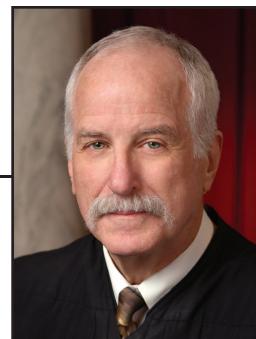


FROM THE CHIEF

John A. Hutchison

Chief Justice
The West Virginia Supreme Court



WEST VIRGINIA JUDICIARY EMBRACING HOLISTIC APPROACH TO JUSTICE

Scales of justice are an ancient symbol of the court system and represent the judiciary's obligation to weigh evidence impartially. With West Virginia's substance abuse crisis, the scales now also symbolize our commitment to balance justice and compassion.

In my four decades as a legal professional, including more than 25 years as a judicial officer, criminal courts have evolved from focusing solely on determining guilt and imposing sentences to adding treatment courts to address substance use disorders that result in addicted citizens committing crimes. We also now prioritize keeping families together and apply the treatment court model in the civil abuse and neglect process. This year, we are expanding that concept to magistrate courts. A new initiative aims to help repeat offenders address their substance

abuse issues before they "graduate" to committing felonies.

The number of drug offenders admitted into West Virginia prisons increased by 300% from 2000-2017, according to the West Virginia Office of Research and Strategic Planning.¹ In addition, the Centers for Disease Control and Prevention reported that the drug overdose mortality rate for West Virginia increased 54% in one year from 2019-2020,² with a total of 1,330 overdose deaths in 2020.³ The state had the highest drug overdose mortality rate in the nation for 2020 with a rate of 81 per 100,000;⁴ the national average was 28 per 100,000.⁵

West Virginia began developing a treatment court system over 15 years ago. Now, the state has 29 adult drug treatment courts that are accessible to residents in all 55 counties, 16 juvenile drug treatment

courts serving 24 counties and 11 family treatment courts serving 14 counties. Both adult and family treatment courts have tracks within the programming to serve veterans, in conjunction with veterans' centers throughout West Virginia.

All treatment courts depend upon frequent and ongoing judicial interaction with each participant. This is a time-consuming and intense commitment our judicial officers make beyond their normal duties and for which they receive no additional compensation. As local leaders of these programs, judges are asked to keep apprised of the latest research and best practices to effectively communicate and collaborate with specialized non-legal staff who serve on multidisciplinary treatment teams.

Treatment courts integrate early, continuous and intense alcohol and other drug treatment services with



Amber Wilford, pictured with her parents and her son, graduated from a Roane County Adult Drug Court on Feb. 7, 2020. She currently has a job with Family Health Care and works on the county's treatment court teams.

Magistrate Court Services Director Olubunmi Kusimo-Frazier speaks to magistrates at the Magistrate Court Conference in April 2022 at Oglebay Resort in Wheeling. She talked to them about the Substance Use Disorder Initiative a pilot now operating in Calhoun and Mingo Counties and the Eastern Panhandle.



PHOTO BY ALEX WILSON, SUPREME COURT OF APPEALS OF WEST VIRGINIA

justice system case processing. Prosecuting attorneys and defense counsel use a non-adversarial approach to promote public safety, while protecting participants' due process rights. Recovery support through phased step-down services is incorporated in every West Virginia treatment court. Although most individuals charged with a crime are brought before a magistrate, treatment courts are generally not offered in magistrate courts.

To address this gap, the Magistrate Services Division is developing a project intended to help repeat offenders in magistrate court who are struggling with substance abuse issues. The Substance Use Disorder Initiative was introduced to magistrates and staff during spring trainings and is now operating in Calhoun and Mingo counties and the Eastern Panhandle. The initiative complements the work of drug courts and serves a similar, but different, population. Through strong partnerships with the Department of Health and Human Resources and community treatment facilities, the pilot program allows magistrates to refer certain defendants to competent, compassionate, free care in their communities.

Participants are chosen based on pre-trial risk assessments completed by jails within 48 hours of incarceration and the individual's prior record. Participants often have a prior record of arrests, particularly a record with drug possession charges, and may have a history of appearing in court intoxicated.

West Virginia Code § 61-11-22 allows for a pre-trial diversion agreement for certain drug-related magistrate court charges for up to 24 months. Treatment may be a condition of the diversion agreement. At the conclusion of the requisite time period, the matter will be dismissed. The goal is therapeutic, rather than compulsory, completion. The hope is that by the time the pre-trial diversion ends, the individual has found the right treatment plan for them and is working their program.

West Virginia Code § 61-11-22a allows deferred adjudication. In those cases, defendants can plead guilty; but the order is not entered while the individual completes a probationary period. Treatment and counseling may be conditions of the deferred adjudication. Following a conviction, an individual may be ordered into treatment as a condition of probation or home confinement.

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Approved facilities provide medication-assisted treatment to those who need it and develop a rehabilitation plan for everyone referred. If successful, the Division of Magistrate Services is interested in expanding the project and practices statewide.

Because of the success of treatment courts, the West Virginia Judiciary has continued to look for innovative ways to improve justice, especially for our most vulnerable citizens. In 2021, the Supreme Court launched a project that focuses on victim safety. The Remote Domestic Violence and Sexual Assault Outreach Project provides an extra level of protection to victims who may be afraid to seek help from a court for fear of a confrontation with their assailant.

The program allows domestic violence and sexual assault petitions to be filed remotely and for petitioners to virtually attend follow-up hearings from designated locations without going to a courthouse. Respondents' rights are protected because specialized tech equipment, such as document cameras, allows respondents to face their accusers and present evidence. The project is now operating in Cabell, Jefferson, Kanawha and Ohio

counties and will expand to three additional counties before the end of 2022.

A more holistic approach to justice is becoming the norm. The West Virginia Judiciary will continue to look for innovative ways to serve residents who access and interact with our courts. Providing justice in a setting that protects the rights of all parties will always remain our top priority. The ways we carry out that mission continue to evolve to meet the needs of our citizens. **WVL**

Endnotes

1. Office of Research and Strategic Planning Research Brief, "Drug Offenders Incarcerated in West Virginia: Characteristics and Population Trends, 1998-2015, January 2017, by Maria M. Orsini, M.A., and Douglas H. Spence, Ph.D.
2. Centers for Disease Control and Prevention, *2019-2020 Drug Overdose Death Rate Percent Change Map*, 2019-2020 Drug Overdose Death Rate Percent Change Map | Drug Overdose | CDC Injury Center.
3. Centers for Disease Control and Prevention, *2020 Drug Overdose Death Rates*, <https://www.cdc.gov/drugoverdose/deaths/2020.html>.
4. *Id.*
5. Centers for Disease Control and Prevention *Death Rates Maps and Graphs*, <https://www.cdc.gov/drugoverdose/deaths/index.html>.