



DUI JusticeLink

A Resource to Help Reduce Substance-
Impaired Driving

Updated October, 2016

Welcome

Welcome to the *DUI JusticeLink* Bench Book developed and maintained by AAA. The purpose of this content is to provide criminal justice professionals with easily accessible, impartial information on a wide range of impaired-driving issues related to the detection, prosecution and adjudication of substance-impaired drivers. AAA's *DUI Justice Link* was designed to inform judges, prosecutors, probation officers and law enforcement about the work and activities of each professional group, problems often encountered in the criminal justice system, and potential solutions to these problems, all in the context of reducing impaired driving on America's roadways.

Important Note: *Hyperlinks will remain functional so long as internet access is available at the time of use.*

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PURPOSE OF DUI JUSTICELINK

AAA observed the need to pull together information about potential solutions to common problems often faced by judges, prosecutors, probation officers and law enforcement as an impaired driver moves through the criminal justice system. Most of the information presented herein was produced by government agencies, universities, and professional associations serving criminal justice professionals. On your behalf, AAA has compiled resources including, but not limited to scientific research reports, case studies, and state laws.

We realize that criminal justice professionals are extremely busy and have limited time to conduct this type of research, so we have done the work for you. These resources are organized and presented on this website – the information clearinghouse we call *AAA DUI JusticeLink: A Resource to Help Reduce Substance-Impaired Driving*.

JUDGES

As members of the criminal justice system, judges are impartial administrators of the law. Judges who preside over impaired driving cases need to be equipped with specific information about the challenges often faced by the judiciary as an impaired driver moves through the criminal justice system.

The *revolving door*, as it is often called, refers to the continued exploitation of the legal system by repeat offenders. A top priority for AAA is to provide the information needed by judges to help close legal loopholes often exploited by attorneys representing impaired drivers, while still protecting the rights of the accused.

AAA recommends that users of *DUI JusticeLink* conduct a thorough review of general content descriptions and executive summaries provided in each of the core content areas: **Detection, Evidence, Procedures, and Sanctions**. Subsequently, this website may serve you best as a reference guide for use during cases involving an impaired driver.

Note: The purpose of this tool is to help you gain a better understanding for how the roles and responsibilities of criminal justice professionals, other than the judiciary, can affect your ability to address the issue of impaired driving.

Current content will be updated as necessary (e.g. statistics, state laws, etc.), and new information and resources will be added to the website as it becomes available. The core content of *AAA DUI JusticeLink* is available in PDF format for your use while on the bench.

PROSECUTION

Prosecutors and members of prosecution teams are often at a disadvantage during impaired driving cases as defense teams are often well-funded and may have many more resources at their disposal. This can present a great challenge for the prosecution. Any benefit prosecutors can gain in these cases can help to slow or eliminate recidivism in the system. This resource aims to help prosecutors collect information in order to make more well-informed decisions in DUI cases. The more accurate the information prosecutors have to support their case the better their chances of stopping repeat offenders from taking advantage of the judicial system.

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LAW ENFORCEMENT

Members of the law enforcement community are actively involved on the front lines of the impaired driving issue. They regularly encounter dangerous situations and deal with impaired drivers on our roads and highways. Many of the procedures they perform on a regular basis make what they do an important initial component to processing an impaired driver. Administering tests accurately, evaluating drivers and collecting evidence at the scene sets the stage for how smoothly DUI cases will proceed through the justice system.

Identifying methods to streamline their duties and help them to produce more accurate reports will help to provide an evidence base for prosecutors. Impartial, well-trained and more efficient law enforcement professionals can have a positive and significant impact on the detection and apprehension of impaired driving offenders, and the route these offenders take through the justice system.

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Evidence, Procedures, and Sanctions. Subsequently, this website may serve you best as a reference guide for use during cases involving an impaired driver.

Note: The purpose of this tool is to help you gain a better understanding for how the roles and responsibilities of criminal justice professionals, other than law enforcement, can affect your ability to address the issue of impaired driving.

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PROBATION & PAROLE

Probation and parole professionals work to sustain adherence and accountability to punishments being served by DUI offenders. These professionals work simultaneously with the courts and with offenders in the community to help ensure that persons convicted of impaired driving remain compliant with their sentence.

This site provides information needed to improve the supervision, investigation and monitoring of DUI offenders in our communities. Information from cases and examples of effective strategies for treatment and rehabilitation can aid their work.

AAA recommends that users of *DUI JusticeLink* conduct a thorough review of general content descriptions and executive summaries provided in each of the core content areas: **Detection, Evidence, Procedures, and Sanctions.** Subsequently, this website may serve you best as a reference guide for use during cases involving an impaired driver.

Note: The purpose of this tool is to help you gain a better understanding for how the roles and responsibilities of criminal justice professionals, other than probation & parole officers, can affect your ability to address the issue of impaired driving.

Current content will be updated as necessary (e.g. statistics, state laws, etc.), and new information and resources will be added to the website as it becomes available.

EVIDENTIARY ISSUES

These topics involve what consists of evidence and other material that is admissible during testimony in a judicial or administrative hearing.

Blood Alcohol Concentration (BAC) Testing after Fatal or Serious Injury Crashes

Definition: Challenges related to the collection of BAC testing results from suspected impaired drivers that require emergency medical treatment for their crash-related injuries can have major implications on evidence in DUI legal cases.

Executive Summary: Law enforcement officers are often equipped to collect evidence needed to confirm the presence of alcohol as a contributing factor in crashes involving a suspected impaired driver; however, failure to immediately collect such information may lead to a weak evidence base or issues related to the admissibility of such evidence in court proceedings. Law enforcement officers should be familiar with state and local laws regarding the collection of BAC testing results in emergency departments, hospitals or other off-site locations. Testing should occur within hours of a motor vehicle crash, assuming the law enforcement officer has probable cause to collect results.

More Detail: After a fatal or serious injury crash occurs, the immediate screening of the driver is a critical step in identifying the contribution of alcohol to the crash. Furthermore, due to the natural processing of alcohol by the human body, quickly obtaining evidence generally improves its accuracy and reliability. Law enforcement officers are often equipped to collect evidence needed to confirm the presence of alcohol as a contributing factor in crashes involving a suspected impaired driver; however, injuries sustained by the driver during the crash may require emergency treatment. Therefore, the investigating officer may not have the opportunity to acquire an on-scene breath or blood sample.

Medical treatment facilities are generally equipped to determine the driver's BAC with blood samples drawn for medical purposes. For evidentiary purposes a separate blood sample may be required, in which case, it is important to establish an evidentiary chain of custody to ensure the sample belongs to the driver and has not been contaminated from the time the sample is drawn, to the time it is introduced as evidence in court during prosecution.

In states that do not require BAC testing after fatal crashes, law enforcement officers are responsible for promptly requesting that medical staff draw a blood sample for BAC analysis or, if admissible in court, provide the results from the facility's own analysis. Also, before making such a request, the officer must meet certain legal requirements regarding probable cause, implied consent, and other state requirements. It may also be necessary to get a search warrant before a blood draw. These standards, even if considered relatively low, may prove difficult to meet in some instances, particularly if emergency personnel remove the driver from the crash scene before law enforcement arrives. Police should be familiar with the laws pertaining to medical cooperation and be prepared to recite them to doctors and nurses to

"encourage" cooperation.

How to handle BAC after fatal crashes where the suspected DUI operator is taken from the scene to the hospital for examination and/or treatment of his/her crash related injury is the most difficult DUI detection case police arriving at the scene will have to face. Again, knowledge of the local law is key to successfully bringing a charge and obtaining a conviction. In such a case, not only must the officer at the scene be fully conversant regarding the law, he/she would be best served with immediate access to a prosecutor for legal advice on the varying conditions an officer might confront at the scene or at the hospital. Law enforcement readers may see a need to raise the issue with their leadership/prosecutor's office for establishing an operational protocol. In this way, everyone can be aware of handling such legally complex situations.

Suggested Audience: Law Enforcement, Prosecutors, Judges

Additional Resources:

- NHTSA - State laws and practices for BAC testing after fatal crashes, 2004
- Treno, A.J. Alcohol and fatal injury: the use of routinely collected fatality data in community prevention evaluation. *Alcohol Clin Exp Res.* 23(10):1619-1623, 1999.
- Cherpitel, C.J. Alcohol and casualties: a comparison of emergency room and coroner data. *Alcohol.* 29(2):211-218, 1994.
- <http://www.nhtsa.dot.gov/people/injury/alcohol/Maine-BAC-Limits/pages/ExecSumm.htm>
- NHTSA - The BAC Testing and Reporting Process
- MADD - Victim Services
- Alcohol and Other Drug Use Among Victims of Motor-Vehicle Crashes—West Virginia, 2004-2005
- Contribution of Alcohol-Impaired Driving to Motor Vehicle Crash Deaths in 2005
- NHTSA – Identification and Referral of Impaired Drivers through Emergency Department Protocols
- NHTSA – Addressing Alcohol-Impaired Driving. Training Physicians to Detect and Counsel Their Patients Who Drink Heavily, 2000
- Cydulka, R.K.; Harmody, M.R.; Barnoski, A.; Fallon, W.; Emerman, C.L.; Injured intoxicated drivers: citation, conviction, referral, and recidivism rates. *Ann Emerg Med.* 32(3 Pt.1):349-352, 1998.
- Biffi, W.L.; Schiffman, J.D.; Harrington, D.T.; Sullivan, J.; Tracy, T.F.Jr.; Cioffi, W.G. Legal prosecution of alcohol-impaired drivers admitted to a level I trauma center in Rhode Island. *J Trauma.* 56(1):24-29, 2004.

Enhanced Education on Scientific Evidence

Definition: Scientific evidence plays an important role in impaired driving cases. Specialized knowledge of the science behind DUI evidence would likely prove beneficial to judges and prosecutors involved with impaired driving cases.

Executive Summary: Scientific evidence undoubtedly plays a major role in DUI cases. Without such evidence, it would be nearly impossible to prosecute any driver accused of driving under the influence of alcohol or other drugs. Information about the science regarding the effects of alcohol and drugs on the human body will help criminal justice professionals to evaluate and present the facts in each case. Therefore, criminal justice professionals who often work on DUI cases might consider participating in relevant courses designed for this purpose.

More Detail: An accurate, complete and well-written or recorded post-arrest incident report is necessary to increase a prosecutor's chances of obtaining a conviction in a DUI case. Preparing such reports requires time, thought and reflection; however, the likelihood of conviction is sometimes dramatically reduced without such a report.

Use of a hand held recording device at the scene outlining the officer's observations of the behavior of the DUI suspect can serve as a substitute to the written report (or at least a supplement to a shorter written report), each of which should minimize, if not eliminate, the burden of documenting the evidence supporting a DUI arrest.

Criminal justice professionals may find it helpful to obtain background knowledge on each step of the testing procedures for detection, including information about the mistakes that can be made while obtaining evidence. Given the large caseload and sometimes limited financial resources in the judicial system, such training may not be possible. However, criminal justice professionals are generally required to participate in continuing education, which could incorporate training on the science related to evidence and procedures in impaired driving cases. States should create, promote and assist, with the resources necessary to successfully execute these enhanced education programs. Participation in such programs would help to create a more educated and better-prepared criminal justice system to successfully manage impaired driving cases.

In 1984, the National District Attorneys Association founded the American Prosecutors Research Institute (APRI), which is a non-profit research and program development resource for prosecutors. APRI provides access to comprehensive data resources, including a nationwide network of working prosecutors.

The National Association of State Judicial Educators (NASJE) also provides resources for online research and judicial self-education concerning impaired driving case adjudication and disposition at <http://www.nasje.org>, and the National Judicial College has several NHTSA-funded courses for judges <http://www.judges.org>. Practitioners may ask their Traffic Safety

Resource Prosecutor (TSRP) for more information on this issue.

