



# STATE OF TEXAS

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## Impaired Driving Program Assessment

August 17 – August 21, 2015

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## **ACKNOWLEDGEMENTS**

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The team also thanks each of the participants for the time and energy invested in preparing and delivering their presentations. Their candor and thoroughness in discussing their activities to target impaired driving in Texas greatly assisted the team in conducting a complete review.

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This report is based on a review of the State's Impaired Driving Program. It is intended to assist Texas' efforts to enhance the effectiveness of its impaired driving program by equipping the criminal justice community and law enforcement officials with the knowledge and skills to detect, arrest, and prosecute impaired drivers. The team believes that this report will contribute to the State's efforts to enhance the effectiveness of its impaired driving program in preventing injuries, saving lives, and reducing economic costs of motor vehicle crashes on Texas roadways, and commends all who are involved in the day-to-day efforts to reduce impaired driving in Texas.

## INTRODUCTION

The mission of the National Highway Traffic Safety Administration (NHTSA) is to reduce deaths, injuries, and economic and property losses resulting from motor vehicle crashes. In its ongoing pursuit to reduce alcohol-related traffic crashes and subsequent fatalities and injuries, NHTSA offers Highway Safety Program Assessments to the States.

The Highway Safety Program Assessment process is an assistance tool that uses an organized approach, along with well-defined procedures, to provide states with a review of their various highway safety and emergency medical services (EMS) programs. Program assessments are provided for impaired driving, occupant protection, traffic records, motorcycle safety, standardized field sobriety testing, driver education, pedestrian and bicycle safety, and EMS.

The purpose of the assessment is to review all components of a given highway safety or EMS program, note the program's strengths and accomplishments, and note where improvements can be made. The assessment can be used as a management tool for planning purposes and for making decisions about how to best use available resources. The assessments are cooperative efforts among state highway safety offices, state EMS offices, and NHTSA. In some instances, the private sector is also a partner in the effort. NHTSA staff facilitates the assessment process by assembling an assessment team, a team of experts composed of individuals who have demonstrated competence in highway safety or EMS program development and evaluation,

Program assessments are based on the *Uniform Guidelines for State Highway Safety Programs*, which are required by Congress and periodically updated through a public rulemaking process. For each highway safety program area, the criteria against which each state program is assessed have been developed through use of the uniform guidelines, augmented by current best practices.

Although not required, the State of Texas requested NHTSA's assistance in assessing the State's alcohol and drug impaired driving countermeasures program to comply with 23 CFR 1200.23 promulgated under Moving Ahead for Progress in the 21st Century (MAP-21) to qualify for the Impaired Driving Countermeasures Grant.

Under MAP-21, States that have an average impaired driving fatality rate that is 0.60 or higher are considered high-range states. States are considered mid-range if their average impaired driving fatality rate is lower than 0.60 but higher than 0.30 and low-range if their rate is 0.30 or lower. Texas is considered a mid-range state and as such is required to convene a statewide impaired driving task force to develop a statewide impaired driving plan.

The Texas Impaired Driving Program Assessment was conducted at the Doubletree Austin Hotel, in Austin, TX from August 17 to August 21, 2015. Under the direction of Frank Saenz, Texas Department of Transportation Program Manager, Alcohol and Other Drugs Countermeasures Program, arrangements were made for impaired driving program partners and stakeholders (see Agenda) to deliver briefings and provide support materials to the team on a wide range of topics over a three-day period.

## **STATE BACKGROUND**

Texas, the largest state in the contiguous United States, is bounded by Oklahoma (N); Arkansas (NE); Louisiana (E); the Gulf of Mexico (SE); Mexico, (SW); and New Mexico (W). North to south, Texas stretches 801 miles and the longest east-west distance is 773 miles. The State encompasses 261,797 square miles of land and 6,784 square miles of water. The 2010 U.S. Census indicated that, 46 percent of the population was Caucasian, 38 percent Hispanic, 12 percent Black, and 4 percent “other” racial/ethnic groups. About 27 percent of the population is less than 18 years-old, 63 percent is 18-64, and 10 percent is 65 or older.

The 2014 U.S. Census estimates that Texas has a population of 26,956,958, an increase of 1.8 million people (7.2%) since 2010. Texans live in 254 counties that range from 86 people (Loving) to 4,441,370 people (Harris), and approximately 1,215 incorporated cities ranging from 35 people (Impact) to 2,195,914 people (Houston).

As of February 2015, there are 24,192,822 million registered vehicles in the State, including rental trailers, exempt vehicles and other special categories. Licensed drivers numbered 16,579,591 in 2014.

There are approximately 80,268 centerline miles of state-maintained roadways, including 3,272 miles of Interstate highways, 12,062 miles of U.S. highways, and 16,411 miles of Texas state highways. Another 40,932 miles on the state system are designated as Farm or Ranch to Market roads. In addition to the state-maintained roads, there are approximately 311,249 miles of city and county-maintained streets and highways. While only 26 percent of roadways in Texas are state-maintained, 74 percent of all vehicle miles traveled (VMT) occurs on state-maintained highways. In 2010, the average daily VMT on state-maintained highways was 475.4 million miles. The average daily VMT on all roadways in the state was 641 million miles. The average annual VMT on state-maintained highways was 234 billion miles; 172 billion on all state roadways.

Over the last five years, Texas has had, on average, 3,194 motor vehicle crash-related fatalities. There was upward movement in 2013 from a low of 3,023 recorded in 2010 to 3,382 in 2013 (Fatality Analysis Reporting System).

Texas has seen a large increase in the number of reportable serious injuries from a low of 15,276 in 2010 to 17,136 reported in 2014; an increase of 11 percent.

Nationally, Texas has ranked in the top 10 states for six consecutive years for alcohol-related fatalities per 100 million VMT. Alcohol-related is defined as one or more of the vehicle or motorcycle operators involved in a fatal crash tested with a blood alcohol concentration of 0.08 (or higher), which is the legal limit to drive within the State of Texas.

## PRIORITY RECOMMENDATIONS

### I. Program Management and Strategic Planning

- Create and convene a Governor's Executive Committee of the Impaired Driving Task Force chaired by a Texas Department of Transportation Commissioner (appointed by the Governor) with a membership consisting of the Attorney General, six State Senate members (appointed by the Lieutenant Governor), and six House members (appointed by the Speaker of the House) meeting in even numbered years to discuss legislative recommendations provided by the full Impaired Driving task force membership. The Executive committee will receive administrative support from the Traffic Operations Division-Traffic Safety Section (TRF-TS).
- Develop and fund a driving under the influence/driving while intoxicated (DUI/DWI) tracking system that would link Texas criminal justice agencies' databases in order to create a network containing offenders' criminal history, arrests, warrants, photographs, and fingerprints, to ensure access to offenders' previous and/or current DUI/DWI history.  
*\*Note: This recommendation also appears in sections III.A; V.A.1.; and VI.B of this report.*

### II. Prevention

- Enact a \$.10 per drink excise tax increase and dedicate a portion of new revenues to alcohol abuse and impaired driving prevention and treatment.

### III. Criminal Justice System

- Codify driving while intoxicated (DWI) deferral, diversion, and pretrial intervention programs so as to provide uniform statewide guidelines, requirements, and procedures that regulate the implementation, operation, and applicability of such programs.
- Enact reasonable constitutional guidelines through one or more politically accountable governing bodies regarding driving while intoxicated (DWI)/sobriety checkpoints.  
*\*Note: This recommendation also appears in section III.A&B of this report.*
- Expand statewide partners for Drug Recognition Expert (DRE) training through regional training teams.
- Review the organization, operation, and budget of the office of the Traffic Safety Resource Prosecutor (TSRP) to determine if additional TRSPs should be funded for purposes including on-site assistance to prosecutors, particularly in rural jurisdictions, in the trial of complex DWI felonies and assistance in argument of motions with significant statewide implications.

