

- Marijuana and Its Impact on Laws and Specialty Courts
- Texas Association of Specialty Courts
- Judge Mary A. Celeste (ret.)
- April 10, 2017
- Bastrop, Texas
- Colorado
- As of January 2016
- 516 Rec MJ
- 424 MMJ
- 322 Starbucks
- 202 McDonald's
- Overview
- MJ Data & Statistics
- Marijuana Laws/Texas
- Specialty Courts Data & Statistics on /Texas
- Impact on 10 Guiding Principles; Targeting Population; Eligibility; Treatment; Monitoring/Testing/Toxicology of Marijuana
- Control Substances I-V
- ⊙ **Schedule I** — drugs with a high abuse risk. These drugs have **NO safe, accepted medical use** in the United States. Some examples are heroin, marijuana, **LSD, PCP, and crack cocaine**.
- ⊙ **Schedule II** — drugs with a high abuse risk, but also have safe and accepted medical uses in the United States. These drugs can cause severe psychological or physical dependence. Schedule II drugs include certain narcotic, stimulant, and depressant drugs. Some examples are **morphine, cocaine, oxycodone** (Percodan®), methylphenidate (Ritalin®), and dextroamphetamine (Dexedrine®).
- ⊙ **Schedule III, IV, or V** — drugs with an abuse risk less than Schedule II. These drugs also have safe and accepted medical uses in the United States. Schedule III, IV, or V drugs include those containing smaller amounts of certain narcotic and non-narcotic drugs, anti-anxiety drugs, tranquilizers, sedatives, stimulants, and non-narcotic analgesics. Some examples are acetaminophen with codeine (**Tylenol® No.3**), paregoric, diazepam (**Valium®**), alprazolam (Xanax®), propoxyphene (Darvon®), and pentazocine (Talwin®).
- U.S. Gallup Poll
 - 1 in 8 US Adults Smoke Marijuana
 - ☐ July 13-17, 2016
 - ☐ Random sample of 1,023 adults
 - ☐ 1 in 8 doubles the percentage who reported smoking marijuana 2013
- Growing Support for MJ
- 60% of Americans support legalizing marijuana for medical or recreational use, according to PBS News.

- It's the highest percentage of Americans to support legalization since pollsters started keeping track in 1969.
- **MJ the Most Commonly Used Drug**
- Marijuana is the most commonly used Illicit drug worldwide
- Marijuana is the most commonly used illicit drug in Canada and the U.S.
- 22.2 million past-month U.S. users 2014
 - 2017 Texas Recreational MJ
- ☐ Constitutional amendment that would legalize the possession, cultivation and distribution of cannabis was **filed December, 2016 in the legislature**
- ☐ The proposal, HJR 46 **filed**, it **would fully legalize the plant (the other measures would either decriminalize it, or lower the penalties associate with it).**
- How Many People Have MMJ Cards?
 - 100 million
 - 150 million
 - 200 million
 - 250 million
 - 250, a quarter of the population has access to adult use.
 - Texas Marijuana Laws
- Possession & Cultivation Laws
- MJ & Driving Laws
- Child Abuse Laws
 - MJ Possession Laws
- As of 2016-21 States Decriminalized MJ Possession
- 5 states poised to decriminalize
 - Texas MJ Possession Law
- ☐ It is a crime to possess marijuana in Texas. Penalties vary according to the amount possessed, with increased penalties for offenses in a drug free school zone. (Texas Stat. and Code Ann. § 481.121.)
- ☐ **Two ounces or less.** Penalties include a fine of up to \$2,000, up to 180 days in jail, or both.
- ☐ **More than two ounces, but less than four ounces.** Penalties include a fine of up to \$4,000, up to one year in jail, or both.
 - First Chance Intervention Program
Harris County
- ☐ Started by former Harris County DA Devon Anderson.
- ☐ The program made it so that those caught possessing **up to two ounces** of cannabis for the **first time would be given a citation and mandated to attend a diversion program**
- ☐ However, those caught possessing cannabis for a 2nd time have still faced a possible misdemeanor and jail time.
 - 2017 Texas Drug Bills
- A Bill to provide a defense for those prosecuted for possessing small amounts of drugs while seeking medical help for an overdose victim.
- A Bill to change the penalty for possessing small amounts of certain controlled substances to a class A misdemeanor, rather than a state jail felony.
- A Bill that expands who has to pay certain costs on convictions meant to support drug courts.