Additional Resources:

- [NHTSA - Review of Literature on Effects of Low Doses of Alcohol on Driving Skills 2000](#)
- [NHTSA - Guide to Understanding BAC and Alcohol Impairment 2005](#)
- [NDAA - Prosecutors and Toxicology 2003](#)
- A National Online Resource Library for the Judiciary On Impaired Driving
<http://nasjedui.unm.edu/>
- [APRI - The American Prosecutors Research Institute](#)
- [National Judicial College](#)
- [National Center for State Courts](#)
- [NHTSA - Breath Testing at 10 degrees Celsius](#)

Test Refusal

Definition: A driver who refuses chemical testing for intoxication, or who has a BAC of .08 or more is subject to the immediate suspension of the driver's license and seizure of the automobile.

Executive Summary: Most states have implied consent laws regarding test refusal, which means that upon signing for the driver's license, drivers have automatically agreed to testing or have agreed to submit evidence to law enforcement for the determination of sobriety. Motorists must obey such laws in the state(s) where they are stopped/arrested; not the state in which the license was issued.

More Detail: Most state laws require a driver to provide a breath and/or blood sample. Yet, even if the driver is required by law to submit to testing, the testing period may not occur until an hour or more after the initial arrest. This extensive time delay can prevent an accurate BAC reading at the time of the crash or offense, yielding a lower BAC level than when they were driving. To counteract this issue, some states have laws that presume that any test taken within three hours of driving reflect the BAC at the time of the driving. This is a rebuttable presumption. In order to avoid issues associated with test refusal, states could enact laws with stiff penalties to deter suspected impaired drivers from this practice.

Some jurisdictions have enacted a search warrant program to secure blood evidence in DUI cases when the suspect refuses the chemical test after the implied consent or expressed consent is given. These "no refusal" programs are effective in securing chemical evidence during the DUI investigation. With the ease of electronic search warrant processes, some jurisdictions have been successful in securing warrants from judges within 30 minutes.

Chemists and other experts can accurately calculate BAC as it existed at the time of arrest, for example, from a BAC taken later at a police station. Weight, sex, and time are used to calculate a rate of metabolism so that an expert can give a sound opinion, admissible in court,

about a driver's BAC at the time of arrest. They use a mathematical process called "retrograde extrapolation" to calculate the BAC at the time of driving.

In cases dealing with repeat offenders, the recidivist often knows of the strategy of test refusal. Refusals of these tests can present a substantial obstacle in the prosecution of suspected impaired drivers because law enforcement is prevented from obtaining important evidence during the traffic stop. This loss of evidence may cost the state the chance of a conviction. Therefore, maintaining the ability to accurately assess the driver after being stopped is a vital component in a DUI case.

Sample Legal References: One statutory approach that appears to be effective in reducing test refusal was enacted by the Nebraska legislature. Nebraska Statute §60-6,197.03 provides for virtually identical penalties for either driving under the influence (DUI) or refusing chemical testing. Twelve other states have such laws. A refusal conviction brings mandatory fines and license revocation/impoundment and enables the sentencing court to impose probation with conditions such as evaluation, alcohol education, treatment and other conditions related to preventing recidivism. Thus, there is little or no advantage in refusing. Indeed, a defendant may actually gain more possible defenses by taking a test and thus being able to litigate the myriad of issues that can arise with respect to a breath testing apparatus. The Nebraska refusal statute's criminal penalties are in addition to separate administrative license revocation (ALR) sanctions, the combination of which the Nebraska appellate courts have found, do not raise constitutional double jeopardy or multiple punishment issues. See: *Kenley v. Neth*, 271 Neb. 402, 409-411, 712 N.W.2d 251, 259 - 261 (Neb., 2006).

A similar Minnesota law is currently before the United States Supreme Court is expected to rule on the legality of such a scheme once and for all. See: *Bernard vs. Minnesota* 859 N.W.2d 762 (2015)

According to a National Conference of State Legislatures' study, in Minnesota and Vermont, the penalties for a test refusal are also equal to or substantially similar to the penalties for an impaired driving conviction. In California and Vermont, prior impaired driving convictions enhance the criminal penalties for subsequent test refusals. The effect of laws that criminalize refusal, with the same penalties applicable to impaired driving, appears to be effective as Nebraska's refusal rate is less than seven percent. However, their constitutionality is in question and will be decided by the U.S. Supreme Court this term.

Some states have enacted laws that permit the introduction of test refusals as evidence of guilt in an impaired driving case. See K.S.A. 8-1001 which specifically provides for the admissibility of the refusal of evidentiary breath tests at trial. See also Pennsylvania statute, 75 Pa.C.S.A. § 1547, 1547(e).

Many appellate courts such as the Texas Court of Criminal Appeals held that the admission in a DUI prosecution of a defendant's uncompelled refusal to submit to a breath test does not violate the state constitutional privilege against self-incrimination. 723 S.W.2d 696, 704-05 (Tex.Crim.App.1986). These rulings are generally based on the U.S. Supreme Court's decision

in *South Dakota v. Neville*, 459 U.S. 553, 566, 103 S.Ct. 916, 923, 74 L.Ed.2d 748 (1983) upholding use at trial of defendant's refusal to provide a blood sample for DUI testing where the defendant was not warned refusal could be used against him at trial as required by state statute Id. 563-64, 103 S.Ct. at 922.

Having penalties for refusal that are equal to an impaired driving conviction have been imposed in Canada since 1969 and in the European Union and Australia for many years.

In December 2015, the US Supreme Court granted certiorari in four cases involving implied consent laws. These four cases, *Birchfield v. North Dakota*, *Danny v. North Dakota*, *Bernard, Steve M. v. North Dakota*, and *William R. v. Minnesota*, will decide "[w]hether, in the absence of a warrant, a state may make it a crime for a person to refuse to take a chemical test to detect the presence of alcohol in the person's blood." The outcome will have a nationwide effect on law as it exists currently.

Suggested Audience: Enforcement, Prosecutors, Judges

Additional Resources:

- [The Century Council. DUI Data - Test Refusal](#)
- Gullberg, R.G. Factors associated with breath test refusals in drunken driving arrests. *Sci Justice*. 45(2):85-92, 2005.
- [McKay MP, Garrison HG; National Highway Traffic Safety Administration. National Highway Traffic Safety Administration \(NHTSA\) notes. Breath test refusals in DUI enforcement: an interim report. Dec; 46\(6\):552-3; discussion 553-5, 2005.](#)
- Grube, K, " Effective Approaches to Reducing Breath Test Refusals", *Highway to Justice*, Fall 2008
- [NHTSA - Breath Test Refusals in DUI Enforcement 2005](#)

Enhanced Training for Law Enforcement

Executive Summary: It is critical for law enforcement to be trained to properly administer any tests and procedures used to obtain evidence against an accused impaired driver. Accurately collecting and handling evidence is also imperative in these cases. Not doing so can result in lost prosecutions and allow impaired drivers to escape conviction and court-ordered sanctions and treatment.

More Detail: Enhanced techniques for obtaining evidence can include: collection of evidence through video recording, interviewing techniques, test administration as well as evidence and data collection and handling of evidence contributing to admissibility for a trial.

Improved procedures and methods to increase the DUI detection rate should be considered and can help combat DUI. While these methods can help the police, a bigger view of the problem dictates procedures that can ultimately deter impaired driving, which should be the

goal of any enforcement program.

One well-known nationally-based source of law enforcement training interdiction of impaired drivers is the Institute for Police Training and Management (IPTM). The Institute is currently the largest police training center of its kind in the United States, annually training more than 14,000 officers from around the world. The Institute also presents training programs under contractual arrangements with government agencies throughout North America and abroad. In 1997, IPTM acquired the Public Safety Institute located in Orlando, Florida. It is a division of IPTM and serves as an additional training facility.

Available impaired driving related courses include: advanced in-car video, advanced roadside impaired driving enforcement, DRE recertification, case law and legislative update, case preparation and courtroom presentation, standardized field sobriety testing, SFST testing instructor update, DUI instructor, HGN workshop for prosecutors and law enforcement officers, in-car video user training for DUI enforcement and prosecution, medical foundation for visual system testing and sobriety checkpoint operations.

Suggested Audience: Enforcement, Prosecutors, Judges

Additional Resources:

- [Minnesota Office of Traffic Safety - Department of Public Safety Home](#)
- [Washington DUI Center](#)
- <http://www.informaworld.com/smpp/content~content=a718869634~db=all>
- Stephen D. Mastroski; R. Richard Ritti Police training and the effects of organization on drunk driving enforcement. *Justice Quarterly*, Volume <http://www.informaworld.com/smpp/title~content=t713722354~db=all~tab=issueslist~branches=13 - v1313>, Issue 2 June 1996 , pages 291 — 320
- [Institute for Police Training and Management \(IPTM\)](#)
- [Issues and Methods in the Detection of Alcohol and Other Drugs, Transportation Research, September 2000.](#)

Video Recording of Police Arrests

Executive Summary: Jurisdictions are increasingly using in-car cameras, which include audio and video recording as valuable tools in impaired driving arrests. An in-car video camera can provide a compelling visual record of driving behavior prior to the stop as well as statements by the suspect and performance on field sobriety tests. This information is vital to cases involving impaired drivers.

More Detail: Many police agencies welcome video cameras as a way to demonstrate that traffic stops are conducted in compliance with sanctioned policies and procedures. Due to liability issues to protect both the accused and the officer, video can demonstrate that the offender was afforded due process and officers performed their jobs lawfully and

appropriately. Video footage of the booking of an offender can also be useful to provide further proof of intoxication. This evidence can sometimes be just as valuable as the roadside footage.

There is widespread agreement that cameras can protect the rights of police and citizens, exonerating officers from false complaints and also monitoring appropriate police behavior. Prosecutors report that DUI offenders often will plead guilty after watching a video of their arrest. These admissions of guilt are very beneficial as they reduce delay, help reduce plea negotiation attempts and requests for costly jury trials. At the same time, police officers should be trained in how to testify about recorded arrests of hardcore alcohol-impaired drivers, recognizing that hardcore offenders do not always appear as impaired as they are. Knowing how to capture a good video is also important as proper angle, lighting and sound which can all contribute to an effective video to support their case.

As technology develops and the purchase and operating costs drop for in-car video systems, use of recorded traffic stops will grow increasingly more common, useful, and practical. The benefits for prosecution can provide additional value to support its adoption by law enforcement. Law enforcement could utilize this efficient and effective means of obtaining evidence and, if needed, legislatures and communities can help provide adequate resources for necessary equipment and training.

Suggested Audience: Enforcement, Prosecutors, Judges

Additional Resources:

- NDAAs - Event Data Recorders
- Jones, B. In-vehicle videotaping of drinking driver traffic stops in Oregon. *Accid Anal Prev.* 31(1-2):77-84, 1999.
- Fifth Amendment: Videotaping Drunk Drivers: Limitations on "Miranda's" Protections Jacques Leboeuf *The Journal of Criminal Law and Criminology (1973-)*, Vol. 81, No. 4 (Winter, 1991), pp. 883-925.
- The Impact of Video Evidence on Modern Policing, found at:http://www.cops.usdoj.gov/files/ric/Publications/video_evidence.pdf
- Dam, J.L. Sept. 17, 2001. Drunk driving attorneys use police videotapes to win cases. *Lawyers Weekly*, USA. Lawyers Weekly, Inc.
- International Association of Chiefs of Police. 2001. *Traffic Safety in the New Millennium: Strategies for Law Enforcement: A Planning Guide for Law Enforcement Executives, Administrators and Managers*. Alexandria, VA: International Association of Chiefs of Police.
- Jones, B. January 1998. In-vehicle videotaping of drinking driver traffic stops in Oregon. *Accident Analysis and Prevention* 31(1): 77-84.
- Morrison, K. 2002. *Evaluation of In-Car Video Systems*. Jacksonville, FL: Institute of Police Technology and Management, University of North Florida.
- National Highway Traffic Safety Administration. 1996. *In-Vehicle Videotaping of DUI Suspects*. Washington, DC: National Highway Traffic Safety Administration.
- Pavic, B., Stoduto, G., Mann, R.E., Anglin, L., and Vingilis, E. 1997. Fast-track courts and

video-cameras as drinking driving countermeasures. In: *Proceedings of the 14th International Conference on Alcohol Drugs and Traffic Safety*, Annecy, France.

