

Testimony of Tim Barker for June 24, 2019

Good morning Chairman Hennessey and Carroll and members of the House Transportation Committee. By way of introduction, my name is Tim Barker and I am a Chief Deputy Prosecutor for the York County District Attorney's Office, where as part of my duties, I oversee the establishment of policies related to Vehicular Crimes and Pretrial Diversion. On behalf of York County District Attorney Dave Sunday and the Pennsylvania District Attorney's Association, we thank you for the invitation to appear before you and discuss pretrial bail initiatives relating to repeat and multiple DUI offenders.

In 2011, the York County Criminal Justice Advisory Board formed a subcommittee to analyze the potential expansion of the DUI Treatment Court. This subcommittee contained representatives from all areas of the criminal justice system. As part of this subcommittee, the Criminal Bench raised a concern that they were seeing DUI defendants being arrested multiple times before the resolution of their first DUI.

Many theories were discussed as to why this multiple offender group appeared to be high. The DA's Office volunteered to analyze all repeat and multiple offender DUI files and offenders. This subcommittee supported this data/evidence-based approach.

Following an exhaustive review of all 2010 information, we identified significant issues regarding our DUI criminal justice system. Of these, the greatest problem was most repeat/multiple offenders consistently received ROR bail without conditions regardless of number DUI arrests or convictions. Even those offenders who received monetary bail received low bail and no conditions upon release. Finally, the analysis revealed that repeat/multiple DUI offenders within the 10 year statutory look back period constituted approximately 25% of our DUI offenses for 2010; hence the name "Target 25."

To address this problem, the subcommittee created the nationally recognized Target 25 initiative. We wish to stress some points before detailing the operation of the Target 25 initiative. First, this program has its roots in the "24/7" concept promoted by NHTSA, which has been validated through research. Second, Target 25 successfully operates within the confines of the Rules of Criminal Procedure and governing case law, specifically those relating to arrest and bail. Third, Target 25 does not invade the critical role of judicial discretion in evaluating and ordering appropriate bail conditions for repeat/multiple DUI offenders. Finally, and most critically, Target 25 is a supervised bail program run through our York County Department of Probation Services. Our success would be reduced without the use of supervised bail.

During a DUI arrest under the Target 25 initiative, an officer requests the Sheriff's Department and/or inquires themselves into the DUI suspect's criminal history and driving record. The purpose of this review is to see if the suspect has any prior DUI convictions within the statutory 10 year look back period (the time period in the PA DUI

law wherein prior DUI convictions constitute a prior DUI offense for sentencing purposes) or a pending DUI offense.

If the DUI suspect has such prior or pending DUI offenses, then the officer or a Sheriff's Deputy transports the DUI defendant to Central Booking at the York County Judicial Center. The officer then charges the DUI defendant with DUI under either 75 Pa.C.S. §§ 3802(a)(1), (d)(2) or (d)(3), (the general impairment DUI subsections for alcohol and/or drugs, depending upon the impairing substance suspected at the time of arrest).

A Magisterial District Judge then preliminarily arraigns the DUI defendant, wherein specific bail conditions may be imposed upon the Target 25 offender. First and foremost, those conditions include being placed on Supervised Bail under an Adult Probation Officer assigned to the Supervised Bail Unit of the Department of Probation Services.

Other bail conditions may include requiring that the defendant wear an alcohol-monitoring device around the ankle, providing 24/7 prohibition against the consumption of alcohol. DUI defendants may also be subject to random drug testing, which includes testing for alcohol, through a testing facility near the Judicial Center. The drug testing component is critical, as a drug was in whole or in part responsible for the DUI offense committed by the Target 25 offender in 58.61% of the 2018 DUI cases.

Following the preliminary arraignment and imposition of Target 25 bail conditions, a preliminary hearing is established in a block scheduling time for the MDJ as close as possible to 20 days after the DUI defendant's arrest. The charges are then amended at prior to or at the preliminary hearing based upon the toxicological results received from a forensic toxicology laboratory with interpretation by a forensic toxicologist (we use a private laboratory a blood drug and alcohol panel as a primary testing panel).