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MJ Driving Laws

- Observations & Testing
- *Per Se* Laws
- Zero Tolerance Laws
 - Observance & Testing (Texas)
- Impairment must be proven
- Behavior based
- Evidence collected by police
- Specialists in drugs DRE may be necessary
- Biological specimen (blood, urine) or refusal
 - *Per Se* v. Zero Tolerance Laws
- *Per se* laws prohibit drivers from operating a motor vehicle if they have greater than a **set level of a drug or drug metabolite present in their system.**
 - *Per Se* v. & Zero Tolerance Laws
- Zero Tolerance laws, in their strictest form, forbid drivers from operating a motor vehicle if they have **any detectable level of an illicit drug/controlled substance or drug metabolite present in their bodily fluids.**
- 20 States
 - Zero Tolerance THC
- **9 states** have zero tolerance for THC or a metabolite.
- **3 states** have zero tolerance for THC but no restriction on metabolites.
 - Texas Family Code § 261.001
- “‘Abuse’ includes the following acts or omissions by a person: Causing or permitting the child to be in a **situation** in which the **child sustains a mental or emotional injury** that **results in an observable and material impairment in the child’s growth, development, or psychological functioning ...**
- The current use by a person of a controlled substance as defined by the Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child • Causing, expressly permitting, ...”
- Specialty Docket/ Court
 - Specialty Courts

Nearly **1/4 of the 16,000** courts in the U.S. are Specialty Courts

They operate both in limited jurisdiction courts and general jurisdiction trial courts.

- Texas & Specialty Courts
- The Governor's Criminal Justice Division maintains a list of current specialty court programs
- Includes family drug court, drug court, veterans court, Child Support & Child Protection Specialty Courts and mental health court programs.
- These programs are governed by Title 2, Subtitle K (Specialty Courts) and Section 772.0061 of the Texas Government Code.
- Specialty Treatment Courts
 - U.S. Drug Courts
 - DWI and Hybrid Courts

- A Hybrid DWI/Drug Court is one that started out as a Drug Court that now also takes DWI Offenders
- Through June 2013 there were 229 DWI Courts and 422 Hybrid Courts
- Top 4 States with DWI Courts: Georgia & Michigan (20); Missouri & **Texas (18)**
- Top 4 States with Hybrid Courts: New York (79); Oklahoma (54); Michigan (44); Missouri (38)

- Texas Drug Courts

- STAR Drug Court Program, 1 in 50 adult drug courts throughout the state that puts repeat, nonviolent drug offenders through a mandatory treatment program as an alternative to jail
- Drug Courts are mandatory for all Texas counties with a population over 200,000
- In Harris County, about 6,000 adults every year face nonviolent drug charges, but only about 250 went through STAR 2016

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Drug Reports, Texas 2015

Items Seized by Law Enforcement

- ☐ Methamphetamine 32,290 32.4%
- ☐ **Cannabis 19,551 19.6%**
- ☐ Cocaine 18,466 18.5%
- ☐ **Opioids 7,491 7.5%**
- ☐ **Synthetic Cannabinoids 4,646 4.7%**
- ☐ **Heroin 3,947 4.0%**
- ☐ Alprazolam 3,281 3.3%
- ☐ Hydrocodone 1,584 1.6%
- ☐ AB-CHMINACA 1,573 1.6%
- ☐ Fentanyl 43 <0.1%

- Opioid Abuse on the Rise in Texas

- 2015 state lawmakers passed a bill aimed at curbing opioids Senate Bill 1462 Relating to the prescription, administration, and possession of certain opioid antagonists for the treatment of suspected opioid overdoses.
- A group called the Texas Overdose Naloxone Initiative (TONI) is on the frontline of the opioid crisis in Austin.
- Mental Health Courts

- Mental Health Courts

- Broward County, Florida, established the first mental health court in 1997
- Mental Health Court Statutes in Texas Chapter 125 of the Texas Government Code outlines the requirements for establishing mental health courts in Texas.47 Sections 125.001