- Enact a driving while intoxicated (DWI) statute that would enable DWI/Drug Court judges, upon motion from the prosecutor, to reward those who successfully complete a DWI/Drug Court program of one year or longer in duration, by waiving surcharges/fines.

#### IV. Communication Program

- Evaluate Highway Safety Office marketing to ensure its messages are reaching target audiences.

#### V. Alcohol and Other Drug Misuse: Screening, Assessment, Treatment, and Rehabilitation

- None

#### VI. Program Evaluation and Data

- Provide funding for an eCitation system such as the one proposed by the Texas Office of Court Administration.

## **I. Program Management and Strategic Planning**

*Effective impaired driving programs begin with strong leadership, sound policy development, effective and efficient program management, and coordinated planning, including strategic planning. Program efforts should be data-driven, focusing on populations and geographic areas that are most at risk; are evidence-based; and determined through independent evaluation as likely to achieve success. Programs and activities should be guided by problem identification, carefully managed and monitored for effectiveness, and have clear measurable outcomes. Adequate resources should be devoted to the problem, and the costs should be borne, to the extent possible, by impaired drivers. Strategic planning should provide policy guidance; include recommended goals and objectives; and identify clear measurable outcomes, resources, and ways to overcome barriers.*

### **A. State and Tribal DWI Task Forces or Commissions**

#### **Advisory**

*States and tribal governments should convene Driving While Intoxicated (DWI) task forces or commissions to foster leadership, commitment, and coordination among all parties interested in impaired driving issues. State-level and tribal task forces and commissions should:*

- *Receive active support and participation from the highest levels of leadership, including the governor and/or governor's highway safety representative.*
- *Include members that represent all interested parties, both traditional and non-traditional, such as representatives of: government – highway safety, enforcement, criminal justice, liquor law enforcement, public health, education, driver licensing and education; business – employers and unions; the military; medical, health care and treatment; multi-cultural, faith-based, advocacy, and other community groups; and others.*
- *Recommend goals and objectives, provide policy guidance and identify available resources, based on a wide variety of interests and through leveraging opportunities.*
- *Coordinate programs and activities to ensure that they complement rather than compete with each other.*
- *Operate continuously, based on clear authority and direction.*

#### **Status**

In 2010, Texas underwent a statewide Impaired Driving Assessment. One of the Priority Recommendations of that assessment was to “create and convene a Driving While Intoxicated (DWI) Task Force consisting of membership, at the highest level, of stakeholder organizations to review the findings and recommendations of the October, 2010 Impaired Driving Assessment Report”.

Texas created an Impaired Driving Task Force that addresses the impaired driving problem and demographic and geographic considerations of the State. The Task Force membership reflects the diversity recommended in the National Highway Traffic Safety Administration's (NHTSA) *A Guide for Statewide Impaired Driving Task Forces and Uniform Guidelines for State Highway Safety Programs, Number 8 – Impaired Driving*. Following are organizations with representatives on the Texas Impaired Driving Task Force:

- AAA Texas
- Alamo Area Council of Governments
- Austin Police Department



- Baylor Scott and White Hillcrest Baptist Medical Center
- Bell/Lampasas Counties Community Supervision and Corrections Department
- Brazos Valley Injury Prevention Coalition
- College Station Police Department
- Education Service Center
- Enviromedia
- Galveston County District Attorney
- Guerra, Deberry & Coody (GDC) Marketing
- Harris County District Attorney's Office
- Law Enforcement Mobile Video Institute – University of Houston Downtown
- Mothers Against Drunk Driving (MADD)
- Montgomery County District Attorney
- National Injury Prevention Council
- National Safety Council
- NHTSA – Region 6 Office
- Safeway Driving Systems
- Sam Houston State University
- Smart Start, Inc.
- Tarrant County District Attorney
- Texans Standing Tall
- Texas A&M AgriLife Extension Service
- Texas A&M Transportation Institute
- Texas Alcoholic Beverage Commission
- Texas Association of Counties
- Texas Center for the Judiciary
- Texas Department of Public Safety
- Texas Department of State Health Services
- Texas Department of Transportation
- Texas District and County Attorneys Association
- Texas Justice Court Training Center
- Texas Municipal Courts Education Center
- Texas Municipal Police Association
- Travis County Attorney

The Texas Impaired Driving Task Force meets twice a year. Meetings are facilitated by the Texas A&M Transportation Institute (TTI) in Austin. The first meeting is held in the fall prior to the traffic safety grant proposal cycle, which occurs between November and January. The second meeting is held in the spring in conjunction with the Statewide Impaired Driving Forum.

In 2013, the Impaired Driving Task Force approved the Texas Impaired Driving Plan, which was developed by the Texas Department of Transportation (TxDOT), Traffic Operations Division - Traffic Safety Section (TRF-TS), in accordance with the *Uniform Guidelines for State Highway Safety Programs*. The plan was revised in 2014.

Neither the Governor nor the Governor's Highway Safety Representative participates in the Texas Impaired Driving Task Force meetings. The Task Force does not review impaired driving statutes or make recommendations to the Governor or State Legislature.

In addition, there are at least 15 local task forces that consist of enforcement, education, engineering, medical, private, youth, and elderly traffic safety partners. The coalition works in a collaborative effort to reduce the number of roadway fatalities and injuries. The State expects to add two more local task forces by the end of this calendar year.

### **Recommendations**

- **Create and convene a Governor's Executive Committee of the Impaired Driving Task Force chaired by a Texas Department of Transportation Commissioner (appointed by the Governor) with a membership consisting of the Attorney General, six State Senate members (appointed by the Lieutenant Governor), and six House members (appointed by the Speaker of the House) meeting in even numbered years to discuss legislative recommendations provided by the full Impaired Driving task force membership. The Executive committee will receive administrative support from the Traffic Operations Division-Traffic Safety Section (TRF-TS).**

## **B. Strategic Planning**

### **Advisory**

States should develop and implement an overall plan for short- and long-term impaired driving activities. The plan and its implementation should:

- Define a vision for the state that is easily understood and supported by all partners.
- Utilize best practices in strategic planning.
- Be based on thorough problem identification that uses crash, arrest, conviction, driver record, and other available data to identify the populations and geographic areas most at risk.
- Allocate resources for countermeasures determined to be effective that will impact the populations and geographic areas most at risk.
- Include short-term objectives and long-range goals. Have clear measurable outcomes.
- Be an integral part of or coordinate with and support other state plans, including the Highway Safety Plan and Strategic Highway Safety Plan.
- Establish or adjust priorities based on recommendations provided to the state as a result of reviews and assessments, including this impaired driving assessment.
- Assign responsibility and accountability among the state's partners for the implementation of priority recommendations.

### **Status**

Texas has a Strategic Highway Safety Plan. The Highway Safety Plan (HSP) includes specific impaired driving performance measures and a detailed resource allocation for impaired driving programs. The HSP contains all of the National Highway Traffic Safety Administration (NHTSA) required performance and grant activity measures. A comprehensive eGrants system that is used from solicitation of grants, through the implementation, and to closure of the funded grants, is helping the Texas Highway Safety Office (HSO) build a strong history of grant performance.

The HSP is completed annually and submitted to NHTSA prior to July 1 each year by the HSO. The most recent strategic planning session for the Texas Highway Safety Program addressed the period including fiscal years 2012 – 2016. The session reevaluated program areas, goals, strategies, and reviewed the traffic safety program mission statement.

