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COMPELLED SPEECH: YOU CAN'T MAKE ME SAY THAT



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PRESIDENT'S LETTER



BY: **LORI GRIGG BLUHM**
City Attorney, Troy, Michigan
and IMLA President

To My Dedicated and Informed Municipal Law Colleagues

Most of us chose a municipal law career in order to make a difference in our communities, and a governmental law practice provides daily opportunities to fulfill this mission. Our practices generally require much versatility, engaging us in many different legal specialties. In my case, the City charter obligates our office to take on criminal misdemeanor prosecution matters, in addition to everything else. It's been a few years since I've had to handle a criminal jury trial, but I do receive a significant number of diversion requests from criminal defendants that detail the devastating impact a criminal conviction will have on their lives and/or the lives of their families. Many of the stories are heart wrenching, and most, if not all, of the crimes are attributed to some type of a substance use disorder. I intentionally use this technical medical term, rather than saying "addiction," since I'm told by experts that it's less stigmatizing. We are surrounded by stories of how lives are disturbingly impacted by substance use disorders. For example, I just finished reading *Demon Copperhead* by Barbara Kingsolver--just one illustration of the unyielding grip of opioid, alcohol, or other drug dependencies.

As municipal attorneys, we can take some action to address substance use disorders. In the case of opioids, IMLA members were at the forefront of the nationwide effort to hold manufacturers, distributors, and pharmacies accountable for their role in the epidemic. I want to give Erich Eiselt and our colleagues on the IMLA Opioid Litigation Group a huge shout out for their work in educating us, and for in their zealous advocacy, which continues to this day. In my home state, there were two additional recent class action opioid settlements, and hopefully all of you are aware of the opportunities to recoup some of the costs that municipalities incurred and will continue to incur in addressing the epidemic. One potential use of this money, which has proven to make a difference in our community, is to provide support to a problem solving court.

As a criminal prosecutor, I have the privilege of serving on two problem solving courts, which are designed to address the root causes of crime and stop the cycle. In Michigan, according to the just released *FY 2022 Problem Solving Courts Annual Report* issued by our State Supreme Court, there are 109 drug therapy courts, 22 adult mental health courts and 28 veteran's treatment courts. These specialty courts follow best practices recommended by the National Association of Treatment Court Professionals, and are comprised of a diverse team that includes judges, prosecutors, defense attorneys, treatment professionals or psychologists, police officers, social workers, and peer recovery coaches. As a member of a drug therapy court team for many years, I have witnessed hundreds of success stories. Part of the success of the program is the support and encouragement given to the participants in a non-controversial and more informal setting. When the participants feel that the team, including the judge, are vested in their success, they are more likely to buy into the program. The therapists are a critical component and help to uncover root causes leading to substance use disorders. The peer recovery team members are also essential, since they are well versed in the many excuses and behaviors exhibited by persons with substance use disorders. Other team members assist in the participant's efforts to secure steady employment. The State has also offered some incentives, including the issuance of a driver's license for participants who agree to have ignition interlocks (breathalyzers) installed in their vehicles..

Many of your states have interdisciplinary problem solving courts, and they have demonstrated their value. Some states choose to reward successful drug treatment court participants with diversions, holding criminal conviction(s) in abeyance until the successful completion of a treatment court. This may bring with it some unintended consequences. In another example of how these issues can converge, IMLA's Legal Advocacy Committee has authorized participation in a petition to the U.S. Supreme Court in *Duarte v. Stockton*, a Ninth Circuit decision. In *Duarte*, a criminal defendant pled nolo contendere to resisting arrest, but received a diversion. After completing the diversion, he filed a Section 1983 lawsuit against the arresting officer and the department. Under *Heck v. Humphrey*, a guilty plea would generally preclude this type of a civil rights lawsuit against the officers and the municipality, but the Ninth Circuit found that because the plaintiff's criminal charge was ultimately dismissed due to completing the diversion, no "conviction" had occurred, and he was not precluded. IMLA's amicus activity in *Duarte* follows another case from last year, where a criminal defendant was granted a pardon after twenty years and was subsequently allowed to file a civil rights lawsuit against the government.

These are just some of the ways in which IMLA continues to be at the forefront of issues relevant to local government, and reaffirms my commitment to our organization.

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