- Institute for Police Training and Management. <http://www.iptm.org/Default.aspx>
- The Century Council. DUI Data – In-Car Video Recording

Police Reports (Paperwork)

Executive Summary: Using technology to streamline and reduce paperwork involved in a DUI arrest can decrease the amount of time needed per traffic stop and therefore increase the number of stops and arrests an officer makes during a shift. Less time spent on paperwork/reports can also help increase DUI enforcement by officers who were once deterred by lengthy arrest processes. Reducing their workload on the administrative side can be an effective measure taken to maximize the amount of time spent enforcing the law.

More Detail: Interviews with law enforcement officers, and a number of research studies have identified paperwork as a primary hindrance to DUI arrests. Documenting an arrest can take several hours of an officer's time and require as many as 13 different forms, taking valuable time away from other enforcement activities. On average, 45 percent of arrests take one to two hours, but half of the officers surveyed in a recent report said it takes in excess of two hours. Such time-consuming documentation can discourage officers from making impaired driving arrests. It can also lead to frustration, errors or incomplete details in reports that can limit a prosecutor's ability to obtain a conviction. In cases of hardcore alcohol-impaired drivers refusing BAC testing, accurate paperwork is particularly vital because the officer's observations and interaction with the suspect become the primary sources of evidence (Simpson and Robertson 2002).

Reducing paperwork associated with the arrest, processing through computer technology and the use of fewer and shortened forms can be productive ways to increase patrol availability and officer productivity (Jones et al. 1998). A DUI enforcement van, equipped with evidentiary breath test equipment and sometimes even a magistrate, can dramatically cut arrest processing time in checkpoint or blanket patrol operations (Hedlund and McCartt 2002).

Technology in the field is often under-utilized. A coordinated electronic record keeping system with information readily available could help officers more easily identify offenders and enforce penalties. Some police departments in Arizona, Florida, Iowa, North Carolina and Wisconsin obtain information from driver's licenses by swiping them through bar code or magnetic stripe readers. Police in West Des Moines, Iowa, have mobile computers with bar code readers. When the license is swiped, the driver's information is stored and can be uploaded at the end of a shift (Simpson and Robertson 2002).

Another way to utilize technology in reporting DUI arrest information is with the LEADRS system. LEADRS, Law Enforcement Advanced DUI Reporting System, is an electronic information reporting system for the law enforcement community. It aims for standardized

and simplified DUI reporting to complete arrest information in a shorter amount of time. This system was developed in Texas and is currently in use in several other U.S. states and also in parts of Canada. More information can be found on their Web site: www.leadrs.org/.

Suggested Audience: Enforcement, Prosecutors

Works Cited:

- Jones, B. January 1998. In-vehicle videotaping of drinking driver traffic stops in Oregon. *Accident Analysis and Prevention* 31(1): 77–84.
- Hedlund JH, McCartt AT. *Drunk Driving: seeking additional solutions*. Washington, DC: AAA Foundation for Traffic Safety; 2002.
- Robertson RD, Simpson HM. *DWI system improvements for dealing with hard core drinking drivers: adjudication and sanctioning*. Ottawa, Ontario: Traffic Injury Research Foundation; 2002.

Additional Resources:

- CJ Harris - *The New Technology of Crime, Law and Social Control*, 2007
- *Making Sense of COMPSTAT: A Theory-Based Analysis of Organizational Change in Three Police Departments* James J. Willis, Stephen D. Mastrofski, David Weisburd.
- *Law & Society Review* 41 (1), 147–188. (2007)
- Ping Yi, Bin Ran *Streamlining Chinese Highway Accident Data Acquisition, Communications, and Analysis*. *Transportation Research Record* Volume 1846, 31-38, 2003.
- Dunwort, T. *Information Technology and the Criminal Justice System*, 2005
- *Police Information Technology: Assessing the Effects of Computerization on Urban Police Functions*. *Public Administration Review* 61 (2), 221–234. Volume 61 Issue 2 Page 221-234, March/April 2001.

DETECTION ISSUES

This section covers material dealing with the observation and detection of impaired drivers both prior to, and during a traffic stop or other activity involving law enforcement.

Saturation Patrols

Definition: Saturation patrols involve law enforcement deploying additional police officers to targeted roadways during select time periods to detect and apprehend impaired drivers.

Executive Summary: The primary focus for officers during these patrols is to find impaired drivers by observing changes in driving behaviors, while also looking out for any traffic violations by motorists. The behaviors most often assessed are: lane deviation, following too closely, reckless or aggressive driving and/or speeding (Greene, 2003). The intention of this heavier police presence is to increase motorists' perception that they will be arrested if they drive impaired. Saturation patrols take place in all 50 states, and do not present many legal issues beyond those associated with routine traffic stops.

More Detail: Measured in arrests per working hour, these blanket patrols are viewed by some as the most effective method of apprehending impaired drivers (Greene, 2003). Saturation patrols can be as effective, or more effective than sobriety checkpoints in apprehending hardcore alcohol-impaired drivers who often evade checkpoints. Many police departments favor them over sobriety checkpoints for their effectiveness, reduced staffing requirements, and the comparative ease of operating saturation patrols. Adequate publicity is needed though, to reap the deterrence effect more commonly associated with sobriety checkpoints.

Suggested Audience: Enforcement

Works Cited:

- Greene, J. January 2003. Battling DUI: A comparative analysis of checkpoints and saturation patrols – driving under the influence. The FBI Law Enforcement Bulletin.

Additional Resources:

- American Bar Association, Judicial Division, National Conference of Specialized Court Judges "Highway to Justice" newsletter article (See attachment A)
- NHTSA - Saturation Patrol and Checkpoint Guide (2002)
- NHTSA - Visual Detection of DUI Motorists
- NHTSA - General DUI Deterrence (2005)
- NHTSA - Evaluation of National High-Visibility Campaign (2007)
- The Century Council. DUI Data- Blanket Patrols
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Sobriety Checkpoints

Definition: Sobriety checkpoints are police stops, or checkpoints, where officers are set up on a roadway to randomly stop vehicles to check for impaired drivers. These are usually set up during times when impaired driving is known to happen, such as holiday weekends.

Executive Summary: Sobriety checkpoints, shown by some studies to be effective in combating impaired driving, are conducted in a fixed location at which police pull over vehicles according to a predetermined plan. If an officer's preliminary encounter with the driver leads to a belief the driver may be under the influence of alcohol and/or drugs, the officer then conducts field sobriety tests that might result in a request for a breath test. The personal contact officers have with drivers increases the reliability of identifying hardcore alcohol-impaired drivers, as well as individuals driving with a suspended or revoked license due to an alcohol-related conviction.

In the U.S., law enforcement may not require breath tests of all drivers, only those for whom an officer has a reasonable suspicion of impaired driving. Not only do sobriety checkpoints provide officers a means to identify impaired drivers, the heightened media attention surrounding checkpoints can deter impaired driving in some instances by increasing drivers' perceived risk of arrest.

More Detail: These detection techniques are commonly targeted to specific areas and times that studies have shown the probability of a DUI apprehension is highest (i.e. after bars and restaurants close in the entertainment section of town, or over holiday weekends such as Memorial or Labor Day, etc.).

One limitation of sobriety checkpoints is the lack of time to view driving behavior to determine suspicion of impaired driving. Therefore, most of the officer's decision to formulate suspicion of impairment depends on the few moments of interaction and conversation with the driver.

States may differ in their laws regarding stops and seizures so it is best for law enforcement to consult the state statute and relevant case law. An officer can also check with a prosecutor regarding the conditions that need to be observed for this type of stop to be legal, and for evidence gathered to be admissible in court. In most cases, where such stops are lawful, set

conditions must be observed and later proven by law enforcement in court. For instance, some states require public disclosure that such stops are being made in advance of the checkpoints actually being set up. Other states require that every automobile be stopped versus, for example, every third vehicle being stopped. Some states require that stops be brief and not last longer than a specific period of time.

These mobilizations work best when prosecutors and court officials have been given sufficient notice to prepare for the higher than ordinary influx of DUI cases that occur following such campaigns. It does little good to arrest large numbers of DUI suspects only to have their cases delayed, dismissed or pleaded down because the city prosecutor or town judge was overwhelmed due to lack of preparation time. Calendars should be adjusted, and resources identified in order to meet the influx of cases generated by the campaign. Not all states conduct sobriety checkpoints. A recent study of state police departments found that 13 states do not currently conduct sobriety checkpoints. Of these, 12 states consider checkpoints to be contrary to state law (Fell 2003).

Thirty-seven states, plus the District of Columbia, confirmed their use of sobriety checkpoints, though 13 said that limited resources lead to checkpoints being conducted on an infrequent basis (Fell, 2004). Fortunately, studies have shown that checkpoints can be completed successfully with a limited number of officers. Surprisingly, increasing the number of police officers at a checkpoint does not necessarily increase the efficacy of their use (Fell, 2003).

A systematic review of 15 studies conducted for The Community Guide to Preventive Services concluded that strong evidence exists for the effectiveness of sobriety checkpoints in decreasing the incidence of DUI (CDC, 2002). These checkpoints were found to decrease fatal crashes between 20% and 26%, and property damage collisions by an average of 24% (Elder et al, 2002). While sobriety checkpoints have been shown as effective, one study found that only 38% of drivers with a BAC of 0.08 or above were detected during a routine sobriety checkpoint (Wells, 1997), indicating the challenges law enforcement have in consistently detecting hardcore and other impaired drivers.

Stopping a vehicle, albeit briefly, constitutes a "seizure" under the Fourth Amendment to the U.S. Constitution and, thus, must be reasonable and with probable cause. In evaluating the constitutionality of a checkpoint, courts generally require that the procedures utilized curtail the unbridled discretion of the officer in the field. See *Delaware v. Prouse*, (1979) 440 U.S. at 662, 99 S.Ct. 1391. The Louisiana Supreme Court decision in *State v. Jackson* 764 So.2d 64, 72-73, (La., 2000) illustrates the considerations that courts generally employ to determine the validity of sobriety checkpoints.

They are as follows:

1. The location, time and duration of a checkpoint, and other regulations for operation of the checkpoint should be established (preferably in written form) by supervisory or other administrative personnel rather than the field officers implementing the checkpoint;
2. Advance warning to the approaching motorist with signs, flares and other indications

to warn of the impending stop in a safe manner and to provide notice of its official nature as a police checkpoint;

3. Detention of the motorist for a minimal length of time; and
4. Use of systematic non-random criteria for stopping motorists.

Suggested Audience: Enforcement, Judges

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- Wells J. Greene M, Foss R, Ferguson S, Williams A. Drinking Drivers Missed at Sobriety Checkpoints. *J Studies Alcohol* 1997: 58; 513-517.

Additional Resources:

- Insurance Institute of Highway Safety – Annotated Bibliography of Sobriety Checkpoints Research
- NHTSA - Saturation Patrol and Checkpoint Guide (2002)
- NHTSA - Low Staffing Checkpoints
- NHTSA – Driver Characteristics and Impairment at Various BACs
- NHTSA - A Review of the Literature on the Effects of Low Doses of Alcohol on Driving-Related Skills
- Lacey, JH; Jones, RK; Fell, JC. A comparison of blitz versus continuous statewide checkpoints as a deterrent to impaired driving. *Proceedings for the 13th International Conference on Alcohol, Drugs, and Traffic Safety* 1995; 2:845-848. Adelaide, Australia: NHMRC Road Accident Research Unit, University of Adelaide.
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- FBI – Battling DUI: A Comparative Analysis of Checkpoints and Saturation Patrols
- The Century Council. DUI Data - Sobriety Checkpoints
- Fell, J.C.; Lacey, J.H.; Voas, R.B. Sobriety checkpoints: evidence of effectiveness is strong, but use is limited. *Traffic Inj Prev.* 5(3):220-227, 2004.

