



# TEXAS DISTRICT & COUNTY ATTORNEYS ASSOCIATION

## **DWI Prosecutor Task Force Meeting**

**Courtyard by Marriott Austin Pflugerville & Pflugerville**

**Conference Center**

Pflugerville, Texas

November 8, 2024

### **Friday, November 8, 2024**

#### **9:00 a.m. Introductions: State of Impaired & Driving Prosecution**

*All Task Force members*

Clay introduced Brian Klas, TDCAA's Director of Training and Joe Hooker, TDCAA's Asst. Training Director. Brian Klas talked to the Task Force regarding attending our Train the Trainer course which helps get prosecutors ready to teach and present at TDCAA's conferences. Joe Hooker talked to the Task Force about needing ideas for DWI Trainings that we can publish as online trainings. Kristin Burns introduced herself as TDCAA's new Domestic Violence Resource Prosecutor and asked the Task Force members to send her names of prosecutors in their office that would like to be on a Domestic Violence Task Force.

#### **10:00 a.m. DWI Resource Prosecutor Project**

*Clay Abbott*

- Case Summary

Task Force members unanimously recommended Jessica Fraizer continues updating this twice a year.

- SFST Review

Task Force members unanimously recommended that Mariel Puryear keeps updating the SFST Review once a year.

- Regional Training

Clay posed the question, should we continue training prosecutors and law enforcement officers at the same time using the same 4 training courses as FY24 and FY25? Task Force members unanimously agreed to keeping the same 4 training courses. The census

was that both prosecutors and law enforcement officers' benefit tremendously from these trainings and they both have reached out regarding wanting to attend more of them.

Brian Klas asked if respective counties were dedicating more or less resources to DWI? Jessica Frazier from Comal County said they just got a DWI Task Force and Andrew James with Dallas County said their PD has a Task Force. Clay asked if DWI arrests are up or down. Montgomery, El Paso, Hidalgo, Scurry, Mason, McClennan, Donley, Jasper Counties said arrests for DWI was up. Dallas, Taylor County said up, especially on the interstate. Williamson County is up with drugged driving arrests, but not alcohol, Denton County related the same. Victoria county is up with Intoxication Manslaughter and bodily injuries. Dallas County said much lower. Clay said seeing DWI numbers going down since 2020, but Intoxication Manslaughter had continuously kept climbing. The Task Force agreed on an increase of death and injuries in all counties. Jessica said she is seeing a lot of arrests for drugs out of cars but not arresting for the DWI which seems like DWI charges are being ignored and only arresting for drug charges. Other Task Force members said they are seeing this as well. Andrew James suggested doing Rolling Stoned with ARIDE to help with this. Clay said he will talk with Carlos Champion to see if this would work since it is hard for officers to get multiple days off. Jessica suggested changing the title because the title makes it sound like it's a course only on marijuana. Definitely need to talk about marijuana but wanted to make sure everyone knows there are other drugs being discussed in the course. See about putting in police videos and a little more on prescription drugs. Also, she suggested TDCAA may need to leave out voir dire in the rolling stoned course and just do an online training course. Everyone agreed this is a good suggestion. The Task Force agreed ECT doesn't need changes. WCS good (need to shorten PowerPoint/handout), Jessica said we definitely need to keep this course because she is seeing an increase in crash cases in Comal County and law enforcement needs to continue to be trained. Everyone agrees this is the case in their county. The consensus was keep WCS. GTH was good with minor update modifications.

Clay asked if there is a big hole for prosecutors and police officers that we are not training on yet? Brian asked if there was a way to train officers on voir dire where it would relate to them rather than prosecutors? Clay said in phase 2 of GTH there is the same questions for officers that prosecutors would use in voir dire. Joe said if the officers understood that voir dire was on the case rather than just the offense, officers would understand the voir dire process more. Will work on putting voir dire into the training where it will relate to the law enforcement officers.

