some things fall through the cracks. Mental health evaluation starts at the Police Departments and Sheriff's Offices.

Peer to peer training is the best training for this. Everyone agreed that Cinthya could have their email addresses to follow up with this discussion and put her in contact with their mental health prosecutors. Clay asked if TDCAA should make a course just for mental health or have more people write articles for us regarding mental health. Everyone agreed that TDCAA should do both.

## **DRE**

Problems with the DRE Program right now is that it's difficult to renew a DRE recertification and officers just won't keep their DRE up to date. Need to make recertification as easy as possible. Need to make it to where if they are terminated from one office, their DRE certification would not start over. Need to have your officers that are dedicated to DWI/Patrol to become DRE's. Also need to see if prosecutors' offices will help with costs associated with an officer becoming a DRE including hotel rooms and per diem to attend recertification training. Clay asked the Task Force what else would make the DRE Program better? Jessica Frazier mentioned that most officers don't want to take the time to become a DRE because there isn't more money that comes with being a DRE, but there is more work. Asked if there was a grant that could help with that. Clay suggested maybe seeing if they can apply the STEP Program to get that put in place.

Lunch Break

## **DWI Resource Prosecutor**

Clay went over his 2022 TxDOT grant objectives with the Task Force. These objectives were included in the DWI Task Force member's packet. Everyone approved of these objectives. Clay asked what kind of training video he should do with the \$10,000 video project. Jessica Frazier suggested doing a training video on Intox/Manslaughter. Laura Nodolf suggested a video about Recon related to commercial motor vehicle crashes. Everyone discussed that the video should include understanding and presenting Recon to a jury, causation, charging decisions and punishment. The Task Force all agreed that

using TxDOT funding to make the training video free to view so that every prosecutor and officer can view the video was the best idea. A lot of smaller counties don't have money in their budget to pay for this type of training.

### **Leadrs and SFST**

Jerard Collins with LEADRS presented on their database and SFST trainings. Their database makes it to where there are standardize forms for officers and also includes electronic blood warrants. Before they set up a Police Department or Sheriff's Office with LEADRS, they have a discussion with the prosecutors' offices so they can have a discussion about how the reports need to be done. They are currently working with big counties to get them on board with their database. He discussed how SFST is merging with the FRIDAY Program and has trainings for School Resource Officers and teachers/civilians. Clay highly recommended to the Task Force to set up these trainings in their area. Mike Hartman asked how long the SFST training takes because he would like to send his JP's and Judge's to it regarding signing warrants, but they might now want to attend an all-day course. Jerard said the Practitioner course is 24 hours and the Refresher is 8 hours. There is a SFST instructor course that is a full 40 hour week. They do have a course that goes over warrants that is an hour and usually is geared more towards LEADRS but do offer it to judges.

### **DPS Lab and Forensic Science**

Anna Mudd with the DPS Crime Lab presented. She talked about how they have mock trials for their forensic scientist before they actually let them testify on a drug/alcohol case and Clay comes and does those mock trials for them. Anna said that alcohol testing is going fast, but the drug testing is moving slowly.

Went on to discuss different cannabis problems. Clay discussed the Delta-8 problem. Since it is legal, you may not be able to get a possession but might be able to get them on intoxication. Anna Mudd said they are not seeing a lot of Delta-8 and Delta-9 together. If they ever do see them together, you might end up getting inconclusive results. When you send a blood draw off for and it comes back low, will the report include all the substances found regarding THC. Anna said yes. Anna also talked about designer benzos.

Clay asked Anna how they were doing on remote testifying, and she said not great. She said there are a few counties that are letting them remotely testify, but still are not able to in most counties. Clay recommended that the Task Force members make the request to their judge and defense attorney for the toxicologist to be able to remote testify because the back log of cases due to COVID has made a high demand for them to come and testify everywhere in Texas and sometimes the travel wastes a lot of their time to be available to testify in other cases.

Anna said they are short staffed so they have been sending some things out to the west Texas labs so you might see an analyst from Lubbock on your case out of central Texas.

They do things a little differently than the Austin lab so you might want to check with them first to make sure your questions get answered.

Anna said that they are now sending spreadsheets to the counties that shows all the cases they have completed and pending and ask them to look over the list and let them know if there are any cases they can stop working or to prioritize them, so they know which ones need to go first. This helps them save time to work on the cases they need to and not waste time on cases they don't need to work. Anna Mudd asked how many people need the drug lab report before they charge the case and everyone said they need the lab report first. Anna said the main thing they would like to be able to do is get the cases out of the que that don't need to be worked so they free up time for the ones that do.

Anna mentioned the destruction order form and the Task Force asked to have that form put on the DWI Resource page on the TDCAA website and Anna agreed to send that to TDCAA to post.

Anna proposed that there would be a Stop Testing Limit put on drugs after finding the first drug.. For alcohol, if there is a fatality and the alcohol level is tested and is above .10, they do not test for drugs. The Task Force said they would not want to implement that for drug testing. Landon Lambert said that even though it's easy, easy is not always best. Alison Baimbridge said that this puts the toxicologist in a bad cross examination situation. Samantha Nelson said it could be a problem for the jury if the defendant says he took more drugs than are listed on the drug testing report. Clay said that under Michael Morton deliberately not knowing an answer to a question will not bode well for prosecutors in court. All members of the task force agreed this was a bad policy. Clay suggested, and Anna confirmed, better communications between prosecutors and the lab was the most effect means of reducing delay.

Clay adjourned the meeting at 4:06 pm.