Standard Field Sobriety Test (SFST) and Admissibility

Definition: The Standardized Field Sobriety Test (SFST) is a battery of 3 tests performed during a traffic stop in order to determine if a driver is impaired. The 3 tests that make up the SFST are the horizontal gaze nystagmus (HGN), the walk-and-turn, and the one-leg stand tests. Developed in the 1970s, these tests are scientifically validated, and are admissible as evidence in court in a majority of states.

Executive Summary: According to researchers, officers trained to conduct SFSTs correctly identified alcohol-impaired drivers over 90% of the time using the results of SFSTs (Burns and Anderson 1995; Stuster and Burns 1998). The SFST consists of three tests administered and evaluated during a traffic stop to determine impairment and probable cause for arrest. The HGN test is performed to observe whether the driver's eyes involuntarily jerk as a stimulus is moved side to side. Both the walk-and-turn and one-leg stand tests are "divided attention" tests that are easily performed by most sober drivers. They require a subject to listen and follow instructions while performing simple physical movements. Impaired persons have difficulty with tasks requiring their attention be divided between simple mental and physical tasks.

More Detail: The National Highway Traffic Safety Administration (NHTSA) defines the three parts of the SFST as follows (see NHTSA Highway Safety Desk Book):

- The **horizontal gaze nystagmus (HGN) test:** Horizontal gaze nystagmus is an involuntary jerking of the eyeball which occurs as the eyes gaze to the side. Under normal circumstances, nystagmus occurs when the eyes are rotated at high peripheral angles. However, when a person is impaired by alcohol, nystagmus is exaggerated and may occur at lesser angles. An alcohol impaired person will also often have difficulty smoothly tracking a moving object. In the HGN test, the officer observes the eyes of a suspect as the suspect follows a slowly moving object such as a pen or small flashlight, horizontally with his eyes. The examiner looks for three indicators of impairment in each eye: if the eye cannot follow a moving object smoothly, if jerking is distinct and sustained nystagmus when the eye is at maximum deviation, or if the angle of onset of jerking is prior to 45 degrees of center. The subject is likely to have a BAC of 0.08 or greater if, between the two eyes, four or more clues appear. A 1998 validation study found that this test allows proper classification of approximately 88 percent of subjects. HGN may also indicate consumption of seizure medications, phencyclidine, a variety of inhalants, barbiturates, and other depressants.
- In the **walk-and-turn test**, the subject is directed to take nine steps, touching heel-to-toe, along a straight line. After taking the steps, the suspect must turn on one foot and return in the same manner in the opposite direction. The examiner looks for eight indicators of impairment: if the suspect cannot keep balance while listening to the instructions, begins before the instructions are finished, stops while walking to regain balance, does not touch heel-to-toe, uses arms to balance, steps off the line, takes an

incorrect number of steps, or makes an improper turn. A 1998 validation study found that 79 percent of individuals who exhibit two or more indicators in the performance of the test will have a BAC of 0.08 or greater.

- In the **one-leg stand test**, the subject is instructed to stand with one foot approximately six inches off the ground and count aloud by ones beginning with one thousand (one thousand-one, one thousand-two, etc.) until told to put the foot down. The officer times the subject for 30 seconds. The officer looks for four indicators of impairment including: swaying while balancing, using arms to balance, hopping to maintain balance, and putting the foot down. A 1998 validation study found that 83 percent of individuals who exhibit two or more such indicators in the performance of the test will have a BAC of 0.10 or greater.

There are many factors that might render a person unable to successfully complete one or more of the SFSTs. For instance, regarding the HGN test, the person asked to consent to such a test might be suffering from an eye disease or condition that affects his/her ability to see and consequently confound the test and results. Age, injury or disease could also affect the ability of a person to perform the one-leg stand test or the walk and turn test. As a general rule, an officer should ask the DUI suspect whether they can give any reason why they cannot perform the test and their answer should be carefully noted in the officer's report. Other disabilities, such as deafness, should be taken into consideration and noted as well.

Admissibility of Standardized Field Sobriety Test Results

In 1981 NHTSA promulgated a federal standard for field sobriety testing procedures. States are not required to adhere to this federal standard. Although some states do not employ the exact procedures, others replicate NHTSA procedures as closely as possible. In *Ohio v. Homan*, 732 N.E.2d 952 (Ohio, 2000), Ohio became the only state where courts ruled that evidence is "inherently unreliable" and inadmissible when gathered from field sobriety tests that deviate from NHTSA standards. However, this "strict compliance" standard has since softened to a "substantial compliance" standard, as confirmed by the Ohio State Supreme Court in *Ohio v. Boczar*, 863 N.E.2d 155, 160 (Ohio, 2007).

Furthermore, according to NHTSA, courts in several states have reviewed the admissibility of field sobriety tests and have held that deviations from the administration of simple dexterity tests (one-leg stand and walk-and-turn tests) should not result in the suppression of test results. However, admissibility of the HGN test may be treated differently due to its "scientific nature." For this reason, HGN results are vulnerable to challenge, and likely to be excluded by the court if the test was not administered in strict compliance with established protocols. Appellate courts generally require that, before an opinion can be expressed by an officer who administered an HGN test, the officer must be qualified as an expert or skilled witness for the purpose of administering the test as well as expressing an opinion as to the results. For an example see **Robinson v. State** 982 So.2d 1260, 1261 Fla.App. 1 Dist., 2008.

Suggested Audience: Enforcement, Prosecutors, Judges

Works Cited:

- Burns, M., & Anderson, E. (1995). *A Colorado validation study of the standardized field sobriety test (SFST) Battery* (Project No. 95-408-17-05). Los Angeles, CA: Southern California Research Institute; Aspen, CO: Pitkin County Sheriff's Office. (NTIS No. PB2003-106102). Retrieved August 22, 2006 from http://www.ndaa-apri.org/pdf/co_val2.pdf
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- NHTSA Highway Safety Desk Book
- *Ohio vs. Homan, 2000*
- *Ohio vs. Boczar, 2007*

Additional Resources:

- The Century Council. DUI Data – Swift Identification
- NHTSA Field Test of On-Site Drug Detection Devices
- NHTSA Horizontal Gaze Nystagmus: The Science & The Law. A Resource Guide for Judges, Prosecutors and Law Enforcement.
- Field Sobriety Tests – Are they Designed for Failure?
- Walking the Line of Admissibility: Why Maryland Courts Should Reexamine the Admissibility of Field Sobriety Tests. Grams, R.M. U. of Baltimore Law Review, 2005, Volume 34; Number 3, pages 365-388.
- Drinking/Driving Litigation: Criminal and Civil 2d s 17:17, s 17:17. Analysis of NHTSA studies (2008)
- Drinking/Driving Litigation: Criminal and Civil 2d s 17:18, s 17:18. Drug detection evidence (2008)
- Drug Testing Law, Technology and Practice s 4:54, s 4:54. Horizontal gaze nystagmus test (2008)
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- NHTSA -Development of a Standard Field Sobriety Test
- Drinking/Driving Litigation: Criminal and Civil 2d s 17:18, s 17:18. Drug detection evidence (2008)
- Drug Testing Law, Technology and Practice s 4:54, s 4:54. Horizontal gaze nystagmus test (2008)
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Drug Evaluation and Classification Program

Definition: The Drug Recognition Expert (DRE) procedure is a 12-step standardized and systematic process to determine if a motorist is driving under the influence of drugs (DUID). Police officers with specialized training, known as Drug Recognition Experts, perform an evaluation procedure that can distinguish individuals under the influence of alcohol, other drugs, combinations of alcohol and other drugs, and injury/illness. Developed in the 1970's, the process is scientifically validated and a DRE's evaluation may be admissible as evidence in court.

Executive Summary: The DRE process is a method for collecting evidence, with safeguards to ensure accuracy of the DRE's opinion and conclusions. DREs are trained to follow a 12-step evaluation process consisting of interviews, preliminary breath testing, SFST's, examination of the eyes and vital signs, and submission of a toxicological sample. The DRE evaluation is standardized and systematic and based upon observable signs and symptoms known to be reliable indicators of drug impairment. The DRE's final opinion is based on the sum of information from the evaluation, not just one element. According to researchers, DRE evaluations of drug impairment are corroborated by toxicology results in over 85% of cases.

More Details: The International Association of Chiefs of Police (IACP) define the 12 steps of the drugs evaluation process as follows (see The Drug Evaluation and Classification Program by IACP):

1. **Breath Alcohol Test**— The arresting officer reviews the subject's breath alcohol concentration (BrAC) test results and determines whether the subject's apparent impairment is consistent with the subject's BrAC. If the subject's impairment is consistent with the BrAC, the officer will not call a DRE. If the impairment is not explained by the BrAC, the officer requests a DRE evaluation.
2. **Interview of the Arresting Officer**— The DRE commences his or her investigation by reviewing the BrAC test results and discussing the circumstances of the arrest with the arresting officer(s). The DRE asks about the subject's behavior, appearance, and driving pattern. The DRE also asks whether the subject made any statements and whether the arresting officer(s) found any other relevant evidence, like a small pipe or a baggie.
3. **Preliminary Examination and First Pulse**— During this step the DRE will perform a preliminary examination checking for any evidence of a medical complication that would warrant terminating the evaluation and requesting medical assistance. The suspect is asked a series of questions, and the DRE conducts a series of eye examinations that assists in making the decision whether the suspect is under the influence of alcohol and/or drugs or if the impairment may be medically related. If drug impairment is suspected, the DRE proceeds with the evaluation.
4. **Eye Examination**— The DRE examines the subject for horizontal gaze nystagmus (HGN), vertical gaze nystagmus (VGN) and a lack of ocular convergence. A subject lacks convergence if his or her eyes are unable to converge toward the bridge of his nose when a stimulus is moved in. Depressants, inhalants, and dissociative anesthetics, the so-called DIP drugs, may cause HGN. In addition, the DIP drugs may cause VGN when taken in higher doses. The DID drugs, as well as cannabis (marijuana), may also cause a lack of convergence.

5. **Divided Attention Psychophysical Tests**— The DRE administers four psychophysical tests: the Modified Romberg Balance, the Walk and Turn, the One Leg Stand, and the Finger to Nose tests. The DRE can accurately determine whether a subject's psychomotor and/or divided attention skills are impaired by administering these tests.
6. **Vital Signs and Second Pulse**— The DRE takes the subject's blood pressure, temperature and pulse. Some drug categories may elevate the vital signs. Others may lower them. Vital signs thus provide much valuable evidence of the presence and influence of a variety of drugs.
7. **Dark Room Examinations**— The DRE estimates the subject's pupil sizes under three different lighting conditions with a pupilometer to determine whether the pupils are dilated, constricted, or normal. Some drugs increase pupil size. Others may decrease pupil size. The DRE also checks for the eyes' reaction to light. Certain drugs may slow the eyes' reaction to light. Finally, the DRE examines the subject's nasal and oral cavities for signs of ingestion.
8. **Examination for Muscle Tone**— The DRE examines the subject's skeletal muscle tone. Certain categories of drugs may cause the muscles to become rigid. Other categories may cause the muscles to become very loose and flaccid.
9. **Check for Injection Sites and Third Pulse**— The DRE examines the subject for injection sites, which may indicate recent use of certain types of drugs. The DRE also takes the subject's pulse for the third and final time.
10. **Subject's Statements and Other Observations**—The DRE typically reads Miranda, if he or she has not done so previously, and asks the subject a series of questions regarding the subject's drug use.
11. **Analysis and Opinions of the Evaluator**— Based on the totality of the evaluation, the DRE forms an opinion as to whether the subject is impaired. If the DRE determines that the subject is impaired, the DRE indicates what category or categories of drugs may have contributed to the subject's impairment. The DRE bases these conclusions on his or her training and experience, drug symptomatology matrix, and information observed during the 12-step evaluation.
12. **Toxicological Examination**— The DRE requests a urine, blood and/or saliva sample from the subject and sends the sample to the toxicology lab for analysis.