- Prosecutor only Expert Training in August

Clay said he would like to go to 4 different cities. Everyone agrees. Jessica suggested voir dire training. Clay said he has heard from evaluations that they would like a training regarding defense DWI experts. Andrew James said basic videos on 705 hearings would be beneficial. Joe said they can work on online training/videos regarding the science on how it works and then follow it up with a live defense expert training. Most of the Task Force said they are not seeing a lot of defense DWI experts. Jessica said it's mostly the prosecutors turned defense attorney that attacks their DWI cases rather than experts being

hired by a defense attorney. Joe said when he was a prosecutor, defense attorneys had DWI experts that attacked the toxicology. Stacie said that her brand-new prosecutors are needing training because they have a lot of questions regarding DWI, like basic language and hospital blood for examples. Clay said teaching science is great, but how do we get the information out there without teaching a training that attendees will not zone out of. What about TDCAA creating a glossary of toxicology terms. Everyone agreed with this idea. Can put that training online and in the materials of the Rolling Stoned course. Solomon Gonzalez volunteered to help with the glossary. Clay asked for anyone that could write an article about defending against defense experts and toxicology, let him know and we will work on getting the article in our Texas Prosecutor magazine. Clay will also write an article introducing himself as the DWI Resource Prosecutor and talking about the Intoxication Manslaughter book and DWI resources on TDCAA's website. Brian suggested we create a list of what you should read before you attend a training. Jessica will work with Clay on updating Rolling Stoned and Andrew James and Taylor will work on updating WCS. Jessica suggested doing a prosecutor only course on Smith v Arizona. Clay said it is a good idea but not sure if we can pull a training together by August. Clay said he has addressed it in an article, but not sure about a whole training on it at this time. Clay said to table prosecutor only training until FY2026. Could possibly be able to do the training on Smith v Arizona at that time. Everyone agreed.

- 2026 Grant

Clay went over TDCAA's FY2025 DWI Resource Prosecutor Grant. Discussed what should be included in the FY2026 grant. Will rewrite traffic stops and mailout. Also, will update Probation and Punishment and mailout. Will add pages relating to specialty courts in Probation and Punishment. Will not put these two books as baby school books for 2026. Add in Prosecutor only training.

- Potential Video Projects

Joe talked about prosecutor only videos relating to general trial things (motion to suppress, bias against the state/law enforcement, defense experts - 705 & 702, etc.) that TDCAA will be releasing on Vimeo soon and said to email him if you want the link to those videos, but would also like ideas for DWI videos that TDCAA can make and release on Vimeo. Asked the Task Force members to email him with their ideas/what their office is struggling with and maybe volunteer to be a part of these videos. Kristin said a basic Toxicology video would be beneficial. Joe talked about making a forensic video series. Jessica talked about making a video regarding SCRAM and interlock devices and what the differences are. She also recommended a video on hospital blood. Clay also said he could make a video on Smith v Arizona as well. Jessica said she would volunteer for a video. Joe said to contact him with what you think needs to be discussed in toxicology videos. Jessica said the lack of doing things differently, DPS processing differently. Jessica also mentioned how to try a total refusal. Stepheny suggested how to pre-trial an officer and Mariel agreed. Andrew recommended issue spotting videos.

- Articles/Documents/Resources

Andrew James said he could co-author an article on defense experts. Clay will work with the DPS lab on an article on having alcohol and marijuana in someone's system at the same time.

## **11:50 LEADRS**

*Brian Grubbs & Chris Clements*

Brian Grubbs addressed the Task Force. If there is anything you need from law enforcement, they are retired police officers and spent their careers dealing with DWIs and their staff are DWI experts, so please reach out. Talked about their trainings and invited prosecutors to attend. Talked about their data and how they categorize DWIs (Clay helped with these categories). He brought up AI report writing. Clay asked the Task Force what they thought about AI report writing. They said they are extremely concerned about it. Brian talked about the issues they worked out with AI regarding the blood search warrants to give an idea of how they are making it work. Solomon Gonzalez said he isn't ok with the AI composing the narrative but correcting it would maybe work. Andrew James agreed. Mike brought up that it would not help with communication skills if AI wrote the report for them. Brian said it would be a series of questions that would be asked to make sure the officer included everything in the report and then put it in essay style.

## **12:00 p.m. Lunch (provided)**

## **1:00 p.m. 24/7 Program in Texas**

*Christine Adams & Cinthya Fillips, TTI*

Christine gave a brief overview of the 24/7 Program and the success rate of it. Cinthya explained the psychological side of the program and how it helps offenders succeed. Christine also gave a handout to the Task Force members. Christine then welcomed questions and comments from the Task Force and asked which of their jurisdictions would benefit from their program. She gave out her contact information to the Task Force members and gave them a survey. Clay said it would be a great idea to try out the program in a few jurisdictions to see if it will work for Texas.