- Texas Mental Health Courts

- July 2008, Smith County commissioners laid the foundation for a Mental Health Court Program in Tyler.
- Harris County Felony Mental Health Court (FMHC) began screening defendants for court admission during the first week of March 2012.
- Dallas County Mental Illness Court
- Tarrant County Mental Health Court
- Domestic Violence Courts

- Texas & Domestic Violence Courts
- **County Criminal Court #10** in Dallas handles only misdemeanor criminal cases and was the first specialized domestic violence court in the State of Texas, opening in 1996.
- Texas Domestic Violence Resource Program
- Veterans' Courts
- Quiz
 - First Veterans Court
 1. 1968
 2. 1988
 3. 1998
 4. 2008
- Veterans Treatment Courts (VTCs)
 - Increased 14-fold from 2009 to 2014
 - A total of 350 problem-solving courts offered specialized services for military veterans or active duty personnel in 2014
 - Including 266 state, territorial and federal VTCs
 - As well as **specialized tracks** for veterans in already existing traditional drug courts or mental health courts.
 - Tribal Courts
 - Texas Tribal Courts
 - **Alabama-Coushatta Tribe of Texas Tribal Court**
 - **Tribal Court**
 - **Ysleta del Sur Pueblo**
 - **Na Peuykam Chibel (Juvenile) Court**
 - **Ysleta Del Sur Pueblo Tribal Court**
 - MJ Law & Tribal Lands
 - 2015 DOJ announced that it would let Native American tribes grow or sell marijuana on their reservations, even in states where the drug is still illegal.
 - Texas Child Protection Courts
 - The 24 child protection courts operate in 130 counties.
 - The specialty child protection courts in Texas were created to assist trial courts in the rural areas in managing their child abuse and neglect dockets.
 - The judges assigned to these dockets hear child abuse and neglect cases exclusively.
 - Therefore, children can achieve permanency more quickly and the quality of placement decisions should be higher.
 - Impact on Drug/Hybrid Courts

Target Population

Assessments

Eligibility/Termination

Treatment

Monitoring/Testing

- Driving Cases
- Types of MJ Cases

- Drug Possession Cases
- Child Support & Child Protection Cases
- Child Custody & Visitation
- Veterans Criminal Cases
- Mental Health Criminal & Drug Cases (co -occurrence)
- Domestic Violence Criminal Cases
- Tribal Jurisdiction Drug Cases
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- 10 Guiding Principles for Drug/DWI Courts
- **DETERMINE THE POPULATION**
- **PERFORM A CLINICAL ASSESSMENT**
- **DEVELOP THE TREATMENT PLAN**
- **SUPERVISE THE OFFENDER**
- FORGE AGENCY, ORGANIZATION, AND COMMUNITY PARTNERSHIPS
- TAKE A JUDICIAL LEADERSHIP ROLE
- DEVELOP CASE MANAGEMENT STRATEGIES
- ADDRESS TRANSPORTATION ISSUES
- EVALUATE THE PROGRAM
- ENSURE A SUSTAINABLE PROGRAM
- Drug Use and Eligibility in Specialty Courts
- Eligibility for Specialty Courts will vary depending on the jurisdiction.
- Even if offender meets the jurisdiction's criteria, acceptance is usually at the discretion of the Court.

Eligibility Criteria

OFFENDER CHARACTERISTICS

OFFENSE CHARACTERISTICS

Qualifiers vs. Disqualifiers

- In or Out
- Admitting Drug Court Participants
MJ Abuse
- **Large numbers of drug courts are admitting offenders who are abusing alcohol and marijuana**, but may not be clinically dependent or abusing more serious drugs.
- 87.7 % indicated that participants can enter drug court for marijuana abuse only.
 - Admitting Drug Court Participants
MJ Abuse
- **Allowing participants into drug court based on marijuana abuse only did vary geographically**
- The **majority** of courts that **do not accept** participants into drug court **based only on marijuana abuse are located in urban areas** (62.2 %), suggesting they may have a greater focus on more serious drug problems."
 - Issues
- Will the use of legally permissible MMJ prevent eligibility into a Specialty Court?
- Will the use of prescription medications prevent eligibility into a Specialty Court?