Nothing in the DRE procedure is new or novel. The procedures in the DRE evaluation are modified versions of tests physicians have used for decades to assess drug impairment. The relationship between vital signs and foreign substances is well documented in medical literature. Physicians have recognized HGN and VGN as an indicator of substance impairment since the early 1900's. Alcohol and other drugs are known to impair motor skills, which physicians have assessed using a battery of psychomotor tests. These procedures, all rooted in science, form the underlying framework of the 12 step drug evaluation process.

Admissibility in Court: DRE testimony has provided compelling evidentiary support for prosecutors in drugged driving cases. Defense attorneys in several states have challenged whether DRE officers should be allowed to testify as expert witnesses under Frye or Daubert standards. In Frye courts (*Frye v. United States 293 F. 1013 (D.C.. Cir 1923)*), new evidence is admissible if it is generally accepted in the scientific community. In Daubert courts (*Daubert v.*

Merrell Dow Pharmaceuticals, Inc. 509 U.S. 579 (1993)), new evidence is admissible if the court determines the underlying reasoning and methodology is scientifically valid. The DRE process is based on a compilation of accepted medical theories and practices. Decisions to admit DRE testimony as evidence has been overwhelmingly favorable in both types of court settings.

In Frye jurisdictions, every court that has considered the admissibility DRE testimony has ruled in favor of the DRE testimony except one, *Maryland v. Squire* 32 Md. App. 307 (Md. Ct. Spec. App. 1976). In the ruling, the judge was concerned the DRE program had not gained general acceptance in the scientific community. According to the American Prosecutors Research Institute, the court's decision was aberrant and inconsistent with the evidence; Frye applies to a method's underlying theories and procedures, not to the resulting opinion testimony. In Daubert jurisdictions, every court that has considered the admissibility of DRE testimony has ruled in favor of it.

Suggested Audience: Enforcement, Prosecutors, Judges

Works Cited:

- The Drug Classification (DEC) Program—Targeting Hardcore Impaired Drivers (2004).
- Hamilton, Stephen. Methods for Defending Against Drug DWI Charges and the New Age of Discovery. (2014)
- [Frye v. United States](#)
- [Daubert v. Merrell Dow Pharmaceuticals, Inc.](#)
- [Maryland v. Squire](#)

Additional Resources:

- [Drugged Driving Essentials Course—National Judicial College](#)
- [Effectively Using Judicial Outreach Liaisons, Law Enforcement Liaisons, and Traffic Safety Resource Prosecutors](#)
- [Law Enforcement Liaison Program Resources](#)
- [From Ticket to Docket](#)
- [Guidelines for Creating State Judicial Outreach](#)
- [Drug Evaluation and Classification Program State Coordinators](#)
- [Traffic Resource Center for Judges](#)
- [Judicial Outreach Liaisons](#)
- [The Dangers of Drugged Driving](#)
- [Traffic Safety Resource Prosecutor's Manual](#)

Passive Alcohol Sensors

Definition: Passive alcohol sensors (PAS) are small electronic devices, usually built into police flashlights or clipboards that can detect alcohol in the ambient air of a vehicle. The sensors are quick, objective, and provide another source of detection to the officer which may aid in the identification of impaired drivers.

Executive Summary: PAS devices do not require "active" cooperation by the suspect because an officer needs only to place the device within several feet of the inside of the vehicle to obtain a reading. The results from the PAS lack the precision or accuracy of a traditional breathalyzer but serve well as another means for an officer to detect the presence of alcohol much like blood-shot eyes, slurred speech or other known personal indicators. These methods of primary alcohol detection provide reasonable suspicion to alert the officer to investigate further.

More Detail: PAS provide an officer with a range of alcohol in the air of the vehicle, acting much like an electronic nose. Whereas a human nose can be deceived by other smells (perfume, gasoline, body odor); the electronic nature of the PAS can be more accurate. Research has shown passive alcohol sensors to be effective in identifying persons with BACs of 0.08 and greater with detection rates of 70% or higher.

The goal of these passive sensors is merely to aid an officer in the detection of alcohol during a stop, not to replace other more reliable and effective testing methods. This equipment helps provide law enforcement with tools to develop initial suspicion of someone breaking the law (IIHS, 1993). Because they lack the precision of other tests and can detect alcohol from sources other than the suspected impaired driver, PAS results generally are not accepted as *prima facie* evidence during the prosecution's case. However, in at least one state PAS results have been admitted, not for the purpose of ascertaining alcohol concentration but, rather as one of several field sobriety tests as an indicator of intoxication. See *Fernandez v. State* 915 S.W.2d 572, 576 (Tex. App.-San Antonio, 1996).

Enhanced training is required for the effective use of the PAS device since these devices may be a new technology to law enforcement. Additionally, prosecutors and judges also benefit from familiarization themselves with this technology. However such training would not require great amounts of administrative resources, given the simple design of most PAS devices.

Passive alcohol sensors, are also used to detect commercial drivers with illegal BAC levels (0.04 BAC) and underage drivers with low BACs to enforce "Zero Tolerance" laws. Research has shown that passive alcohol sensors appear to be a cost-effective tool since police resources and related expenses are oftentimes a concern. Better ways to promote their use should be developed and barriers to their use ought to be overcome.

States may differ in their laws regarding passive alcohol sensors so it is best for law enforcement to review the state statute or consult with the prosecutor since not all states accept this device as a reliable indicator of DUI, especially if such evidence forms the basis or main component of what led the officer to make an arrest. Some states may require certain preconditions be met and proven for evidence from PAS to be admitted. For example, in order to be admissible, such evidence might have to be cumulative rather than determinative. An officer who provides such test results may first need to be qualified as having received training in the use of the PAC device. Proof that the device was working properly and that its continuing accuracy is routinely tested may be required.

Suggested Audience: Enforcement, Judges

Works Cited:

- Insurance Institute of Highway Safety - Passive Alcohol Sensors Annotated Bibliography of Scientific Research, 1993.

Additional Resources:

- The Century Council. DUI Data – Passive Alcohol Sensors
- Wisconsin DOT - Examples of PAS and their characteristics
- Foss, R.D.; Voas, R.B.; Beirness, D.J. Using a passive alcohol sensor to detect legally intoxicated drivers. Am J Public Health 83(4):556-560, 1993.
- Lindberg, L.; Brauer, S.; Wollmer, P.; Goldberg, L.; Jones, A.W.; Olsson S.G. Breath alcohol concentration determined with a new analyzer using free exhalation predicts almost precisely the arterial blood alcohol concentration. Forensic Sci Int. 168(2-3):200- 207, 2007.
- Passive Alcohol Sensors Tested in 3 States for Youth Alcohol Enforcement- NHTSA (1996)

Identifying the “Hardcore” Alcohol-Impaired Driver

Definition: Hardcore alcohol-impaired drivers (HCDD) are those individuals who have one or more previous impaired driving offense, or have a BAC of 0.15 mg/dL or more when stopped for an offense.

Executive Summary: The identification of HCDDs is of utmost importance, given that these offenders contribute to 70% of all alcohol-related fatalities and often suffer alcoholism requiring specific treatment. HCDDs frequently drive after they have been drinking and consider such behavior to be normal.

More Detail: It is also imperative to be able to identify these hard core offenders as early in the process as possible. Identification of HCDDs should occur when a driver registers a high BAC during a stop or when traffic records show the driver to be a repeat offender. It may also occur when the offender is charged, appears before a judge, or is evaluated for treatment. Police officers, prosecutors, defense counsel and judges are encouraged to look more closely at high-BAC cases and those with a history of repeat offenses. The accessibility of hardcore offenders' records should provide the information needed to determine the extent of their problems and recommend appropriate sanctions and treatment, including possible placement in a Sobriety Court.

Suggested Audience: Enforcement, Prosecutors, Judges

Additional Resources:

- The Century Council. DUI Data – Swift Identification
- NHTSA – Identification and Referral of Impaired Drivers through Emergency Department

Protocols, 2002

- NHTSA – Addressing Alcohol-Impaired Driving. Training Physicians to Detect and Counsel Their Patients Who Drink Heavily 2000
- NHTSA - Evaluation of Enhanced Sanctions for Higher BACs: Summary of States' Laws HS 809 215, 2001

PROCEDURES

This section includes topics regarding the methods and processes in the judicial system involved with bringing persons and evidence forward to be heard in impaired driving cases and proceedings.

Motions and Continuances

Definition: Defense motions and requests for continuances can result in delaying a case from reaching a resolution. Without appropriate docket control, these delays can increase the likelihood of a case dismissal or acquittal for repeat and hard core offenders.

Executive Summary: Pre-trial motions can delay proceedings for several weeks or even months. Multiple continuances may result in a dismissal or acquittal for their defendants when prosecutors are unable to adequately respond to filed motions. Consequently, police officers and other witnesses are less likely to attend court hearings when there are delays. Therefore, these delays can result in missed identification and conviction of repeat offenders and hardcore alcohol-impaired drivers. Model time standards for misdemeanor criminal cases are 90% resolved within 30 days of filing and 100% resolved within 90 days. Judges have a responsibility to manage their dockets to ensure that defense pretrial motions and request for continuances do not unduly delay the case. <http://www.ncsc.org/Services-and-Experts/Technology-tools/~media/Files/PDF/CourtMD/Model-Time-Standards-for-State-Trial-Courts.ashx>

More Detail: DUI cases are often the responsibility of new and less-experienced prosecutors. A 2002 study by Robertson and Simpson showed that almost half of such prosecutors reported being inadequately prepared to handle DUI cases and over a third of judges believe that prosecutors do not have equal knowledge as defense attorneys in these cases. The prosecution is therefore sometimes hesitant or unprepared, to challenge motions filed by seasoned defense attorneys. Prosecutors, especially in rural jurisdictions, often work with insufficient resources and may lack necessary up-to-date reference materials and/or access to recent cases that could help their responses to defense motions. As a result, prosecutors may be more likely to negotiate a plea agreement involving lesser charges or a reduced sentence to avoid proceeding to court and potentially losing a case.

To overcome this problem, traffic safety resource prosecutor positions are being created and/or enhanced in some jurisdictions to provide education, guidance, and advice.

Suggested Audience: Prosecutors, Judges

Additional Resources:

- [NHTSA - Traffic Safety Resource Prosecutor Manual \(2007\)](#)
- [TIRF - DUI System Improvements for Dealing with Hard Core Drinking Drivers: Prosecution \(2002\)](#)

Failure to Appear

Definition: Convictions matter. Individuals who were acquitted or whose case was nolle prosequed, either because of delay or the defendant failing to appear, have higher re-arrest rates than those who had been convicted.

Executive Summary: A study of first offender impaired driving recidivism found that those who were acquitted were 64% more likely to recidivate and those whose cases were nolle prosequed were 28% more likely to recidivate than those who were convicted.

More Detail: It is important to stress the police response in the cases of such individuals. Cases that result in an acquittal or nolle prosequi waste resources if law enforcement has failed to adequately prepare their case. One recommendation might be to better train new prosecutors who are generally assigned to these types of cases in the intricacies of an impaired driving case. It is also recommended that there be an established "warrant task force" to deal with defendants who failed to appear using a coordinated police/court program at specific times each year. Every year a concentrated effort can be employed by the police to get these people to appear before the courts.