The HSO sought public comment by posting a Request for Comments in the *Texas Register*. The *Texas Register* serves as the journal of state agency rulemaking. The HSO also sent e-mail notifications to all registered users of the Texas Department of Transportation's (TxDOT) Traffic Safety Electronic Grants Management System, eGrants. The following organizations submitted formal comments through the call posted in the *Texas Register*:

- Law Enforcement Mobile Video Institute – University of Houston
- NHTSA Region 6
- San Antonio Metropolitan Planning Organization
- Texas A&M Transportation Institute
- Texas Center for the Judiciary
- Texas Department of Transportation – Traffic Safety and Engineering Professionals within Traffic Operations Division - Traffic Safety Section (TRF-TS), at Austin Headquarters

- Texas Department of Transportation – Traffic Safety Specialists
- Texas Education Agency

Data driven decisions are made using the Fatality Analysis Reporting System (FARS) data, TxDOT Crash Records Information System (CRIS) data, evaluations, surveys, TxDOT vehicle miles of travel, and Task Force recommendations. Credible driving under the influence/driving while intoxicated (DUI/DWI) arrest and conviction data do not exist. Planning and development of an electronic citations system (eCitation) is in its very early stages.

Impaired driving goals, strategies, and performance measures are established for the Alcohol and Other Drug Countermeasures Program Area for the HSP through the State’s strategic planning process.

#### Goals

- To reduce the number of alcohol impaired and driving under the influence of alcohol and other drug-related crashes, fatalities, and injuries
- To reduce the number of DUI-related crashes where the driver is under 21

#### Strategies

- Increase and sustain high-visibility enforcement of DWI laws
- Improve blood alcohol concentration (BAC) testing and reporting to the State’s crash records information system (CRIS)
- Improve anti-DWI public information and education campaigns including appropriate bilingual campaigns
- Increase the number of law enforcement task forces and coordinated enforcement campaigns
- Increase training for anti-DWI advocates
- Increase intervention efforts
- Improve and increase training for law enforcement officers
- Improve DWI processing procedures
- Improve adjudication and processing of DWI cases through improved training for judges, administrative license revocation judges, prosecutors, and probation officers
- Increase the use of warrants for mandatory blood draws
- Educate the public and stakeholders on the use of interlock devices and other alcohol monitoring technologies for DWI offenders
- Improve education programs on alcohol and driving for youth
- Increase enforcement of driving under the influence by minors laws
- Increase public education and information, concentrating on youth age 5–13 and 14–20, including parent education on drinking
- Increase primary prevention efforts
- Increase public education and information on drunk and drugged driving impairment

#### Performance Measures

- Number of DUI-related (alcohol or other drugs) fatal and serious injury (KAB) crashes

- Number of fatalities in crashes involving a driver or motorcycle operator with a BAC of 0.08 or above
- Number of impaired driving arrests made during grant-funded enforcement activities
- Number of 16–20 year old DUI drivers (alcohol or other drugs) in KAB crashes per 100,000 16–20 year olds

The Texas Impaired Driving Task Force intends to identify secondary performance measures related to crashes, program deployment, youth, and other items in order to better understand the impact of countermeasures on the number of fatal and serious injury crashes where at least one driver is deemed to be impaired by alcohol and/or other drugs.

### **Recommendations**

- **Develop and fund a driving under the influence/driving while intoxicated (DUI/DWI) tracking system that would link Texas criminal justice agencies' databases in order to create a network containing offenders' criminal history, arrests, warrants, photographs, and fingerprints, to ensure access to offenders' previous and/or current DUI/DWI history.**

## C. Program Management

### *Advisory*

*States should establish procedures and provide sufficient oversight to ensure that program activities are implemented as intended. The procedures should:*

- *Designate a lead agency that is responsible for overall program management and operations;*
- *Ensure that appropriate data are collected to assess program impact and conduct evaluations;*
- *Measure progress in achieving established goals and objectives;*
- *Detect and correct problems quickly;*
- *Identify the authority, roles, and responsibilities of the agencies and personnel for management of the impaired driving program and activities; and*
- *Ensure that the programs that are implemented follow evidence-based best practices.<sup>1</sup>*

### **Status**

The Texas Highway Safety Office (HSO) serves as the lead agency responsible for overall program management and operations of the State's highway safety program. Texas' highway safety program is designed to reduce traffic crashes and the resulting deaths, injuries, and property damage. Programs and projects are administered in accordance with uniform guidelines promulgated by the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA).

The HSO assesses the needs of the State, counties, and municipalities related to highway safety and provides solutions to meet those needs. Because federal funding for the highway safety program is minimal, projects implemented by the HSO are limited to priority program areas based on crash severity, over-representation, and magnitude of the problem. There are three contributing factors associated with a traffic crash: the roadway and environment, the vehicle, and the driver (human). Human factors (also known as behavioral issues), including impaired driving, speeding, not using occupant protection devices, etc., can contribute to some of the most severe traffic crashes. The Texas Highway Safety Plan seeks to coordinate and unite state and local programs and projects to reduce traffic crashes, deaths, and injuries by focusing on enforcement, public information and education, and legislation.

The HSO is responsible for coordinating and administering the State's traffic safety program and has the following responsibilities:

- Develop and administer the annual Highway Safety Plan;
- Manage traffic safety projects in federally designated priority program areas and in other areas as assigned or determined by problem identification;
- Provide oversight to prospective grantees and assist them in development and implementation of traffic safety projects at the local level;
- Develop statewide traffic safety policies and procedures using input from stakeholders, partners, and others;

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<sup>1</sup> See "Countermeasures That Work: A Highway Safety Countermeasure Guide for State Highway Offices," Sixth Edition, 2011.

- Communicate and coordinate activities with local government, stakeholder groups, and the public;
- Ensure compliance with state and federal regulations;
- Administer traffic safety evaluation and research;
- Provide legislative information on traffic safety issues;
- Review, approve, and execute grants, contracts, and subcontracts;
- Approve subcontracts or process them for federal approval;
- Provide operational oversight to ensure conformity with program and project management policies and procedures; and
- Monitor the activities, results, and expenditures of approved State agency grants.

### **Recommendations**

- Conduct a study to determine the Texas Highway Safety Office's needs for better and more accurate impaired driving data.

## D. Resources

### *Advisory*

*States should allocate sufficient funding, staffing, and other resources to support their impaired driving programs. Programs should aim for self-sufficiency and, to the extent possible, costs should be borne by impaired drivers. The ultimate goal is for impaired driving programs to be fully supported by impaired drivers and to avoid dependence on other funding sources. States should:*

- *Allocate funding, staffing, and other resources to impaired driving programs that are:*
  - *Adequate to meet program needs and proportional to the impaired driving problem;*
  - *Steady and derived from dedicated sources, which may include public or private funds; and*
  - *Financially self-sufficient, and to the extent possible paid by the impaired drivers themselves. Some States achieve financial self-sufficiency using fines, fees, assessments, surcharges, or taxes. Revenue collected from these sources should be used for impaired driving programs rather than returned to the State Treasury or General Fund.*
- *Meet criteria to enable access to additional funding through various incentive programs.*
- *Identify opportunities and leverage resources on behalf of impaired driving efforts.*
- *Determine the extent and types of resources available from all sources (local, state, and federal; public and private) that are dedicated to impaired driving efforts.*
- *Designate a position and support the individual in that position with sufficient resources to adequately serve as a focal point for impaired driving programs and issues.*

### Status

The Texas Highway Safety Office (HSO) is located in the Texas Department of Transportation (TxDOT), Traffic Operations Division - Traffic Safety Section (TRF-TS). TxDOT is governed by the five-member Texas Transportation Commission which is appointed by the Governor with State Senate consent for six-year terms. The TxDOT Executive Director is responsible for the strategic direction and management of the agency. The Executive Director is assisted by the Deputy Executive Director. The TRF-TS Director is assisted by 47 staff members who are located at Austin headquarters and TxDOT District Offices. There are two full-time Alcohol and Other Drug Countermeasures Program Managers that devote 100 percent of their time to impaired driving. There are no critical vacancies in the TRF-TS at this time.

The HSO's mission statement is to operate in a manner that saves lives and prevents injuries and its goal is to identify traffic safety problem areas and programs to reduce the number and severity of traffic-related crashes, injuries, and fatalities. The HSO's strategy to achieve its goal is to use information, technology, resources, and skills to identify priority traffic safety issues, plan initiatives, generate coordinated action, and evaluate and communicate results.