- Should marijuana be used in lieu of naltrexone, suboxone, vivitrol, etc. for opioid addiction in Drug Courts as MAT?
 - Should marijuana be used in Veterans Courts for PTSD?
 - May probation/parole permit the use of MMJ?
 - Pharmacological Approaches Treatment
 - Use of Drugs for Treatment in Drug Courts
 - Medication Assisted-Treatment (MAT) for Opioid Dependence
 - Use of MMJ for Opioid Dependence?
 - 2016 Year of the Opioids
 - CDC warns doctors about the dangers of prescribing opioid painkillers
 - FDA is reassessing its policies on opioid medications
 - Senate has passed legislation that would expand drug abuse treatment and prevention
 - Feds Give States \$53M to Fight Opioid Epidemic
 - The President's FY 2017 Budget \$1 billion in new mandatory funding over two years to expand access to treatment for prescription drug abuse and heroin use
 - DEA is pushing physicians for more responsible prescribing.
 - The departments of Veterans Affairs and Defense already have opioid policies for their patients.
 - Fentanyl
 - Fentanyl is an opioid, a class of painkillers that also includes oxycodone and morphine. Prescription-grade fentanyl is up to 100 times more toxic than morphine.
 - "Pink" "Pinky" Synthetic Opioid
 - Pink, better known by chemists as U-47700, is eight times stronger than heroin
 - By themselves or mixed with other drugs, in forms ranging from pills to powder to mists, they're killing thousands of people across the country, say law enforcement and health officials.
 - This stuff is so powerful that if you touch it, you could go into cardiac arrest.
 - The powerful, ersatz opioids are part of a surge of synthetic drugs, including bath salts and mock-ups of ecstasy, being shipped into the U.S. from China and other nations.
 - It has appeared in Florida, New Hampshire, Ohio, Texas and Wisconsin. A Toledo man died in May, 2016. A 19-year-old died in a Detroit suburb in October, 2016
 - So far, however, only four states have made Pink illegal. It can still be ordered legally online and delivered to your home. The internet has many websites a Google search away where the drug is available for as little as \$5 plus shipping.
 - The DEA said it had temporarily categorized U-47700 as a "Schedule 1" substance, effective Nov. 14, 2017
 - MAT for Opioid Dependence
 - Methadone, buprenorphine (saboxone), and extended-release injectable naltrexone are effective treatments for opioid use disorder and could decrease recidivism and avert drug-related crimes.
 - Many national and international professional bodies consider MAT an evidence-based best practice for treating opioid dependence.
 - Adult Drug Courts
- MAT for Opioid Dependence

- NADCP Supports MAT in Drug Courts with proper protocol and guidelines
- NADCP Board of Directors passed a unanimous resolution urging all treatment courts to utilize MAT where appropriate.
- NADCP recently published the Adult Drug Court Best Practice Standards
 - Adult Drug Courts
MAT for Opioid Dependence
- However, many drug courts do not recommend (or even allow) the use of MAT for opioid dependence
 - Adult Drug Courts
MAT for Opioid Dependence
- In a 2014 survey of all state and territorial **drug court coordinators** in the U.S.
- Opioids were ranked as the primary substance of abuse
- 20% of adult urban drug courts
- 30% of rural and suburban drug courts

• MMJ Reduces Opioid Abuse & Deaths?

- 3 Studies
- JAMA
- RAND
- Health Affairs
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Rand Study

- MMJ dispensaries were associated with a 16-31% decrease in opioid overdose deaths, especially among men
- Findings suggest that providing broader access to MMJ may have the potential benefit of reducing abuse of highly addictive painkillers.
- But See Health Affairs Study
- July, 2016
- Doctors in states with medical marijuana laws wrote fewer prescriptions for pain meds to Medicare patients than their colleagues in other states.
- That suggested that the reason for the decline in opioid deaths seen in the two earlier studies might indeed be because doctors are prescribing fewer of the drugs.
- MMJ for PTSD in Veterans Courts?
- Up to **one in five veterans** who served in **Afghanistan** and **Iraq** experience PTSD each year
- There are several federal and state bills and policies that have been passed, are pending, or have been declined, that have targeted the use of MMJ for Veterans diagnosed with PTSD.
 - Comprehensive Addiction and Recovery Act (CARA), 2016
- Will significantly strengthen drug courts and veterans treatment courts by expanding access to the overdose reversal drug naloxone.
- Will also provide new funding to expand access to evidence-based treatment, including MAT
- Will improve opioid safety measures at the Department of Veterans Affairs medical centers
- MMJ for PTSD in Veterans Courts?