Estimates of the number of offenders who fail to appear in court at pre-trial, trial, or sentencing range from 10%- 30%, depending on the proximity of borders with other states or countries. A defendant who fails to appear in court can often evade prosecution and conviction, most often because the police are unable to locate them and return them to court. This is mostly attributed to the limited resources available for police to execute arrest or bench warrants. A national survey of prosecutors reported that 22% of defendants fail to appear in court at some point in a typical DUI case, and 65% of prosecutors reported that this behavior was more common among repeat offenders. Cases involving absent defendants continue and remain in open case files for extended periods, causing an increase in caseloads and further strains on court resources. This may be more common in border states and in states with large immigrant populations where legal status may be an issue.

One way to address this problem includes increasing penalties associated with failing to appear in court. Although in some instances there is a right to bail or release on one's own recognizance, certainly multiple offenders court receive more scrutiny before being released. When judges and prosecutors take DUI offenses more seriously than offenders may do so as well.

Suggested Audience: Prosecutors, Judges

Additional Resources:

- NHTSA - A Study of Outstanding DUI Warrants (2001) C. H. Wiliszowski, C. E. Rodriguez- Iglesias, J. H. Lacey, R. K. Jones and E. Cyr Published 2001.
- DUI System Improvements for Dealing with Hard Core Drinking Drivers (Quick Reference Guide) (2006)

Plea Agreements

Definition: Plea agreements are negotiated settlements between the prosecution and defense that can result in reductions of the charge and/or sentence.

Executive Summary: Fewer than 10% of criminal cases go to trial. Following arraignment a plea agreement that reduces the charge to a lesser included offense where the sanctions are less serious is often offered.

More Detail: Judges have discretion as to whether or not to accept a plea agreement in most instances. At the very least, judges faced with a plea recommendation should be advised to review the police report if allowed to do so by local law. Absent a showing of good cause placed on the record by the prosecutor as to why the court should accept this plea, the prosecutor should be ordered to bring the matter to trial should the court's calendar allow for it.

Plea agreements are most common in heavy volume courts especially where the prosecutor is not employed full-time by the city, town or state for which they work. Alaska is one state that has a "no plea bargain" policy. While that may not be feasible for all states, judges should at least be advised of all options available to enforce the state DUI laws.

Although agreements sometimes result in reduction of charges or sentences, agreements also permit the certainty of a conviction even though the state's evidence may be relatively weak or otherwise problematic. Also, plea agreements allow a defendant the opportunity to accept responsibility and receive punishment without the necessity of an expensive and uncertain trial. The laws and policies relating to plea agreements vary among states and are governed by statute or by the policy of the prosecuting attorney.

Some argue that plea agreements undermine the justice system by eroding the general and specific deterrent effects of criminal sanction; others argue that without plea agreements the system would grind to a halt. Regardless, the use of plea agreements in impaired driving cases is being controlled as jurisdictions begin to impose limits on the process in an effort to ensure appropriate sanctioning. Prosecutors in a national survey estimated that two-thirds of DUI defendants who plead guilty do so with a negotiated plea agreement; a majority of prosecutors also reported that they were not required to state reasons for the plea agreement on the court record. This lack of information regarding previous charges and plea agreements impedes the identification of repeat offenders. Pleas to lesser charges, especially those that are non-alcohol

related, prevent prosecutors from elevating charges from misdemeanors to felonies in subsequent cases because prior convictions may not be counted.

Due to the exceptional administrative benefits of plea agreements, eliminating or even reducing this legal practice does not offer a favorable solution to the associated problems. However, other measures can be taken to improve the efficacy of plea negotiation. When an accused impaired driver accepts a plea negotiation, prosecutors may be required to present the facts for the charged crime in the court records. This will provide detailed information about the crime in the event of a repeat offense by the defendant. Another complication is when prosecutors reduce sentences from an alcohol-involved driving crime to one that does not involve alcohol. Some local plea policies ensure that an alcohol-related crime remains an alcohol-related crime. Finally, in enhanced offenses such as high-BAC cases, limiting plea opportunities can be beneficial. These limits can help so that a defendant still favors the plea over trial, while assuring proper consideration for the committed offense.

Suggested Audience: Prosecutors, Judges

Additional Resources:

- DUI Caseflow Management *Washington Office of the Administrator for the Courts*, Published 1999 <http://www.courts.wa.gov/>

Reasonable and Appropriate ‘Look-back’ Periods

Definition: The length of time offenses remain on a driver's record (often called a 'look-back period') is a key issue in identifying hardcore alcohol-impaired drivers.

Executive Summary: Extended look-back periods enable prosecutors, judges, and licensing authorities to identify DUI recidivists who qualify for mandatory enhanced penalties and driver license sanctions upon subsequent conviction. They enable judges and prosecutors to identify DUI offenders who carry a higher risk of future DUI arrests as well as a higher risk of involvement in fatal crashes.

More Detail: While laws exist to provide for the imposition of more stringent sanctions for each conviction of DUI or DUI-related offense, many offenders may receive a lessor sentence because the sentencing judge or the prosecutor simply did not know the criminal history of the accused. Law enforcement, prosecutors and judges should be advised of the importance of working together to remedy this problem and to help obtain funding for the establishment of an integrated record keeping system regarding DUIs.

There is a wide disparity between states regarding the period of time prosecutors, judges or administrators may consider in reviewing an offender's records. Although no perfect solution exists, perhaps one of the fairest ones is establishing a system in which the 'look-back' period is proportionally extended for each DUI conviction that a driver records. Such a system would help

ensure the records of each driver are reasonably available while attempting to differentiate between unique offenders and hardcore recidivists. It would also take into account the driver's ability to reestablish a clean record. These systems may include: standardizing records across jurisdictions, facilitating access to them, and streamlining the ease of use of current records among agencies and jurisdictions. Automated record-keeping systems can also help overcome many of these issues.

This issue can be more of a problem in locations where state borders are regularly crossed for work purposes. In the smaller states of New England, for example, people may live in one state and work in another. Therefore, laws should be reasonable and appropriately determined and executed for the situation.

Of particular importance is recommending that police, prosecutors, and judges urge their state legislative leaders to work with their counterparts in other states to fund and implement a national record registry for DUIs and other serious traffic offenses. Given the mobility of the American people, such an interstate system is crucial to effective enforcement of state DUI laws.

Extended look-back periods have been adopted by a majority of States following enactment of the Transportation Equity Act for the 21st Century (TEA 21) Restoration Act (1998-2003), which provided, in Section 164, that States would be subject to a transfer of funds if they did not apply certain minimum sanctions to offenders convicted more than once within a five-year period. To comply, states must have the ability to 'look back' five (or more) years to determine whether enhanced sanctions should be applied. States that provide for a shorter period of time run a risk of treating repeat offenders as first-time offenders, possibly leading to inappropriate and ineffective sanctions and treatment.

A 2014 NHTSA study of 40 states found that about one quarter of all drivers arrested for DUI each year are repeat DUI offenders. Between 2007 and 2011, the proportion ranged from 11%-41% and the median was around 25%. The look-back period analysis provided evidence that shorter look-back periods result in lower DWI recidivism prevalence.

In all criminal matters, a delicate balance must be found between appropriate sentencing and protecting the rights of the convicted driver. Appreciating this fundamental tug-of-war is especially important for the issue of records because an overly extensive 'look-back period' can turn a single poor decision into a lasting black mark on the driver's record. Since the 'look-back period' is defined in statute, the criminal justice system should ask the legislature to establish periods that can serve as appropriate windows to identify repeat impaired drivers while still avoiding unnecessarily severe consequences.

Suggested Audience: Prosecutors, Judges

Additional Resources:

- The Century Council. DUI Data - Insufficient Look-Back Periods
- [NHTSA – A Study of Outstanding Warrants](#)

- Use of Driver and Criminal Records for Judges and Prosecutors. Barbara Hilger Delucia, Robert A. Scopatz, Mark L. Edwards Transportation Research Record. Volume 1581, 1997.

Caseloads

Definition: Heavy caseloads in busy metropolitan or county level courts are another impediment to the effective enforcement of a state's DUI laws.

Executive Summary: Criminal justice professionals, particularly those in the public sector, face a substantial number of cases at any given time. The lack of available time and attention may jeopardize the quality of work in complex and demanding cases such as DUI cases charged against repeat offenders or stemming from serious crashes. Because hardcore repeat offenders often choose trials over plea negotiations, these cases demand more time and resources, further straining the professional's schedule.

More Detail: Heavy caseloads are not a unique problem to the impaired driving issue. However, given the frequency at which DUI cases are filed, the two issues are closely linked. The rate of DUI cases results in heavier caseloads, forcing the judges and prosecutors to spend less time on each case. This can result in these professionals mishandling hardcore recidivists, resulting in repeat DUI arrests and consequently, more trials over plea agreements.

Absent the initiation of a DWI court to handle all DUI related cases, there are still some things that can improve performance in this regard. There are efforts in some jurisdictions to recruit those patrol officers, prosecutors and judges who are more fully invested than some of their counterparts in the fair and effective enforcement of their state's DUI laws to bring, try and adjudicate such cases. Doing so would be the administrative responsibility of law enforcement leadership, prosecution and the judiciary and would amount to a more focused approach to the case management of DUI cases than is normally the situation.

Some states require that DUI cases be given priority handling by the courts, but in lieu of such a law, each stakeholder could ensure priority handling of DUI cases as a matter of rule or policy. Adoption of a "no plea bargain" protocol for DUI cases or an "early trial rule" regarding such cases, is another way to restrict the cavalier ways these case are handled in some heavy volume districts and courts. Prior to adoption of such a protocol or rule the court must be assured it can handle an increase in the number of jury trials.

Suggested Audience: Prosecutors, Judges

DUI/Drug Courts

Definition: DUI/Drug Courts are separate court dockets dedicated to changing the behavior of alcohol/drug dependent offenders convicted of DUI. The goal of these courts is to reduce recidivism by attacking the root cause of DUI: alcohol and other drug abuse.

Executive Summary: There are currently more than 2,800 drug courts across the country with hundreds more in the process of being created. More than 600 DUI Courts provide an alternative and effective method of battling impaired driving, particularly in regards to recidivism. This system is able to appropriately address convicted drivers in a manner that targets the defendant's dependence on alcohol, which is usually the cause of repeat offending. DUI Courts provides an option that involves strict court supervision of the defendant's conduct while the defendant engages in an appropriate form of treatment. These courts are virtually all post-conviction, meaning that the accused must plead guilty or be convicted in order to participate in them.

More Detail: DUI/Drug Courts utilize all criminal justice stakeholders (prosecutors, defense attorneys, probation, law enforcement, and others) along with alcohol/drug treatment professionals.

This group of professionals comprises a DUI/Drug Court Team with the judge as the “captain.” The group uses a team-oriented approach to systematically change participant behavior. This approach includes identification and referral of participants early in the legal process to a full continuum of drug/alcohol treatment and other rehabilitative services. Compliance with treatment and other court-mandated requirements is verified by frequent testing, close community supervision and interaction with the judge in non-adversarial court review hearings. During such hearings the judge employs a science-based response to participant compliance (or non-compliance) in an effort to further the team's goal to encourage pro-social, sober behaviors that will help prevent DUI recidivism.

Supported by the American Judges Association, the Governor’s Highway Safety Association, the International Association of Chiefs of Police, Mothers Against Drunk Driving, the National Alcohol Beverage Control Association, National Association of Prosecutor Coordinators, the National District Attorneys Association, the National Sheriff’s Association, and the National Transportation Safety Board, DUI Courts have a body of evidence demonstrating that “close monitoring” and intensive treatment with individualized sanctions for DUI offenders reduce recidivism.

