

State of the Judiciary
Chief Justice Maureen O'Connor, Ohio Supreme Court
Message to Ohio Judicial Conference
September 13, 2018

Good afternoon, everyone.

Thank you Judge (Shriver) for that introduction ... and thank you for the invitation for me to deliver the State of the Judiciary Address.

This is the eighth time that this honor has been extended to me – by the OJC and by the voters who provided me the privilege to serve them.

I'm pleased to see so many familiar faces ... and so many new ones.

As already noted, attendance at this gathering is at a record level this year.

When judges have the opportunity to see each other and share knowledge, good things happen.

This turnout is great to see.

The Ohio Judicial Conference's leadership is to be commended for putting together this week's events in a way that draws so many of you here.

To my six colleagues on the Supreme Court – who are here today – I want to say thank you for your resolve and service to the public.

I want to recognize a key leader who is leaving our Court. For four years, Mike Buenger has been our administrative director, making him the senior non-elected officer of the Court.

Mike has served admirably as the overseer of our administrative staff, and as an important liaison with the other two branches of Ohio government. He has led our staff in the development of task forces and many other special projects.

Mostly notably, Mike was at the forefront of a type of enterprise that had never been established before – the Regional Judicial Opioid Initiative.

The opioid initiative has fused together scores of local and state officials from eight states -- across jurisdictions and across lines of duty, including judges, law enforcement and legislators – along with medical and treatment professionals, academics, social service groups and NGO's.

It's a monumental achievement led by our Court – and Mike's deep knowledge of state and federal government interactions was invaluable to its formation.

Mike also is a good friend and I'm sad to see him go.

But he's not going far. Next month, Mike will become the chief operating officer of the National Center for State Courts in Williamsburg, Virginia ... an organization that works diligently to advance justice by assisting courts in all 50 states and our territories.

Congratulations, Mike.

My next acknowledgement is for the passing of an era on the bench. The justice who sits to my right as the senior justice of the Court – Terrence O'Donnell – will depart when his term ends December 31.

Ohio's constitutional judicial senility clause makes it impossible for Justice O'Donnell to continue on the bench.

Terry O'Donnell joined the Court 15 years ago. To be totally accurate, Justice O'Donnell joined the Supreme Court bench 15 years ago. Decades prior to that – in 1971 – he began his law career at the Supreme Court ... as a clerk to Justice J.J.P. Corrigan.

Justice O'Donnell's legal career has been distinguished ... and long – on the Cuyahoga County Common Pleas Court, the Eight District Court of Appeals, as a visiting trial court judge ... just to name some high points.

He will be known for many majority opinions and well-crafted dissents.

He also will be known for making a difference in the legal profession in this state through his leadership in the Lawyer to Lawyer Mentoring Program.

His time on our Court holds special meaning to me, because Terry and I served together under the late Chief Justice Thomas J. Moyer. That experience benefitted both of us in so many ways.

I speak on behalf of my fellow justices and the court staff when I say that we will miss you on the bench, Justice O'Donnell, and in the conference room.

The conference theme – “Today's Trends, Tomorrow's Rulings” – couldn't be more timely.

The educational sessions have been outstanding.

John Born and Sam Quiones hit it out of the park with their riveting session.

I could not have asked for a better preface for my remarks to you today. I'm going to focus on Issue 1.

We have a very, very serious issue facing us this November ... I think of it as a crisis that will exacerbate the opiate crisis we deal with on a daily basis

I'm talking about The Issue One ballot proposal that goes before voters in a few weeksas our nearly month-long voting process begins.

One big take-away from authors and researchers like Mr. Quinones is that the drug problem in America didn't happen overnight and unfortunately there is no magic bullet.

So what is our response?

Well for too long we tried to arrest and incarcerate our way out of it.

That certainly didn't work too well for the drug user or for the criminal justice system.

Quite frankly, addiction to opioids wasn't determined to be a disease, a health issue until rather recently.