## **1:30 p.m. Texas SFST**

*Missy Williams*

Missy gave a brief overview of Texas SFST and handed out resources to the Task Force Members. She also invited the Task Force and any of their prosecutors to attend any of their training or alcohol workshops. Clay strongly suggested that the Task Force members and their prosecutors either attend or observe one of these courses.

**2:00 p.m. Texas DRE**  
*Carlos Champion*

Carlos presented on DRE/ARIDE. Now have 420 DREs and 44 DRE instructors in the state. Encouraged prosecutors to attend or observe one of the trainings. Just let him know you are coming. Also feel free to reach out to him if you want him to come and do training in your area. Alex Benavides and Jessica said they had training for their prosecutors, and the training went well. Ray Duke said having a DRE school in El Paso was long overdue and very beneficial. Clay strongly suggested the Task Force members and their prosecutors attend or observe one of these courses and send your qualified officers to these courses. Carlos also talked about SFST instructors and teaching the course. He will be suggesting to the Impaired Task Force that the SFST Coordinator for the State be the one that approves the teaching of and the instructors for SFST. Will also recommend that the SFST Coordinator come up with the basic refresher course for SFST. Return to the original language and original instruction for SFSTs. Clay can elaborate. Clay asked the Task Force their thoughts on this recommendation. The Task Force heartily and universally supported the DRE program and its direction. The Task Force unanimously told Clay to approve the SFST recommendation from Carlos.

**2:30 p.m. DPS Lab/NMS Lab**  
*Anna Mudd & Renee Hawkins, DPS Lab*  
*Kacie Tross, NMS Lab*

Clay introduced the above presenters and then opened the floor for questions and comments. Clay said because of the increase in blood draws and extensive testing for different types of drugs, it has become overwhelming for DPS labs to process and test blood samples. Anna said that the DPS Lab was able to hire more people to help with the backlog, but they need more space to continue to hire more positions. Anna went over the handout she gave to the Task Force members. Talked about the outsourcing of cases to NMS Lab. Just because they are outsourcing the cases doesn't mean they aren't overseeing them. Renee talked about using a combination method that will streamline and simplify the process. Their goal is to get to 150 days or less for toxicology. Clay asked about methodology. Renee said they are running 2 batches that will show multiple drugs at once. Then you will have 1 or 2 people that will need to come to testify instead of 5. Clay said you can call the lab to see what they have so far so you can go to the defense with the results so far for a plea. Then the lab may not have to continue testing and can move on to another case faster. If the defense doesn't accept a plea at the early stage of testing, continue to test. Do not universally waive further testing until it is negotiated. Anna brought up the spreadsheets that they send to counties to let them know what cases they have active so that the prosecutors can decide if a case is no longer active/closed. When they can stop working on closed cases, it helps them move faster. She also asked for counties to utilize the expedition form if you need a case expedited. Jessica asked about records and LIT packets. Anna said they are still working on the portal where all the records will be kept for download. Hopefully it will be ready by 2026. Quality incidents were discussed. You can now look up the report 30 days after it

was labeled a QI on the forensic science portal. Once it is on the portal, it cannot be changed. Anna will find the link and send it to Clay.

### **3:00 p.m. Marijuana/Hemp: Possession & Impairment**

*Clay Abbott*

Clay discussed the impairments that marijuana/hemp and alcohol combined have. This is making low BACs common in drug/alcohol cases. Clay would like to talk about the dual use of marijuana and alcohol together because of this issue. There are some establishments that sell THC packets that you can put in your alcoholic beverages. For example, there is a theater that will sell THC tea under the non-alcoholic beverages section, and someone can buy a beer and drink both liquids at the same time. If you have a case with both, make sure you are pre-trailing your toxicologist. They will be able to explain the effects of putting THC and alcohol together. Watch for this in your communities and if you see it, let Clay know. He also talked about the proposed definitions/language of intoxications by the Legislature. A handout was given to the Task Force with these proposals. Andrew James emailed and discussed the DWI Statute Proposals that he and some of the other Task Force members came up with.

Jessica talked about wanting to focus on Intoxication Manslaughter and raising the charges when there are extreme circumstances. Clay will elaborate. Clay asked for volunteers to work on a draft of this. Contact him if able to draft.

Change of custody attacks and refrigeration issues. Clay said talk to your toxicologists about this issue. They will be able to solve the problem.

Need to solve the issue of people getting multiple DWIs back-to-back. Maybe bonds are a solution. Also, the 24/7 program may be a partial solution.

### **3:30 p.m. Report Drafting & Assignments**

### **4:00 p.m. Adjourn**