- 2016 DEA approved a Colorado study that will “measure the efficacy of five different potencies of smoked or vaporized marijuana among 76 military veterans with chronic, treatment-resistant PTSD against a placebo treatment
 - MMJ for PTSD in Veterans Courts?
- 2010 the **U.S. Department of Veterans Affairs** formally **allowed patients treated at its hospitals and clinics to use MMJ in states where it is legal.**
- The clinic will **not actually prescribe** medical marijuana, but, those Veterans that are using it will not have their benefits or their pain medications ended.
 - MMJ Use in Drug Courts
- NADCP unequivocally stands against the legalization of marijuana and the use of smoked marijuana as “medicine.”
- What will you do if a Veteran is using MMJ for PTSD and wants to enter your Specialty Court?
 - MJ & Drug Testing
 - Standard Urine Test Panel
 - Alcohol
 - Amphetamines
 - Barbiturates
 - Benzodiazepines
 - **Cannabinoids (THC)**
 - Cocaine
 - Creatinine
 - Opiates
- Issues With MJ Monitoring & Testing
- MJ Metabolism-THC dissipates in blood swiftly
- Urine tests for inactive MJ metabolite only
- Oral Fluid-THC dissipates swiftly
- Window of detection and cut-off issues
- Confirmatory tests expensive
- **Manner of Ingestion**
Route of Administration
- How MJ Moves Through the Body
- The time it takes to move through the body can vary from person to person and depends significantly on:
 - The amount of MJ used
 - The method and frequency of use
 - The user's rate of metabolism
 - The concentration of THC

The Blood-Brain Barrier

- How MJ Moves Through the Body
- THC typically reaches the brain seconds after it is inhaled.

- The drug and its metabolites are lipophilic (fat soluble), and thus are easily able to pass through the blood-brain barrier
- How MJ Moves Through the Body
- Even antibiotics, or drugs for cancer treatment, do not cross this barrier
- Yet, cannabis is able to penetrate the two layers of cells that form the blood-brain barrier.
- After metabolism in the lungs and liver, into its metabolites, THC moves rapidly to lipid-rich tissues in the body, including the brain
 - Marijuana Toxicology

Active

THC a/k/a delta-9-tetrahydrocannabinol is the main **psychoactive** substance found in marijuana

Metabolites

11-Hydroxy-THC (aka 11-OH-THC) is the **main psychoactive** metabolite of THC formed in the body after marijuana consumption

11-nor-9-Carboxy-THC (aka 11-nor-9-carboxy-delta-9-tetrahydrocannabinol, 11-nor-9-carboxy-delta-9-THC, 11-COOH-THC, THC-COOH, and THC-11-oic acid,) is the **main secondary metabolite** of THC which is formed in the body after marijuana is consumed. It is NOT active.

- Metabolization
Alcohol vs. MJ

- Alcohol is metabolized at a predictable rate.
- Drugs are **not** eliminated from the body in a predictable way
- Unlike alcohol, there is no retrograde extrapolation for drugs.
- THC rapidly dissipates **in the blood** 1-2 hours after use THC levels drops over 80% within first hour of smoking
 - Metabolization of Marijuana

- ⊙ Assumption that cannabinoids will remain **detectable in urine for 30 days or longer** following the use of marijuana.
- ⊙ For new or **infrequent users**, the window of time for detection is believed to last **1 to 2 days**.