The HSO funds enforcement-, education-, and training-related impaired driving programs. The Fiscal Year 2015 impaired driving program included the following funding:

NHTSA Section 402	\$ 3,229,268
NHTSA Section 405d	\$15,293,520
State Funding	\$ 1,300,000
Program Income fees	\$ 21,600
Total	\$19,844,388



Faced with the possibility of less federal revenue in the future, Texas, like all other states will have to seek other sources of impaired driving funding.

### **Recommendations**

- Evaluate impaired driving programs to determine if resources are being allocated in the most effective manner.
- Establish private/public partnerships to increase funding for the impaired driving program.
- Support initiatives that will encourage the Governor and legislature to enact legislation that increases driving while intoxicated fines to generate funding for the impaired driving program.

## **II. Prevention**

*Prevention programs are most effective when they utilize evidence-based strategies, that is, they implement programs and activities that have been evaluated and found to be effective or are at least rooted in evidence-based principles. Effective prevention programs are based on the interaction between the elements of the public health model: 1) using strategies to develop resilient hosts, e.g., increase knowledge and awareness or altering social norms; 2) reducing exposure to the dangerous agent (alcohol), e.g., alcohol control policies and; 3) creating safe environments, e.g., reducing access to alcohol at times and places that result in impaired driving. Prevention programs should employ communication strategies that emphasize and support specific policies and program activities.*

*Prevention programs include responsible alcohol service practices, transportation alternatives, and community-based programs carried out in schools, at work sites, in medical and health care facilities, and by community coalitions. Programs should prevent underage drinking or drinking and driving for persons under 21 years of age, and should prevent over-service and impaired driving by persons 21 or older.*

*Prevention efforts should be directed toward populations at greatest risk. Programs and activities should be evidence-based, determined to be effective, and include a communication component.*

### **A. Responsible Alcohol Service**

#### **Advisory**

*States should promote policies and practices that prevent underage drinking and over-service by anyone. States should:*

- *Adopt and enforce programs to prevent sales or service of alcoholic beverages to persons under the age of 21. Conduct compliance checks and “shoulder tap” activities and support the proper use of technology in alcohol retail establishments, particularly those catering to youth, to verify proper and recognize false identification.*
- *Adopt and enforce alcohol beverage control regulations to prevent over-service, service in high risk situations, and service to high-risk populations. Prohibit service to visibly intoxicated patrons; restrict alcohol sales promotions, such as “happy hours”; limit hours of sale; establish conditions on the number, density, and locations of establishments to limit impaired driving, e.g., zoning restrictions; and require beer keg registration.*
- *Provide adequate resources including funds, staff, and training to enforce alcohol beverage control regulations. Coordinate with state, county, municipal, and tribal law enforcement agencies to determine where impaired drivers had their last drink and use this information to monitor compliance with regulations.*
- *Promote responsible alcohol service programs, written policies, and training.*
- *Provide responsible alcohol service guidelines such as best practices tool kits to organizations that sponsor events at which alcohol is sold or provided.*
- *Encourage alcohol sales and service establishments to display educational information to discourage impaired driving and to actively promote designated driver and alternative transportation programs.*
- *Hold commercial establishments and social hosts responsible for damages caused by a patron or guest who was served alcohol when underage or visibly intoxicated.*

#### **Status**

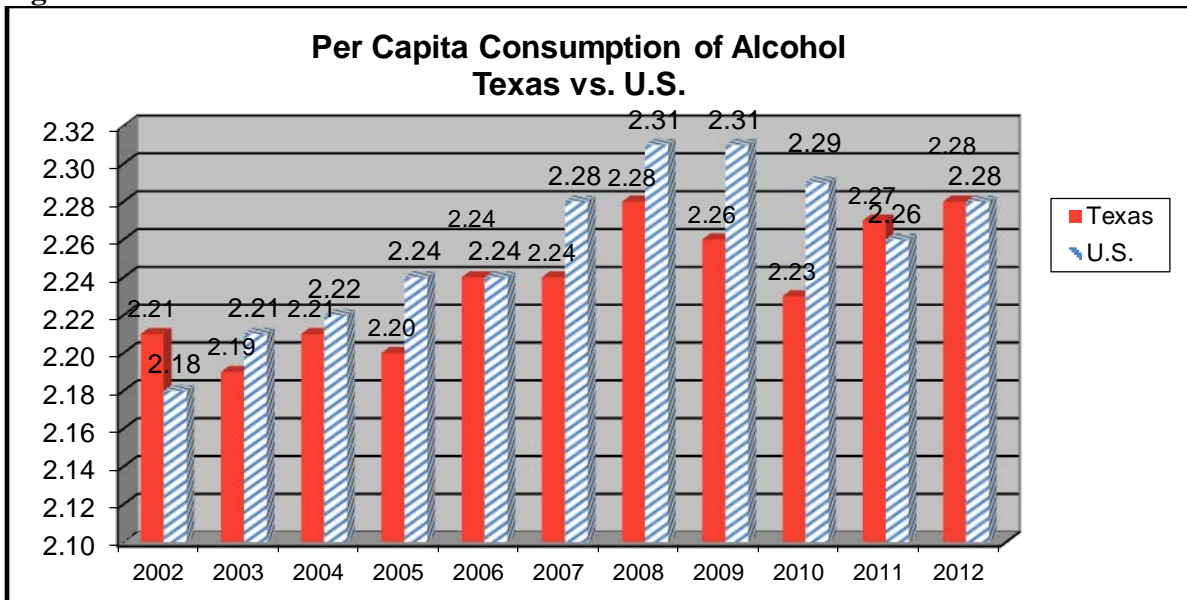
In 2012, the last year for which complete data were available, consumption of alcoholic beverages in Texas equaled 2.28 gallons of ethanol per capita, equal to the national average of

2.28 gallons per capita (see Table 2-A-1). In recent years alcohol consumption in Texas has been increasing somewhat faster than the national trend (see Figure 2-A-1). Per capita consumption estimates are based on taxed sales of alcoholic beverages.

**Table 2-A-1**

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
<b>Texas</b>	2.21	2.19	2.21	2.20	2.24	2.24	2.28	2.26	2.23	2.27	2.28
<b>U.S.</b>	2.18	2.21	2.22	2.24	2.24	2.28	2.31	2.31	2.29	2.26	2.28
<b>Diff</b>	1.4%	-0.9%	-0.5%	-1.8%	0.0%	-1.8%	-1.3%	-2.2%	-2.6%	0.4%	0.0%

**Figure 2-A-1**



Results from the 2014 Texas School Survey of Drug and Alcohol Use, indicate that 64.3 percent of 12<sup>th</sup> grade students self-reported that they have used alcohol at some time and nearly one in three (32.7%) drank in the past month (Table 2-A-2).

**Table 2-A-2**

How recently, if ever, have you used any alcohol product?	Past Month	School Year	Ever Used	Never Used
All	<b>21.2%</b>	29.8%	50.5%	49.5%
Grade 7	<b>9.7%</b>	12.4%	30.9%	69.1%
Grade 8	<b>13.2%</b>	19.8%	40.4%	59.7%
Grade 9	<b>19.9%</b>	28.2%	50.2%	49.8%
Grade 10	<b>25.5%</b>	36.3%	58.4%	41.5%
Grade 11	<b>30.1%</b>	41.7%	64.1%	36.0%
Grade 12	<b>32.7%</b>	45.8%	64.3%	35.7%

One in six (17.4%) 12<sup>th</sup> graders self-reported drinking alcohol more than once a month (Table 2-A-3).