With the more enlightened way of thinking about addiction comes a new way of addressing the treatment for addiction.

And this thinking is to treat addiction as the disease that it is.

Fast forward and the proven model for recovery of addiction is to couple treatment with accountability.

Treatment experts will tell you that medically assisted treatment is the gold standard along with counseling, peer interaction, support and accountability.

Accountability is where the courts come in. Judges should not be precluded from exercising their discretion when they have a drug addicted defendant before them.

Treatment for recovery seems pretty straight forward and if those addicted to heroin or synthetic opioids like fentanyl were able to use will power, to let reason control, or to use common sense to respond to their addiction... we wouldn't have the crisis.

I had a conversation recently with a proponent of Issue 1.

The focus was on the value of MAT and the other features of treatments for recovery.

I said without a force exerting authority to mandate treatment, addicts won't seek treatment and if they do won't stay in treatment.

The next question was, isn't staying alive incentive enough to break the addiction, to make them go to treatment and be successful.

Quite frankly if it was, we wouldn't have the heart break of addiction on the level it is.

The fortunate addict is the one that is arrested, is able to enter a drug treatment court program and is incentivized to complete the program because if they don't they will have a felony conviction and they will do time.

Every addiction specialist that I have consulted over the years, trying to understand this problem, says that drug courts are the best tool & offer the highest rate of recovery.

And the leader of every drug court, the judge, provides the incentive to the addict to complete the program...a commitment to the program and recovery.

Ohio is a shining example of what courts are doing right in the drug abuse arena ... even though the problem is immense, and growing and so difficult to manage ... and, yes, so often depressing.

We judges are making a difference. We are changing lives. Actually, we are saving lives through specialized dockets. That is no exaggeration.

And we are risking the loss of all of our progress at the ballot box in a few weeks.

What defendant will opt for drug court when there is no possibility of the judge sending them to prison? That's what issue 2 says ... Felony 4th or 5th possession charges will all be misdemeanors.

We now have 241 specialized courts in Ohio ... And well more than half of them are drug courts. I'm so proud of the work you are doing on the bench in these specialty areas.

Right now, nobody does more day-in and day-out to fight the opioid crisis than you, the judges.

There is more tough love in a drug court than you will ever see anywhere else when it comes to America's drug epidemic.

Judges must carry the burden of the rule of law – yet also consider – with compassion and empathy – the stories of addicts and how they arrived in court.

Yes, we are listening to them. We are hearing their stories and trying to understand their struggles. In this way we learn, we help the addict and their families and we improve our system.

Understanding our fellow citizens and how they fell into the mess of drugs is a big part of helping them find a pathway out – back to productivity.

Many fail ... over and over ... Some because the drug culture captivates and exploits ... And some because the social deck is stacked against them.

These defendants are co-workers, acquaintances, neighbors, friends – and mothers, fathers, brothers, sisters and daughters and our children.

They are our fellow Americans.

It doesn't matter where they come from ... whether it's a poor neighborhood or a wealthy suburb...

Their needs and their cries for help are heard in the emergency rooms of justice ... otherwise known as courtrooms.

For you judges who constantly must serve in multiple roles ... as a judge and also as a social worker ... ensuring that these addicts get the medically assisted treatment they need, I applaud you.

I cannot say this enough ... when it comes to drug courts, we cannot have any success without medically assisted treatment.

The M-A-T process starts in the courts and is carried out by medical professionals.

We have learned many lessons in our drug courts. The main lesson, I believe, is this one: Without treatment, a drug court does not function.

We have to embrace this reality.

Here's the other bookend to making this process work:

For addicts to recover through drug courts, jail time must be on the table as an alternative.

Without the reckoning of potential jail time versus drug court, there's no remedy for the people we are trying so hard to help.

This choice – the choice of drug court – marks the beginning of the end of addiction for those who get in the program and see themselves through to graduation day.

This choice gains them medically assisted treatment. MAT gets them involved with medical professionals who can truly help.