- Metabolization of Marijuana

- Studies have shown that **regular users** can test positive (20 ng/ml limit) for THC **metabolites for up to 46 consecutive days** following marijuana usage.
- In an extreme case, a **heavy** cannabis user of more than **10 years** was able to test positive (20 ng/ml limit) for up to **67 days** after last being exposed to marijuana.
 - Urine Testing Cut-Offs

- Typical 50 ng/mL cutoff for THC
- Some labs use the less common and more sensitive cutoff of 20 ng/mL
 - Oral Fluid Detection
- If the sample is tested inside a laboratory, where the detection level is as low as 0.5ng/ml, the drug can be **detected up to 72 hours after intake.**
- Onsite using an instant saliva drug test, with cutoff levels higher, cannabis can be detected up to 12 hours from last drug ingestion.
 - Oral Fluid Testing

In a study performed with gas chromatography-mass spectrometry (GC-MS) (7), THC was identified as the major component in saliva, with a detection time in the range from 2 to 10 h.

The presence of certain analytes in saliva is a **better indication of recent use than when the drug is detected in urine**

The presence of THC in saliva can be caused by contamination of the oral cavity during the smoking process, as the cannabinoids in the smoke are sequestered in the mouth

- THC Metabolization
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- If a participant enters the program with a positive urine metabolite of THC, what do you need to know?
 - Could it affect admission? Active v. Inactive
 - Could it delay therapeutic intervention?
 - Could it thwart the timely use of judicial sanctioning...”sooner the better” ?
 - Could it **foster the denial** of drug usage by participants
 - Best Practices MJ Use & Testing
 - Establishment of a drug testing benchmark that defines the expected detection window of cannabinoids in urine following the cessation of smoking
 - The program will need to consider the cutoff concentration of the urine cannabinoid test being utilized and develop criteria for defining chronic marijuana users.
 - The goal is to establish a given time period (detection window limit) after which a client should not test positive for cannabinoids as a result of continued excretion from prior usage.
 - Texas Child Protection Courts
 - Can Parents be Declared Unfit?
 - Maine, the state’s highest court has ruled that using medical marijuana could make a parent unfit
 - The court determined that the extent of the father’s pot use was a distraction to parenting and did pose a danger
 - Child Abuse For Use
 - What happens when individuals, legally entitled to smoke marijuana and forced to smoke inside their home, have young children in the home?
 - We have seen states take a proactive approach towards secondhand tobacco smoke.
 - Second Hand MJ Smoke
2015 Study

- Six experienced cannabis users smoke in the same sealed chamber as six non-users.
- The design of this study utilized three different experimental sessions, accounting for two concentrations of THC (5.3% and 11.3% THC) and two air-control conditions (non-ventilated and ventilated chambers).
- Results: **extreme exposure to second-hand cannabis smoke can produce blood-THC levels high enough to test positive on a drug test for several hours.**
 - Child Dependency

Ca. Ct. App. overturns judgment declaring child to be a dependent of the court

Trial court found father's usage of MMJ placed the child at substantial risk of serious physical harm or illness pursuant to Welfare and Institutions Code

Ordered him to randomly test for drugs and to participate in parenting courses and drug counseling

- Child Dependency
 - Az. Ct. App. Appellant is a MMJ cardholder
 - 2 children were removed from the home following a complaint that Appellant was growing marijuana in his home
 - The appeals court found that the juvenile court did not properly consider the AMMA in making its decision to take the children and, further, stated that, "... we are aware of no Arizona authority suggesting **evidence of a parent's legal use of a substance, standing alone, is sufficient to support a determination that his child is dependent.**"
 - The appeals court remanded the case to the juvenile court for a determination of **whether, at the time of the dependency determination, defendant was using marijuana in compliance with the AMMA and, if so, the court must give due consideration to the provisions of the AMMA regarding custody of minors.**
 - Child Dependency Proceedings

A finding of serious physical harm or illness based merely on such usage alone, without any **evidence that such usage has caused serious physical harm or illness**

or

places a child at substantial risk of incurring serious physical harm or illness, is unwarranted and will be reversed.

- Child Abuse for MJ Grow
- Denver, Colorado
- Defendant was originally charged with felony child abuse for a legal medical marijuana grow because he had three kids living in the home where he was cultivating.
- The count was later bumped down to a couple of misdemeanors, to which Defendant pleaded guilty