Close monitoring approaches include: formal intensive supervision programs, home confinement with electronic monitoring, dedicated detention facilities and individual oversight by judges and continuous alcohol monitoring. Evaluations of DUI court effects on recidivism and court efficiency are ongoing. DUI courts use close monitoring together with random testing, treatment and positive reinforcement. One preliminary report on a DUI court in New Mexico indicated that recidivism was reduced by 50 percent for offenders completing the DUI court as compared to similar offenders not assigned to the DUI court. The latest research shows not only

a reduction in recidivism but also a reduction in crashes. "Research Update on DWI Courts" (NCDIC 2015) <http://www.dwicourts.org/learn/about-dwi-court/-guiding-principles>

DUI courts follow the "Ten Key Components of Drug Courts" <http://www.nadcp.org/sites/default/files/nadcp/KeyComponents.pdf> and the "Ten Guiding Principles of DUI Courts," <http://www.dwicourts.org/learn/about-dwi-court/-guiding-principles> as established by the National Association of Drug Court Professionals and the National Drug Court Institute. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) encourages the use of DUI courts through the Section 410 Alcohol Impaired Incentive Grant Program as did the latest transportation legislation adopted by Congress.

Suggested Audience: Prosecutors, Judges

Additional Resources:

- [NHTSA - Strategies for Addressing the DUI Offender: 10 Promising Sentencing Practices](#)
- [DUI Courts and DUI/Drug Courts: Reducing Recidivism, Saving Lives](#)
National Drug Court Institute, Published 2005
- [DUI Drug Courts: Key Components](#), *National Drug Court Institute, Published 2004*
- *10 Guiding Principles for DWI Courts*
- [National Drug Court Institute](#)
- [National Center for DWI Courts](#)

SANCTIONS

This section outlines punishments and ways to combat accused hardcore and repeat impaired driving offenders. These methods are most effective when coupled with effective treatment programs as compared to individual implementation.

Administrative License Suspension/Revocation (ALR) & Judicial License Suspension/Revocation

Definition: Administrative License Revocation or ALR is when a driver's license is taken away by law enforcement at the time of the offense or stop by police upon the failure or refusal of a chemical test. Judicial or court ordered license revocation, is done post-conviction by a judge.

Executive Summary: Depending on the state, a DUI arrest can result in two kinds of licensing actions. The first is pre-conviction administrative license suspension (ALS) or revocation (ALR), which is carried out by the arresting officer as an administrative action on behalf of the motor vehicle administration. The second is a judicial post-conviction action ordered by the court. A single DUI arrest frequently results in both an ALS/ALR action and a mandatory post-conviction suspension action.

More Detail: State laws for ALR vary, but once the licenses are confiscated, drivers are given a notice of suspension which acts as a temporary permit for up to 45 days. During that time, the suspension can be appealed at a hearing and if it fails, the license is suspended for a determined period of time. Regardless of the appeals hearing, the convicted offender is still subject to a separate criminal process, which can result in additional penalties including judicial licensing actions.

First-time offender suspensions can vary from one week to one year, but most last 90 days. Suspensions for first-time convicted offenders often allow them a restricted license/permit (hardship license) that allows them to drive to and from work and alcohol education/treatment classes. Repeat offenders usually receive longer suspensions and may not be eligible for a hardship license or other restrictions.

The National Highway Traffic Safety Administration (NHTSA) recommends that ALS/ALR laws impose at least a 90-day suspension or a 30-day suspension followed by 60 days of restricted driving. Some states require the completion of a treatment program or other education prior to allowing driving privileges to be reinstated. Michigan is one state that only allows restricted driving if the offender is in good standing with a DWI Court. Administrative revocations are immediate in nature, and, because of this, ALR has been shown to be an effective way to deter people from driving under the influence of alcohol.

The deterrent effect of such suspensions are only as good as the willingness of offenders to comply with such restrictions and the determination of law enforcement and the courts to act swiftly. In every state there are thousands of individuals who drive despite the fact that a

judge/administrator has suspended their license. It is recommended that law enforcement routinely check the status of an operator's license during traffic encounters.

Plea agreements and diversion programs allow many offenders to keep their licenses. Since the criminal process requires proof beyond a reasonable doubt these programs are likely to err toward leniency. This is unlike the administrative process that requires only that the balance of evidence indicate the sanction is warranted. However, most states do have provisions for court-ordered suspensions, which may or may not run concurrently with ALR/ALS.

Suggested Audience: Enforcement, Prosecutors, Judges

Additional Resources:

- NHTSA – Effectiveness of the Ohio Action and Administrative License Suspension Laws
- Insurance Institute for Highway Safety – Administrative License Suspension Q&A
- Administrative license revocation statutes: Do they really deter drunk driving?, *Journal of Quantitative Criminology* (1992). Author(s): Sprattler, Karen M.; Parker, Robert Nash; and Gruenewald, Paul J.
- NHTSA – Strategies for Addressing the DUI Offender: 10 Promising Sentencing Practices (2005)
- NHTSA - Guide to Sentencing DUI Offenders (2005)
- NHSTA - Vehicle and License Plate Sanctions (2004)
- NHTSA – Observational Study of the Extent of Driving while Suspended for Alcohol-Impaired Driving
- **Wagenaar, A.C.; Maldonado-Molina, M.M.** Effects of drivers' license suspension policies on alcohol-related crash involvement: long-term follow-up in forty-six states. *Alcohol Clin Exp Res.* 31(8):1399-1406, 2007.
- NHTSA – Strategies for Addressing the DUI Offender: 10 Promising Sentencing Practices (2005)

Vehicle Impoundment

Definition: A driver's vehicle is seized or impounded as a sanction against hard core offenders.

Executive Summary: The punishment of removing an offender's vehicle is usually an overnight occurrence but if the offender is a recidivist or is driving with a suspended license, it can be for a longer period of time. Hundreds of dollars in fees and costs can be accrued based on the offender and the time of impoundment. This sanction can vary by jurisdiction and by state.

More Detail: Research has demonstrated vehicle impoundment to be consistently effective in reducing DUI offenses among convicted impaired drivers. Vehicle impoundment helps reduce the drivers' likelihood of re-offending even after other sanctions have been completed.

Vehicle impoundment provides a public measure of protection for the period of time it is in use but effectiveness can be limited by offender avoidance and also judicial reluctance to impose and enforce such measures. Some offenders simply have no regard for the law and will continue to drive until they are caught and punished. Even if they are sentenced to jail for a time, many will drive again once they are released from custody.

Many judges fail to impose measures like impounding vehicles because of the cost attached or because they worry about being the cause of an offender's job loss or them not being able to take care of family, for example.

Suggested Audience: Prosecutors, Judges

Additional Resources:

- Repeat Offenders and Persistent Drinking Drivers in the U.S. James Hedlund and James Fell *NHTSA, NTS-20, 400 Seventh St SW, Washington, DC 20590, USA*
- Voas, R.B.; Tippetts, A.S.; and Taylor, E. Temporary vehicle immobilization: Evaluation of a program in Ohio. *Accid Anal Prev* 29(5):635-642, 1997.
- **Voas, R.;** Tippetts, A.; and Taylor, E. Temporary vehicle impoundment in Ohio: A replication and confirmation. *Accid Anal Prev* 30(5):651-656, 1998.
- [Mothers Against Drunk Driving \(MADD\)](#)

Staggered Sentencing

Definition: A staggered sentence is one where the convicted DUI offender does not serve the entire term in a consecutive period, but rather, serves a portion of his sentence before periodically appearing before a judge for assessment.

Executive Summary: Staggered sentencing presents an alternative form of punishment and treatment and is similar to DUI Courts in its effectiveness due to increased court involvement in overseeing the defendant's progress to recovery. The program also requires accountability among offenders as they hold their fate in their hands. Offenders' consequences are clearly defined and agreed upon with judges. Like DUI Courts, Staggered Sentencing is likely best suited for cases with repeat offenders. Staggered sentencing usually does not require the same financial resources or systematic establishment as DUI Courts.

More Detail: Minnesota Judge James E. Dehn devised a program of Staggered Sentencing in order to combat recidivism by repeat DUI offenders. As a result of his efforts and insight, a new form of sanction emerged that mixes punishment and rehabilitation with court supervision. Under the program, a convicted impaired driver receives a specified term of incarceration, just as in traditional sentencing. However, unlike traditional sentencing, the convicted driver does not serve the entire term in a consecutive period. Instead, the Staggered Sentencing program requires the convicted driver to serve a portion of his sentence before periodically appearing before a judge for review. During this assessment, the judge will ensure that the convicted

driver has complied with the terms of his sentence, possibly including abstinence from alcohol, participation in community services, regular attendance at AA meetings, etc. If the convicted offender has demonstrated compliance to the agreed rehabilitative behavior, the court may permit them to complete their sentence through home monitoring instead of in jail. Completing sentences under house arrest or monitoring would still involve clear and strictly-enforced consequences for any subsequent violations.

Suggested Audience: Prosecutors, Judges

Additional Resources:

- [NHTSA – Evaluation of Individualized Sanctioning \(1998\)](#)
- [NASJE - Staggered Sentencing](#)
- [NHTSA – Strategies for Addressing the DUI Offender: 10 Promising Sentencing Practices \(2005\)](#)

Ignition Interlock Devices

Definition: An ignition interlock device is an alcohol breath screening device located in a vehicle, which prevents the vehicle from starting if a blood alcohol concentration of 0.02 (20mg of alcohol per 100mL of blood) or greater is detected.

Executive Summary: Ignition interlocks are found near the driver’s side of the passenger compartment and are connected to the vehicle’s ignition system, not the engine. The purpose of the device is to prevent a person who has consumed alcohol from starting and driving the vehicle.

More Detail: The driver must blow into the device before the car can be started. If the BAC level is above the preset limit, the vehicle will not start. Research has shown these devices to be a popular, effective and relatively inexpensive mechanism for allowing the hardcore offender to drive legally and sober.

Most of the devices have driver recognition or anti-circumvention features, including a data recorder that documents all vehicle uses as well as any attempt to tamper with the device. They can also include a running re-test feature that requires the driver, after starting the vehicle, to supply at least one other breath sample during the trip.

These systems are not foolproof. These devices can sometimes be circumvented, but technological improvements, such as the running re-test, have greatly reduced this possibility. They also do not keep offenders from operating other vehicles, which are not fitted with interlock devices, such as rental cars.

Research does not recommend the use of ignition interlocks as a substitute for licensing sanctions, but rather as a condition of licensing reinstatement after a period of suspension.

Early installation is suggested, as opposed to long periods of license suspension which can teach the driver they don't need a license to drive.

Suggested Audience: Prosecutors, Judges

Additional Resources:

- [TIRF - About Ignition Interlock Devices \(2007\)](#)
- [NCSC - Ignition Interlock Device \(2003\)](#)
- [Evaluation of a program to motivate impaired driving offenders to install ignition interlocks, Accident Analysis and Prevention \(2002\). Author\(s\): Voas, Robert B.; Blackman, K. O.; Tippetts, A. S.; and Marques, P. R.](#)
- [NHTSA – Strategies for Addressing the DUI Offender: 10 Promising Sentencing Practices \(2004\)](#)
- [Alcohol Interlock Programs: Enhancing Acceptance, Participation and Compliance Douglas J. Bierness and Robyn D. Robertson, Published 2005](#)
[http://www.trafficinjuryresearch.com/publications/PDF_publications/Hilton Head Proceedings.pdf](http://www.trafficinjuryresearch.com/publications/PDF_publications/Hilton_Head_Proceedings.pdf)
- [Alcohol Ignition Interlocks: Magic Bullet or Poison Pill? Gregory T. Neugebauer, Published 2002](#)
- <http://www.pitt.edu/~sorc/techjournal/articles/VolIII,2Neubauer.pdf>

Transdermal Monitoring/Testing for Alcohol

Definition: Transdermal testing measures the concentration of alcohol present in the insensible perspiration that is constantly produced and given off by the skin. If a person has been drinking, alcohol can be detected in the level of ethanol vapor present in their perspiration.