We have created a cycle of hope – and it's working in Ohio.

But all of this will come crashing down if Issue One passes in this election season.

Specialized dockets and programs like M-A-T represent an expansion of your role – and, I hope, an expansion of your thinking about how courts aid our society.

We have partners in our quest.

God bless our first responders — the EMTs, the police officers, the medics – who encounter drug victims on the street and in their homes. They work in an un-enviable no-man's land between life and death. Their work is expanding – and exhausting – and dangerous.

The rising use of fentanyl and other synthetic drugs ... that are lethal even in the tiniest amounts ... is putting the lives of first responders at great risk.

When you come right down to it, when you consider what happens next in these people's lives, and the lives of those around them, you arrive at the conclusion that no one protects families like courts do.

You, as judges, are not the very first responders... but you are early responders and your work is connected directly to life- saving measures.

You are responding to the first steps on the addict's path to recovery, if he or she can be persuaded to take those steps.

The possibility of treatment instead of jail time is a path that is working in our state.

Medication-Assisted Treatment is the key that unlocks the door to a drug- free existence. MAT is the key to making drug courts work effectively.

So, thank you judges, for your work day after day. You see the successes and the failures. You are changing lives.

In Medina County, Common Pleas Judge Christopher Collier is changing lives. He oversees an early intervention program that offers drug abusers one compelling choice ... get treatment or stand convicted.

He works to ensure that abusers reach their goals and attend mandatory meetings. If they do all they are supposed to do in one year, he dismisses the drug charges.

In Ottawa County Juvenile Court, Magistrate Danita Gilbert-Conway and the county's Court Appointed Special Advocates just launched a program called "Grand Love" at its family advocacy center.

You see, this crisis is so bad ... that grandparents are taking custody of kids because their parents are addicted to drugs.

This program provides resources for them — since the relatives don't get funding like a foster parent would.

In Ottawa County, 52 percent of juvenile custody cases are filed by a non- parent, a grandmother or grandfather, aunt, or uncle, to help raise these kids.

In Butler County, Fairfield Municipal Judge Joyce Campbell recently was elected to the board of NAMI – the National Alliance on Mental Illness, giving her work in Ohio national exposure.

Judge Campbell realized "early on as a judge," as she put it, that diversion programs – diversion from normal criminal justice solutions -- were needed for those living with mental illness and the same is true with addiction.

In Akron Municipal Court, Judge Annalisa Williams is dealing one-on-one with those suffering

from mental illness. It's called a "Peace of Mind Program."

She asks everyone who appears before her — "Tell me something good."

The participants suffer from conditions ranging from bipolar disorder to schizophrenia. They are charged with misdemeanors.

This program helps reward small victories ... bills being paid, drugs being left behind ... and she gives rewards, including books, for people making progress.

With so much progress being made – and even copied by other states – why would we through it all away?

Yet, that could happen when early voting starts in October and ends on Election Day, November Sixth.

Should it pass, State Issue One – a proposed constitutional amendment – would bring our progress in the drug arena to a halt.

The biggest victims would be the addicts themselves.

But let's face it – all Ohioans would suffer.

I am not saying that the proponents of Issue One are trying to create havoc. To the contrary, I'm willing to give them the benefit of the doubt and say that they are trying to help.

But Issue One is poorly conceived and poorly written. It would be a disaster for our state. On its surface Issue One looks progressive. It purports to help addicts by reducing drug possession penalties.

But it's actually regressive. One of its many flaws is its focus on the size and weight of trafficked and possessed drugs. This is 1960s thinking, when a "nickel bag" of pot could provide a high for a small group of users.

Size and weight are no longer relevant to the effects of abused drugs. By focusing on weight, Issue One would mandate that judges levy a misdemeanor for a lethal dose of fentanyl.

I hope that you've all read my letter that I sent about my concerns with Issue 1. Two milligrams of fentanyl – that's two one-thousandths of a gram – will kill you. Issue One calls for possession of up to 19 grams to be treated as a misdemeanor – an amount that could kill up to 10,000 people.