**Table 2-A-3**

How often do you normally use alcohol?	Never Use	Every Day	Several Times a Week	Several Times a Month	<b>More Than Once per Month</b>	About Once a Month	About Once a Year	Less than Once a Year
All	58.7%	0.3%	2.1%	7.3%	<b>9.7%</b>	11.6%	11.1%	8.8%
Grade 7	81.7%	0.2%	0.8%	1.6%	<b>2.6%</b>	3.7%	5.8%	6.2%
Grade 8	70.7%	0.2%	1.4%	3.6%	<b>5.2%</b>	6.6%	9.1%	8.3%
Grade 9	60.1%	0.4%	1.8%	6.5%	<b>8.7%</b>	11.1%	11.1%	9.0%
Grade 10	49.6%	0.3%	2.1%	9.2%	<b>11.6%</b>	15.1%	13.4%	10.4%
Grade 11	43.2%	0.3%	3.5%	11.5%	<b>15.3%</b>	16.9%	14.2%	10.3%
Grade 12	40.9%	0.5%	3.6%	13.3%	<b>17.4%</b>	18.6%	14.4%	8.7%

One in ten (9.9%) 12<sup>th</sup> graders self-reported driving after having a "good bit to drink" one or more times in the past 12 months (Table 2-A-4).

**Table 2-A-4**

During the past 12 months, how many times (if any) have you driven a car when you have had a good bit to drink?	None	1-3 Times	4-9 Times	10+ Times	<b>1 or more times</b>
All	94.9%	3.9%	0.7%	0.4%	<b>5.0%</b>
Grade 9	97.7%	2.0%	0.2%	0.2%	<b>2.4%</b>
Grade 10	96.6%	2.7%	0.4%	0.3%	<b>3.4%</b>
Grade 11	94.2%	4.6%	0.8%	0.4%	<b>5.8%</b>
Grade 12	90.1%	7.2%	1.8%	0.9%	<b>9.9%</b>

The Texas Alcoholic Beverage Commission (TABC) is the state agency that regulates all levels of the alcoholic beverage industry in Texas. The duties of the Commission include regulating sales, taxation, importation, manufacturing, transporting, and advertising of alcoholic beverages. TABC rules address the operations of licensed alcohol sales.

Texas regulations do not specifically prohibit Happy Hours or other promotions but Subchapter D. - Advertising and Promotion--All Beverages, provides the following substantial restrictions:

§45.103 On-Premises Promotions.

- a) This rule is adopted to prohibit those practices by on-premise establishments that are reasonably calculated to result in excessive consumption of alcoholic beverages by consumers. Such practices constitute a manner of operation contrary to the public

- welfare, health and safety of the people in violation of §§11.61(b)(7) and 61.71(a)(17) of the Alcoholic Beverage Code.
- b) Excessive consumption of alcoholic beverages shall be determined by the standard of public intoxication articulated in §49.02 of the Penal Code.
  - c) Licensees and permittees authorized to sell or serve alcoholic beverages for on-premises consumption may not:
    - 1) serve, sell, or offer to serve or sell, two or more open containers of alcoholic beverages at a price less than the number of containers actually sold or served;
    - 2) increase the volume of alcohol contained in a drink without increasing proportionally the price thereof;
    - 3) serve or offer to serve more than one free alcoholic beverage to any identifiable segment of the population during the course of one business day. Licensees and permittees may, however, without prior advertising, give one free alcoholic beverage to individual consumers in celebration of birthdays, anniversaries or similar events;
    - 4) sell, serve, or offer to sell or serve an undetermined quantity of alcoholic beverages for a fixed price or “all you can drink” basis;
    - 5) sell, serve, or offer to sell or serve, alcoholic beverages at a reduced price to those consumers paying a fixed “buy in” price;
    - 6) sell, serve, or offer to sell or serve, alcoholic beverages at a price contingent on the amount of alcoholic beverages consumed by an individual;
    - 7) reduce drink prices after 11:00 p.m.;
    - 8) sell, serve or offer to sell or serve more than two drinks to a single consumer at one time;
    - 9) impose an entry fee, cover or door charge for the purpose of recovering financial losses incurred by the licensee or permittee because of reduced or low drink prices;
    - 10) conduct, sponsor or participate in, or allow any person on the licensed premises to conduct, sponsor or participate in, any game or contest to be determined by the quantity of alcoholic beverages consumed by an individual or group, or where alcoholic beverages or reduced price alcoholic beverages are awarded as prizes;
    - 11) engage in any practice, whether listed in this rule or not, that is reasonably calculated to induce consumers to drink alcoholic beverages to excess, or that would impair the ability of the licensee or permittee to monitor or control the consumption of alcoholic beverages by consumers.
  - d) The provisions of subsections (c)(1) through (c)(7) do not apply where:
    - 1) the permittee or licensee has entered into an agreement under the terms of which all or a portion of the licensed premises are utilized for a private party or a meeting of a particular organization; or
    - 2) a caterer’s or other temporary permit or license is used for a private party or a meeting of a particular organization.
  - e) Notwithstanding the provisions of (c)(1) through (c)(7) of this rule, licensees and permittees may:
    - 1) offer free or reduced-price food or entertainment at any time, provided the offer is not based on the purchase of an alcoholic beverage;

- 2) include alcoholic beverages as part of a meal or hotel/motel package;
- 3) sell, serve or deliver wine by the bottle to individual consumers during the sale or service of a meal to the consumer;
- 4) sell, serve or deliver alcoholic beverages in pitchers, carafes, buckets or similar containers to two or more consumers at one time.

Texas requires licensees to display health warning posters:

§31.4 Public Information Signs.

- b) Health Risk Warning Sign. A holder of a license or permit authorizing the sale of alcoholic beverages for on premises consumption shall display a health risks warning sign. The health risks warning sign must:
  - 1) be posted at each egress of all public restrooms on the licensed premises;
  - 2) be placed at a level where the sign can be easily seen by persons exiting the restroom;
  - 3) be not less than 8 ½ x 11 inches in size;
  - 4) the following language shall be printed in English and in Spanish, in bold black type on a white surface, or other clearly legible graphic design, with a font or type set size of not less than 28 point Arial or Helvetica:

**HEALTH RISK WARNING SIGN**

- Drinking any type of alcohol while pregnant can hurt your baby's brain, heart, kidneys, and other organs and can cause birth defects.
- The safest choice is not to drink at all when you are pregnant or trying to become pregnant.
- If you might be pregnant, think before you drink.

**AVISO SOBRE RIESGOS DE SALUD**

- Beber cualquier tipo de alcohol cuando está embarazada puede hacerles daño al cerebro, al corazón, a los riñones y a otros órganos de su bebé y puede causar defectos de nacimiento.
- Lo más seguro es no beber nada de alcohol cuando está intentando quedar embarazada o ya lo está.
- Si es posible que esté embarazada, piénselo antes de beber.

- c) The responsibility of furnishing the required signs in this section is the sole responsibility of the licensee or permittee.

Section 2.02 of the Texas Alcoholic Beverage Code includes a dram shop provision that holds establishments liable for selling alcohol to obviously intoxicated persons. An injured person must prove that they were obviously intoxicated to the extent they were a danger to themselves or others when they were sold alcohol. The Texas dram shop law also provides that minors may sue business establishments for any injuries incurred from the sale of alcohol if they were intoxicated at the time of the sale.

There is no specific social host statute but Section 2.02 of the Texas Alcoholic Beverage Code holds party hosts liable in two circumstances: if the hosts knowingly serve alcohol to minors on their property, or if the hosts supply car keys to an intoxicated adult on the hosts' property. The law requires knowledge by the hosts of a minor's age. Without actual knowledge of a minor's age, a party host will not be liable so long as the host's assumption is reasonable.