Executive Summary: A recent advance in alcohol testing is continuous transdermal alcohol monitoring that allows alcohol content to be measured “through the skin.” While transdermal testing cannot determine exact blood alcohol concentration (BAC) levels, it can *qualitatively* determine the quantity of alcohol that was consumed based on the transdermal alcohol content (TAC). TAC results correlate well with BAC results. However, because of the way alcohol is absorbed and processed by the body, TAC peaks typically are reached 30 minutes to two hours after BAC peaks.

More Detail: When an offender is convicted of DUI, domestic violence, or another offense related to alcohol, a typical condition of sentencing or probation is that the individual stop drinking. To enforce this, courts have traditionally looked to random testing methods (blood, breath, or urine) that measure sobriety at a specific point in time which is often scheduled in advance.

Continuous transdermal alcohol monitoring has been confirmed by the scientific community based on more than 70 years of research and 22 peer-reviewed studies. It is becoming an increasingly accepted and integral part of offender alcohol monitoring programs within courts, probation, treatment, and correctional agencies. Transdermal monitoring has also been accepted in evidentiary hearings, and has been admissible in many court cases.

Suggested audience: Prosecutors, Judges

Additional Resources:

- [TIRF - Transdermal Alcohol Monitoring Primer \(2007\)](#)
- [TIRF - Transdermal Alcohol Monitoring: A Practitioner's Guide](#)
- [NHTSA - Evaluating Transdermal Alcohol Measuring Devices \(2007\)](#)
- [NHTSA – Strategies for Addressing the DUI Offender: 10 Promising Sentencing Practices](#)

Victim Impact Panels

Definition: A Victim Impact Panel (VIP) is a community-based meeting for victims/witnesses to describe the experiences they or loved ones have endured due to the actions of impaired drivers.

Executive Summary: A victim impact panel consists of a few people (usually 3 or 4) who were injured, or had a loved one injured or killed in a crash involving an impaired driver. Panel members explain how the crash has impacted their lives. DUI offenders can be required to attend the meetings as part of their court sentences. The panel aims to be non-judgmental and speaks about the consequences of impaired driving in an attempt to change behaviors and attitudes. Many communities use victim impact panels as one sanction against DUI offenders to increase impaired drivers' understanding of the consequences of their actions.

More Detail: Victim Impact Panels began over 20 years ago when bereaved victims of impaired driving crashes were asked to share their experiences with convicted DUI offenders. These panels are a common sentencing option in many courts today, and an educational track in many driving programs and schools.

VIPs can help put a “human face” on the tragic consequences of impaired driving. They provide a forum for victims to tell about the devastating emotional, physical and financial impacts that the incident has had on their lives and those of their families and friends.

The focus of VIPs is to:

- Provide victims a structured, positive outlet to share their personal experiences,
- Help offenders consider how their crimes have impacted both their victims and their community,
- Educate offenders, justice professionals, and community stakeholders about the consequences of impaired driving, and

- Build partnerships in the community to raise awareness and concern, and ultimately help to prevent future impaired driving crashes.

Suggested Audience: Prosecutors, Judges

Additional Resources:

- [NHTSA - Victim Impact Panels \(2001\)](#)
- [NHTSA – Strategies for Addressing the DUI Offender: 10 Promising Sentencing Practices \(2005\)](#)

FACTS

Prevalence of Impaired Driving

- In 2014, there were 9,967 fatalities in crashes involving a driver with a BAC of .08 or higher, accounting for 31 percent of total traffic fatalities for the year.¹
- The 9,967 fatalities in alcohol-impaired driving crashes in 2014 represent an average of one alcohol-impaired driving fatality every 53 minutes.¹
- In 2014, a total of 1,067 children age 14 and younger were killed in motor vehicle crashes. Of those, 209 (19%) occurred in alcohol-impaired driving crashes.¹

High Blood Alcohol Concentration (BAC)

- Of the 9,967 people who died in alcohol-impaired crashes in 2014, 6,931 (64%) were drivers with a BAC of .08 or higher. The remaining fatalities consisted of 2,752 (27%) motor vehicle occupants and 824 (8%) non-occupants.¹
- Another 30 children age 14 and younger who were killed in traffic crashes in 2014 were pedestrians or pedalcyclists who were struck by drivers with a BAC of .08 or higher.¹
- In 2014, 84 percent (9,461) of the 11,231 drivers with a BAC of .01 or higher who were involved in fatal crashes had BAC levels at or above .08, and 56 percent (6,324) had BAC levels at or above .15. The most frequently recorded BAC level among drinking drivers in fatal crashes were tied at .14 and .16.¹

Hardcore Impaired Drivers

- In 2014, the percentage of drivers in fatal crashes with BAC levels .08 or greater was highest for drivers aged 21 to 24 (30%), followed by ages 25 to 34 (29%) and 35 to 44 (24%).¹
- Drivers with a BAC of .08 or higher involved in fatal crashes were seven times more likely to have a prior conviction for driving while impaired (DWI) than were drivers with no alcohol.¹
- About one-quarter of all drivers arrested or convicted of driving while intoxicated or driving under the influence of alcohol are repeat offenders.²
- The risk of a driver who has one or more DWI convictions becoming involved in a fatal crash is about 1.4 times the risk of a driver with no DWI conviction.³

DUI Arrests

- Over 1.12 million drivers were arrested in 2014 for driving under the influence of alcohol or narcotics.⁴
- Only 17 percent of impaired drivers who are injured in crashes are charged and convicted. Eleven percent are charged and not convicted and 72 percent are never charged.⁵
- A 2015 AAA poll measuring the Traffic Safety Culture of Americans, found that almost 80% strongly supported requiring drivers who have been convicted of DWI at least once, to use

equipment that tests them for alcohol, i.e. an ignition interlock device. Also, 66% of the respondents in the poll felt that impaired driving is a serious threat to their personal safety.⁶

Social Costs of Impaired Driving

Alcohol-related crashes in the United States cost the public an estimated \$114.3 billion in 2000, including \$51.1 billion in monetary costs and an estimated \$63.2 billion in quality of life losses. People other than the drinking driver paid \$71.6 billion of the alcohol-related crash bill, which is 63 percent of the total cost of these crashes.⁷

Drugged Driving

- According to the latest National Roadside Survey from NHTSA in 2013-2014, one in five weekend, nighttime drivers tested positive for illegal, prescription, or over-the-counter medication. More than one in eight tested positive for illicit drugs.⁸
- The 2013 National Survey on Drug Use and Health reported that an estimated 9.9 million people ages 12 and older reported to driving under the influence of illicit drugs at least once during the prior year. The rate was the highest among young adults ages 18-25 (1%).⁹
- Among those 12 and older, males (14.1%) were nearly twice as likely as females (7.9%) to drive under the influence of an illicit drug or alcohol in the past year.⁹

Works Cited

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2. DWI Recidivism in the United States: An Examination of State-Level Driver Data and the Effect of Look-Back Periods on Recidivism Prevalence. DOT HS 811 991. Washington, DC: National Highway Traffic Safety Administration, March 2014. http://www.nhtsa.gov/staticfiles/nti/pdf/811991-DWI_Recidivism_in_USA-tsf-rn.pdf
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RESOURCES

- [American Public Health Association \(APHA\) – Alcohol Screening and Brief Intervention manual](#)
- [APRI – Drug Toxicology for Prosecutors](#)
- [Center for Alcohol Policy](#)
- [Contribution of Alcohol-Impaired Driving to Motor Vehicle Crash Deaths in 2005](#)
- [DWI System Improvements for Dealing with Hard Core Drinking Drivers \(Quick Reference Guide\) \(2006\)](#)
- [FBI – Battling DUI: A Comparative Analysis of Checkpoints and Saturation Patrols](#)
- [HORIZONTAL GAZE NYSTAGMUS: THE SCIENCE & THE LAW: A Resource Guide for Judges, Prosecutors and Law Enforcement](#)
- [Institute for Police Technology and Management \(IPTM\)](#)
- [Issues and Methods in the Detection of Alcohol and Other Drugs, Transportation Research, September 2000](#)
- [MADD – Victim Services](#)
- [Minnesota Office of Traffic Safety – Department of Public Safety Home](#)
- [Mothers Against Drunk Driving \(MADD\)](#)
- [National Center for DWI Courts](#)
- [National Center for State Courts](#)
- [National Drug Court Institute](#)
- [National Judicial College](#)
- [NCSC – Ignition Interlock Device \(2003\)](#)
- [NDAA – Prosecutors and Toxicology 2003](#)
- [NHSTA – Vehicle and License Plate Sanctions \(2004\)](#)
- [NHTSA – A Review of the Literature on the Effects of Low Doses of Alcohol on Driving-Related Skills](#)
- [NHTSA – A Study of Outstanding DWI Warrants \(2001\)](#)
- [NHTSA – Addressing Alcohol-Impaired Driving. Training Physicians to Detect and Counsel Their Patients Who Drink Heavily, 2000](#)
- [NHTSA – Breath Test Refusals in DUI Enforcement 2005](#)
- [NHTSA – Development of a Standard Field Sobriety Test](#)
- [NHTSA – Driver Characteristics and Impairment at Various BACs \(2000\)](#)
- [NHTSA – Drugs and Human Performance Fact Sheet](#)
- [NHTSA – Drug Impaired Driving Report to Congress](#)
- [NHTSA – Effectiveness of the Ohio Action and Administrative License Suspension Laws](#)
- [NHTSA – Evaluating Transdermal Alcohol Measuring Devices \(2007\)](#)
- [NHTSA – Evaluation of Enhanced Sanctions for Higher BACs: Summary of States’ Laws HS 809 215, 2001](#)
- [NHTSA – Evaluation of Individualized Sanctioning \(1999\)](#)
- [NHTSA – Guide to Sentencing DWI Offenders \(2005\)](#)

- [NHTSA – Low Staffing Checkpoints](#)
- [NHTSA – National Roadside Survey of Alcohol and Drug Use](#)
- [NHTSA – Saturation Patrol and Checkpoint Guide \(2002\)](#)
- [NHTSA – State by State Analysis of Laws Dealing with Driving Under the Influence of Drugs](#)
- [NHTSA – State laws and practices for BAC testing after fatal crashes, 2004](#)
- [NHTSA – Strategies for Addressing the DWI Offender: 10 Promising Sentencing Practices \(2005\)](#)
- [NHTSA – Traffic Safety Resource Prosecutor Manual \(2007\)](#)
- [NHTSA – Visual Detection of DWI Motorists](#)
- [NHTSA Highway Safety Desk Book](#)
- [NPAMC video – Alcohol Misuse: Crippling criminal justice](#)
- [Passive Alcohol Sensors Tested in 3 States for Youth Alcohol Enforcement- NHTSA \(1996\)](#)
- Robertson, R., Holmes, E. and Vanlaar, W. (2009). Alcohol Interlocks in Canada: From Research to Practice. Traffic Injury Research Foundation.
- Robertson, R., Vanlaar, W. (2009) Proceedings of the 9th Annual International Alcohol Interlock Symposium: Planning for Success. Traffic Injury Research Foundation.
- Robertson, R.D, Vanlaar W., and Simpson, H.M. (2006) Ignition Interlocks: From Research to Practice. A Primer for Judges. Traffic Injury Research Foundation.
- [Sobriety Testing Resource Center and Drug Recognition Expert Data System](#)
- [The Century Council. DWI Research.](#)
- [TIRF – Alcohol Interlock Curriculum for Practitioners](#)
- [TIRF – DWI System Improvements for Dealing with Hard Core Drinking Drivers: Prosecution \(2002\)](#)
- [TIRF – Transdermal Alcohol Monitoring Primer](#)
- [TIRF – Transdermal Alcohol Monitoring: A Practitioner’s Guide](#)
- [TIRF – Ignition Interlock Symposia: Proceedings](#)