Probation would be automatic and the judge cannot incarcerate, which leads us to another major flaw: The removal of the key motivating factor for drug court participation – the specter of jail time.

Who would want to go through a year of mandated drug court if all they are facing is a misdemeanor charge – even though the drug they are possessing or trafficking could kill thousands of people?

Some proponents of Issue One, when faced with this stark reality, say that, well, if voters say yes, it can be fixed at the Statehouse.

No. That's not a given. This is a proposed constitutional amendment. It's not a proposed statute. It would become a fixture in our state constitution, and a legislative road to fixing it wouldn't exist. It would take another constitutional amendment to fix this flawed proposal.

Finally, federal laws that apply against fentanyl and K2, heroin, cocaine and meth – would remain in effect. Do we really want to have the federal system deal with drug abusers? Remember, there is no such thing as drug court in the federal system by which you can erase a felony charge by successfully completing a drug treatment program.

Proponents are wrong when they say Issue One is a way to deal with – quote – “small amounts” – of drugs. I've seen it reported this way in news stories.

What do we get as Ohioans from Issue One? We get destruction of our drug courts – and we get the very real possibility that unimagined leniency toward killer drugs would draw more dealers to set up bases in our state.

I am speaking out because of a sense of duty as your chief justice, to educate Ohioans about this Issue Gone Wrong.

In many previous addresses before you I have urged judges to become involved in dialogues at your local levels and speak up on issues of law and justice.

You need to speak up locally on this potential menace.

What can we do in alignment with our ethical duties?

On April 5, 2002, the Board of Commissioners on Grievances and Discipline issued an opinion (Opinion 2002-3) that says:

It is proper under Canon 2(A)(1) of the Ohio Code of Judicial Conduct for a judge to communicate to the public about a proposed constitutional amendment regarding drug treatment in lieu of incarceration, to explain the proposed amendment, to compare it to current law, and to describe its potential impact on the constitution, the law, and the operation of the courts. At all times during public communications, a judge must maintain the integrity appropriate to judicial office and abide by the high standards of speech in Canon 7.

So, there you have it. I have a duty to speak out on Issue One, and I hope you will join me in doing so and help us continue our progress in the fight against drug addiction. It's a fight against

the misery that drug abuse brings to our state – and especially to the addicts themselves.

Just last week, a mother from rural northern Ohio called my office to thank me for an editorial I wrote and to let me know that a nearby drug court is the last resort for her daughter, who has been addicted for ten (10) years.

She said that her daughter was addicted that long because standard treatments failed. They lasted just a few weeks and – I quote her now – “it takes the brain more than a year, 18 months at least, to recover from opioid addiction.”

Then she said this, quote: “Until she was charged with a felony, she had no help. She needs time for her brain to get better.” End quote. And the only way for her daughter to get there was to “face a felony” ... and then choose drug court ... and get MAT ... and stick with the program.

This caring mom got it right ... not because she’s a medical professional, but because she is living the painful reality of mothering the child she loves and living through the ups and downs – mostly downs – of an addicted child.

She sees the one way out for her child – a caring judge and a functioning drug court.

Please, my colleagues, speak up with your perspectives on this situation. We need your voices across all of Ohio.

You are leaders in your communities ... you understand the challenges we face the drug crisis that doesn’t seem to be going away ... All of you have local challenges. There are times when you are juggling so many challenges on the bench and in court administration that it seems overwhelming.

But together we can prove to the public that we are more relevant now than ever, and that we can adjust to the ever-changing nature of what we do.

Our specialized dockets, including our drug courts, have moved us in that direction. Let’s put our entire system on that road to relevance and effectiveness.

It has been my pleasure to work with you on these great endeavors and I am looking forward to working with you – and recognizing your labor and your results.

Thank you again for allowing me the honor of speaking to you today.

God Bless.