Texas does not require licensees or employees to complete responsible alcohol service training. However, training is available and carries the incentive of protection for the license holder. If an employee sells, serves, dispenses, or delivers an alcoholic beverage to a non-member of a private club, a minor, or an intoxicated person, the holder of a permit or license may qualify for "Safe Harbor" if the following six criteria are met:

1. The person selling is not the owner or an officer of the company;
2. The person selling holds a current seller-server training certificate from a TABC approved school;
3. All employees engaged in the sale, service, or delivery of alcoholic beverages, as well as their immediate managers, are certified within 30 days of their hire date;
4. The employer has written policies for responsible alcohol service and ensures that each employee has read and understands these policies;
5. The employer does not directly or indirectly encourage employees to violate the law;
6. There are not more than three of these types of violations within a 12 month period.

Chapter 50. Alcoholic Beverage Seller Server Training, details the requirements for server training:

Subchapter B. Mandatory Curriculum and Course of Instruction

§50.3 Mandatory Course Curriculum.

- a) The mandatory curriculum is created by and updated by the commission or under a work-for-hire contract. Each certified school is provided with information and security access to the commission's secure portal when an original certificate or renewal is issued. Schools that are unable to access or download the mandatory curriculum must submit a written request to have the curriculum provided in an alternate format. The commission will not provide paper copies of the mandatory curriculum.
- b) The commission claims a copyright in the mandatory curriculum. The mandatory curriculum may not be sold and may not be used in whole or in part without including the commission's claim of copyright.
- c) Each certified school is granted access and specific rights of use to the mandatory curriculum and all updates as part of the school licensing fee.
  - 1) The copyright license provides unlimited use of the mandatory curriculum for authorized purposes only.
  - 2) The commission's claim of copyright must be included in all written and visual materials from the mandatory curriculum.
  - 3) Any sale or use of the mandatory curriculum for unauthorized purposes is a violation of this chapter.
- d) Upon receiving notice from the commission of a change to the mandatory curriculum, a school has 30 calendar days to implement the change.

- e) These topics in the mandatory curriculum must be included in the course of instruction offered by each school.
- 1) The definition of intoxication.
  - 2) The law pertaining to intoxicated persons.
  - 3) The law pertaining to minors.
  - 4) The law pertaining to proper identification.
  - 5) How to detect intoxication.
  - 6) How to detect minors.
  - 7) How to detect improper identification.
  - 8) How to monitor customer behavior.
  - 9) How to use a chart showing the effects of alcohol based on: the size, type and number of drinks; body weight; the sex of the drinker; and the passage of time.
  - 10) The dangers of alcohol poisoning.
  - 11) Intervention pertaining to intoxication.
  - 12) Intervention pertaining to minors.
  - 13) Sanctions for employee violations.
  - 14) Any other topics identified by the commission as appropriate, giving due consideration to developments in the law, society, and the alcoholic beverage industry.

TABC-approved seller server schools train about 350,000 people each year.

Recent TABC enforcement efforts have concentrated on licensed establishments that violate or are deemed at risk of violating regulations. Primary enforcement of underage drinking (e.g., minor in possession) has shifted to local law enforcement agencies. TABC conducts compliance checks, stings, and stakeouts in order to create deterrence for sales to minors.

Based on the survey results shown below, it appears that current efforts have not created an impediment to young peoples' perceptions that alcohol is easy to obtain. Two in three (65.4%) high school seniors thought it would be somewhat or very easy to get alcohol (Table 2-A-5).

**Table 2-A-5**

If you wanted some, how difficult would it be to get alcohol?	Never Heard of it	Impossible	Very Difficult	Somewhat Difficult	Somewhat Easy	Very Easy	<b>Somewhat/Very Easy</b>
All	19.8%	13.9%	5.9%	11.1%	19.3%	30.0%	<b>49.3%</b>
Grade 7	29.9%	27.0%	8.3%	10.3%	11.3%	13.2%	<b>24.5%</b>
Grade 8	23.4%	18.9%	8.0%	11.1%	17.3%	21.3%	<b>38.6%</b>
Grade 9	19.8%	13.2%	5.6%	12.4%	19.2%	29.7%	<b>48.9%</b>
Grade 10	15.2%	9.3%	4.7%	11.1%	22.8%	36.9%	<b>59.7%</b>
Grade 11	13.4%	7.4%	4.4%	10.5%	22.6%	41.8%	<b>64.4%</b>
Grade 12	14.8%	5.1%	4.1%	10.7%	24.0%	41.4%	<b>65.4%</b>



TABC has developed a risk-based program to focus on at-risk behavior that may indicate a pattern of bad business practices that could lead to serious violations. This process includes looking for pre-determined factors in the application, examining administrative violation history, and gathering intelligence from other law enforcement and governmental agencies. The key elements of the risk-based enforcement program are: increased inspection frequency for retailers with past histories of public safety violations, a greater emphasis on “after hours” establishments that illegally sell or permit consumption of alcoholic beverages during prohibited hours, and prioritization of its complaint investigations to give investigations involving allegations of public safety offenses first priority in terms of time and resources.

TABC identifies retailers whose premises have been the scene of an offense with public safety implications, or that have been the subject of multiple complaints alleging such violations. Once identified, these retailers are assigned to one of five priority levels that determine the frequency of TABC inspections. Priority levels are assigned based on the severity and number of past violations or complaints and the length of time since the most recent violation or complaint. At the highest level, locations are inspected bi-weekly. As time passes, so long as no new violations are observed, a business will progress downward through the priority tiers and inspections become less frequent with each downward step. After a 12-month period, retailers are subject only to an annual inspection.

Public safety violations have been given priority status due to their correlation with patrons’ level of intoxication when they are leaving licensed premises. These public safety violations are alcohol age-law offenses, intoxication offenses, prohibited hours offenses, drug-related offenses, disturbances of the peace, and human trafficking. Vice offenses such as prostitution are also considered when assigning priority status. Violations indicative of retailer financial stress are also reviewed because such offenses have been found to occur concurrently with or as a precursor to actual public safety offenses.

As part of this program, TABC provides free training opportunities to retail managers and employees in an attempt to prevent future violations. Field offices are required to offer these opportunities to all retailers qualifying for the two highest tiers but routinely make them available to all other retailers as well. As a result of TABC’s training initiatives, some 20,000 retail managers and employees were exposed to illegal sales recognition and prevention “best practices” techniques.

During fiscal year (FY) 2014, 7,010 retailers qualified for priority status. TABC enforcement agents conducted over 45,350 inspections of these priority status retailers as the year progressed. These inspections produced nearly 554 criminal cases and over 886 administrative cases, mostly involving additional public safety offenses. Due to this model of compliance, the percent of inspections of priority locations resulting in the discovery of public safety violations has steadily declined, falling from 12.8 percent in FY 2006, to 6.9 percent by the end of FY 2014.

The cost of alcohol is a major predictor of levels of consumption and alcohol-related health and safety problems. The price of alcohol has not kept pace with inflation making alcohol an extremely affordable, albeit dangerous, product. A recent analysis of the estimated effects of an

increase in the alcohol excise tax in Texas<sup>2</sup> indicated that a \$.10/drink tax increase would reduce distilled spirit consumption by 11.5 percent; wine consumption by 7.0 percent; and beer consumption by 8.4 percent. In addition, a \$.10 increase would generate nearly \$7.8 million in new revenues annually.

### **Recommendations**

- Implement high-visibility underage drinking enforcement, including party patrols and compliance checks, supported by media campaigns.
- Enact a strict social host liability statute holding all individuals liable for damages resulting from over-service of alcohol to guests.
- **Enact a \$.10 per drink excise tax increase and dedicate a portion of new revenues to alcohol abuse and impaired driving prevention and treatment.**

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<sup>2</sup> Diaz, M.C., Chaloupka, F.J. and Jernigan, D.H. *The Effects of Alcohol Excise Tax Increases on Public Health and Safety in Texas*. Report prepared for: Texans Standing Tall. (2015).