Also, following the arrest of a Target 25 DUI offender, Court Administration notifies the DA's Office to start a Target 25 screening process within the DA's Office. A multistep process within the DA's Office then ensues under this process. Initially, support staff request police and lab reports. Victim/Witness Coordinators screen each file for potential victim information and services. Case Managers calculate prior records through criminal and driving records.

Finally, a Chief Deputy Prosecutor (currently me) reviews each Target 25 file. The Chief Deputy Prosecutor determines if the DUI defendant is eligible for DUI Wellness Court, and if they are, pre-approves their admission into this program. The DA's Office scans this information to the DUI Wellness Court Supervisor. All victims are contacted for their input regarding DUI Wellness Court eligibility.

The Chief Deputy Prosecutor places a sentencing recommendation in the file for all Target 25 defendants who are not eligible for DUI Wellness Court eligible. This file

flow for Target 25 cases takes approximately 25 days to complete, including sentencing recommendation and DUI Treatment Court referral. Finally, the Deputy Administrator of Case Management within the DA's Office records the Target 25 data for future analysis and statistical purposes.

Concurrent with these processes, Supervised Bail Officers engage in supervision of the Target 25 defendants. This process includes the Supervised Bail Officer recommending drug and alcohol evaluations be performed and treatment recommendations to be completed by the defendants. In order to remain compliant with the rules governing bail, substance abuse counseling is not mandated as part of Target 25 supervision. Supervised Bail Officers, however, are highly successful at guiding the defendants into treatment through their recommendations and referrals (in 2018, 66% of Target 25 offenders successfully completed or were still engaged with services at discharge from supervised bail). Supervised Bail Officers will also aid defendants in applying to DUI Wellness Court.

As mentioned previously, an alcohol-monitoring bracelet may be attached to the defendant to effectuate 24/7 alcohol consumption monitoring. Additionally, random drug testing may be mandated. This requirements are also monitored by the Supervised Bail Officers.

Those Target 25 offenders who comply with supervised bail, as well as successfully engage in any recommended substance abuse services, may be eligible for sentencing incentives. To promote these diversionary benefits, York County established a Pretrial Incentives Matrix to aid the Courts in sentencing successful Target 25 offenders.

The results of Target 25 since implementation are overwhelmingly successful. For example, in 2018, 446 Target 25 cases successfully complete supervision. Of those, 86% received a diversionary sentence: 13% entered DUI Wellness Court; 72% received an Intermediate Punishment sentence; and 1% received ARD. Additionally, Supervised Bail Officers recommended additional sentencing incentives for 58% of Target 25 cases, with the Courts granting incentives to 81% of the recommended cases. Also, 32% of Target 25 offenders who were unemployed gained employment while on supervised bail and remained employed at its completion.

In 2018, the average safety rate (no new arrests while on supervised bail that resulted in a revocation) for Target 25 offenders was 93%. Only 9 new DUI's were committed by a Target 25 offender: 2 were alcohol only; 5 were drugs only; and 2 were a combination of alcohol and drugs. 2018 cases involving defendants with multiple DUI offenses within the calendar year (which captures both Target 25 and non-Target 25 DUI offenses) was 11.69% (compared to 25.87% in 2011). The overall success rate (no re-arrests, violations, or failure to appear) in 2018 for Target 25 offenders was 71%.

Finally, the number of DUI victims served by the DA's Office has sustained an unprecedented drop since the inception of the Target 25 initiative. Prior to the implementation of Target 25, the DUI victim population constituted a range between 15 and 20 % of the total number of victims served by the DA's Office, with the typical percentage being the total from 2011, which was 18%. Since the Target 25 initiative began in 2012, the range of DUI victims served is from 6 to 10%. In 2018, the percentage of DUI victims served was 8%, constituting a 10% reduction in DUI victims served from the last pre-Target 25 total in 2011.

In conclusion, people are safer on York County roadways because of the Target 25 initiative. We thank all of you for your attention to this critical matter of public safety on our roadways, and look forward to working with you on this issue.