## **B. Community-Based Programs**

### **B-1. Schools**

#### ***Advisory***

*School-based prevention programs, beginning in elementary school and continuing through college and trade school, can play a critical role in preventing underage drinking and impaired driving. These programs should be developmentally appropriate, culturally relevant, and coordinated with drug prevention and health promotion programs. States should:*

- *Implement K-12 traffic safety education, with appropriate emphasis on underage drinking and impaired driving, as part of state learning standards and comprehensive health education programs;*
- *Promote alcohol-and drug-free events throughout the year, with particular emphasis on high-risk times, such as homecoming, spring break, prom, and graduation;*
- *Establish and enforce clear student alcohol and substance use policies including procedures for intervention with students identified as using alcohol or other substances, sanctions for students using at school, and additional sanctions for alcohol and substance use by students involved in athletics and other extra-curricular activities;*
- *Provide training for alcohol and drug impaired driving, and Screening and Brief Intervention (SBI) to school personnel such as resource officers, health care providers, counselors, health educators, and coaches to enable them to provide information to students about traffic safety and responsible decisions, and identify students who may have used alcohol or other drugs;*
- *Encourage colleges, universities, and trade schools to establish and enforce policies to reduce alcohol, other drug, and traffic safety problems on campus, and to work with local businesses and law enforcement agencies to reduce such problems in neighboring communities;*
- *Provide training for alcohol and drug impaired driving, and Screening and Brief Intervention (SBI), to college personnel such as student affairs, student housing, health care providers, counselors, health educators, and coaches to enable them to provide information to students about traffic safety and responsible decisions, and identify students who may have used alcohol or other drugs; and*
- *Establish and support student organizations that promote traffic safety and responsible decisions; encourage statewide coordination among these groups.*

#### **Status**

Texas does not have a standard mandatory alcohol or traffic safety curriculum; however, *Chapter 115. Texas Essential Knowledge and Skills for Health Education* includes learning standards related to alcohol abuse and impaired driving.

Individuals under 18 years of age who elect to be licensed to drive are required to complete a driver education course and present the Texas Driver Education Certificate (DE-964) at the driver license office. An individual may start the classroom phase of a driver education course at 14 years of age but cannot apply for a learner license until he/she is at least 15. There are three types of driver education for teens: 1. A traditional driver education course offered by a driver training school; 2. Parent-taught driver education (PTDE); and 3. Driver education offered in public school. Most public schools do not offer driver education.

Texas Education Code Title 5 - Other Education Chapter 1001 - Driver and Traffic Safety Education Subchapter A. General Provisions sec. 1001.102 - Alcohol Awareness Information states: (a) The agency by rule shall require that information relating to alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle be included in the curriculum of any driver education course or driving safety course.

Texas A&M Transportation Institute (TTI) developed the Teens in the Driver Seat (TDS) program, a peer-to-peer safety program for young drivers implemented in more than 750 schools in Texas. TDS is implemented by teens for teens as the direction and content of the TDS program is driven by its target audience - teens. School and community-based teams draw upon the material resources provided by the program, and then (with assistance from TDS staff) develop their own action plans that reflect a teen perspective. The various approaches and tools created and used by active teams (including posters, videos, school activities, etc.) are often shared widely through Teen Team showcase pages on the TDS website.

Texas A&M AgriLife Extension Service provides the Watch UR BAC Impaired Driving Prevention Program. The program includes presentations using the DWI (driving while intoxicated) prevention simulator to demonstrate the effect of alcohol and other drugs on driving skills. Through a video game atmosphere, drivers experience obstacles and hazards to simulate those that one might encounter if driving impaired. Fatal Vision© goggles, which distort vision, are worn by the driver during the simulation experience to further duplicate the effect of alcohol or other drugs on one's vision. The program also offers teacher in-service training, adult and parent programs, and displays for health fairs.

MADD (Mothers Against Drunk Driving) provides the Power of Parents program in schools in Texas. The program includes a high school handbook giving parents tools to start the conversation about teen drinking, set family rules, and enforce consequences.

In 2013, Texans Standing Tall (TST) received funding from the Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention's (CSAP) Service to Science Evaluation Enhancement Program to implement and evaluate TST's Screening and Brief Intervention (SBI) project. TST is translating research on SBI for risky alcohol use into practice as a primary prevention tool on college campuses. SBI for alcohol use is an evidence-based intervention that reduces risky drinking and related behaviors and is a recommended strategy by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) and the National Highway Traffic Safety Administration (NHTSA). TST's project is innovative in that SBI is implemented as a primary prevention tool prior to an alcohol-related injury or violation.

TST partners with colleges and universities to implement the project on four-year and two-year, public and private campuses. A higher-risk population, typically first-year students, fraternity/sorority students, or athletes, is selected and invited to participate. Students complete an alcohol use screening tool (the World Health Organization's AUDIT), receive a score sheet with information about alcohol use, and then have the option to meet with an interviewer who has been trained in motivational interviewing.

The interviewer and the student discuss contributing factors and consequences of their alcohol use. The student identifies any problems that occur because of his/her drinking and considers options for change.

Every year, the Texas Department of State Health Services (DSHS) updates a list of recommended programs for public school implementation. The work is done in accordance with legislation, and includes the Texas Education Agency and Education Service Centers. Programs recommended for substance abuse prevention include:

- *Good Behavior Game* (GBG) - a classroom-based behavior management strategy for elementary schools that teachers use along with a school's standard instructional curricula. GBG uses a classroom-wide game format with teams and rewards to socialize children and reduce aggressive, disruptive classroom behavior, which is a risk factor for adolescent and adult illicit drug abuse, alcohol abuse, cigarette smoking, antisocial personality disorder, and violent and criminal behavior.
- *I'm Special* - a substance abuse prevention program for 3rd and 4th graders. The primary goal of the program is to develop and nurture each child's sense of uniqueness and self-worth. It further enhances the protective and resiliency factors of children by teaching them appropriate ways for dealing with feelings; steps for making decisions; and skills for healthy living, effective group interactions, and resisting drugs, as provided through the program's "no use" message.
- *Michigan Model for Health* - a comprehensive and sequential health education curriculum that aims to give students aged 5-19 years (grades K-12) the knowledge and skills needed to practice and maintain healthy behaviors and lifestyles.
- *PALS: Prevention through Alternative Learning Styles* - an alcohol, tobacco, and other drugs (ATOD) prevention program primarily for middle school students. Goals of PALS include: (1) lowering students' intentions to use ATOD, (2) increasing students' use of refusal skills, and (3) enhancing students' knowledge of the effects of ATOD, peer pressure, and healthy decision making.
- *Peer Assistance and Leadership* (PAL) - a peer helping program that seeks to build resiliency in youth by pairing youth with peer helpers who receive training and support from teachers participating in the program.

No information was available on the level of implementation of these programs in schools in Texas.

The State DRE Coordinator provides Drug Impairment for Educational Professionals (DITEP) to secondary educational professionals to recognize the signs and symptoms of drug and/or alcohol impairment. This enables educators to prevent impaired students from driving away from campus and to serve as a treatment intervention tool to reduce

future instances of DWI. Since 2011, there have been 76 DITEP classes resulting in 1,927 educators receiving training.

## **Recommendations**

- Provide schools with current, Texas-specific impaired driving information for inclusion in health and other curricula.
- Coordinate school-based impaired driving activities with evidence-based alcohol and substance abuse prevention programs.

### **B-2. Employers**

#### ***Advisory***

*States should provide information and technical assistance to employers and encourage them to offer programs to reduce underage drinking and impaired driving by employees and their families. These programs can be provided through Employee Assistance Programs (EAP) or Drug Free Workplace programs. These programs should include:*

- *Model policies to address underage drinking, impaired driving, and other traffic safety issues, including seat belt use and speeding;*
- *Employee awareness and education programs;*
- *Management training to recognize alcohol and drug use and abuse, and appropriate responses;*
- *Screening and Brief Intervention, assessment and treatment programs for employees identified with alcohol or substance use problems (These services can be provided by internal or outside sources such as through an EAP with participation required by company policy.);*
- *Underage drinking and impaired driving prevention strategies for young employees and programs that address use of prescription or over-the-counter drugs that cause impairment.*

#### **Status**

The National Safety Council, with support from the Texas Department of Transportation, provides the *Our Driving Concern: Texas Employer Traffic Safety Program*. The program provides resources on distracted driving, aggressive driving, passenger restraint use, impaired driving, and other traffic safety topics. The program offers free tools and resources to managers, human resources professionals, and safety instructors to help employers build a company-wide traffic safety program that includes:

- Promotion of Sober Driving - Remind employees that not only is it against the law to drive under the influence of alcohol or other drugs, but sober driving also prevents injuries and deaths;
- A Sample Sober Driving Policy - Sample text that can be used or adapted to create a company's policy on driving a motor vehicle under the influence of alcohol or drugs, both on and off the job;
- Offering Employee Assistance Programs (EAPs) - Acknowledge the connection between impaired driving and misuse of alcohol and other drugs, and adopt

strategies to encourage employees with problems to seek help through EAPs and drug-free workplace programs

The program has been provided to private and public employers throughout the State.

The State DRE Coordinator conducts Drug Impairment Training for Texas Employers (DITTE). The six-hour training course educates employers on the signs and symptoms of drug impairment (alcohol/illicit drugs/prescription drugs) in order to minimize employee use during work. This allows the employer to provide a safe working environment and safer Texas roadways. Since 2012, there have been 61 DITTE classes resulting in 1,839 employers receiving training.

### **Recommendations**

- Continue and expand the *Our Driving Concern: Texas Employer Traffic Safety Program*.

### **B-3. Community Coalitions and Traffic Safety Programs**

#### ***Advisory***

*Community coalitions and traffic safety programs provide the opportunity to conduct prevention programs collaboratively with other interested parties at the local level. Coalitions should include representatives of: government; highway safety; enforcement; criminal justice; liquor law enforcement; public health; education; driver licensing and education; employers and unions; the military; medical, health care and treatment communities; multi-cultural, faith-based, advocacy and other community groups. States should:*

- *Encourage communities to establish community coalitions or traffic safety programs, comprised of a wide variety of community members and leaders;*
- *Ensure that representatives of local traffic safety programs participate in existing alcohol, substance abuse, injury control, and other related coalitions, (e.g., Drug Free Communities, SPF-SIG), to assure that impaired driving is a priority issue;*
- *Provide information and technical assistance to these groups, including data concerning the problem in the community and information identifying evidence-based underage drinking and impaired driving programs;*
- *Encourage these groups to provide support for local law enforcement and prevention efforts aimed at reducing underage drinking and impaired driving; and*
- *Encourage professionals, such as prosecutors, judges, nurses, doctors, emergency medical personnel, law enforcement officers, and treatment professionals, to serve as community spokespeople to educate the public about the consequences of underage drinking and impaired driving.*

#### **Status**

The Texas Department of Transportation (TxDOT) has worked to create and facilitate the continuation of local traffic safety coalitions. The local nature and membership diversity of these coalitions allow for effective dissemination of information as well as providing input to state strategic and operational initiatives. These coalitions primarily focus on traffic safety in general terms, but each coalition includes a component of impaired

driving as an area of interest. TxDOT recently sponsored a Summit on Community Collaboration that included 300 participants.

Other community-based programs have included public outreach efforts by various social service entities and organizations as a part of their core public health and safety missions. This includes activities launched by municipal courts, hospitals, regional education service centers, social advocacy groups, institutions of higher education, and private companies. Examples include municipal court programs that utilize judges and court staff as resources on impaired driving issues in schools and communities. In addition, hospitals, such as Baylor Scott & White Hillcrest, employ programs such as Reality Education for Drivers (RED) and TeenSafe, which are designed to impact risky teen driving behavior. Topics include education on the effects of impaired, distracted, and unrestrained driving.

The RED program is a one-day hospital-based injury prevention program presented by Baylor Scott & White's Trauma Center Injury Prevention Outreach. It serves as an educational sentencing alternative for juveniles (ages 15-19) identified through the court system. Participants who have exhibited risky traffic behaviors that endanger themselves or others (speeding, non-use of seat belts, minors possessing/consuming alcohol, driving while intoxicated, etc.) are referred to the program by the judge hearing their case.

The Texas TeenSafe Coalition consists of more than 85 individuals and organizations committed to helping teens leverage the proven principles of Graduated Driver Licensing (GDL). TeenSafe initiatives include:

- Safety Poster Contest - Students, create posters that encourage other teens to be safe on the road, focusing on the principles of the GDL program.
- Fast Food Sticker Promotion - Partnering with fast food establishments throughout the State to distribute stickers with safe driving messages.
- Medical Provider Packets - Free packets for medical providers that feature helpful tips, information, and resources that can be distributed to teens and parents.
- Anti-Crash Bash - The Texas Teen Safe Driving Coalition hosts an annual Anti-Crash Bash that brings together Coalition members and outside resources for a one-day event focused on reducing teen crashes in Texas.

Texans Standing Tall (TST) is a statewide coalition working to support and create healthier and safer communities for youth. The TST vision is to make alcohol, tobacco, and other drugs irrelevant in the lives of youth. Coalition members include individual adults and youth, state agencies, education and prevention agencies, advocacy groups, service and faith organizations, business, law enforcement, and other organizations. TST promotes evidence-based, environmental community change strategies.

TST promotes social host responsibility through sponsorship of forums and providing access to webinars presented by experts on the issue. TST also has a major initiative to implement Screening and Brief Intervention services on college campuses.



There are approximately 15 Drug Free Communities coalitions funded by the federal Substance Abuse Mental Health Services Administration. It is not clear to what extent these coalitions address impaired driving or collaborate with the traffic safety community.

### **Recommendations**

- Conduct an assessment of community-based coalitions that address alcohol and substance use to determine the extent and nature of impaired driving prevention strategies and areas for potential collaboration with the traffic safety community.
- Coordinate highway safety plans and programs with substance abuse prevention plans and programs.

#### **B-4. Transportation Alternatives**

##### ***Advisory***

*Alternative transportation describes methods by which people can get to and from places where they drink without having to drive. Alternative transportation includes normal public transportation provided by subways, buses, taxis, and other means. Designated driver programs are one example of these alternatives. States should:*

- *Actively promote the use of designated driver and safe ride programs, especially during high-risk times, such as holidays or special events;*
- *Encourage the formation of public and private partnerships to financially support these programs;*
- *Establish policies and procedures that ensure designated driver and alternative transportation programs do not enable over consumption by passengers or any consumption by drivers or anyone under 21 years old; and*
- *Evaluate alternative transportation programs to determine effectiveness.*

##### **Status**

The Texas Department of Transportation (TxDOT) supports several projects related to responsible transportation choices including media campaigns and programs that directly support alternatives to driving after drinking. TxDOT has implemented media campaigns aimed to prevent impaired driving including: Christmas/New Year's Holiday Campaign, Project Celebration, Impaired Driving Mobilization Selective Traffic Enforcement Program (STEP) Grant Program, Hispanic Impaired Driving Campaign, Labor Day, Football Season Impaired Driving, and College and Young Adult.

The Texas Impaired Driving Task Force promotes designated driver and alternative transportation programs in its Impaired Driving Plan. Some of these initiatives include: university peer-to-peer programs such as Texas A&M Transportation Institute's (TTI) "U in the Driver Seat" program and its associated Designated Unimpaired Driver Extraordinaire (D.U.D.E.) outreach messaging platform. In concert with the philosophical approach of the program's positive peer messaging format and to help address the growing challenges with "other drugs" (i.e., other than alcohol), the D.U.D.E. outreach initiative is designed to help address impaired driving on a much broader scale.

Other examples of promoting and/or providing transportation alternatives include: CARPOOL at Texas A&M University and Driving Jacks at Stephen F. Austin University; transportation alternatives at Fiesta and Fort Worth Stockyards; small businesses providing alternative transportation and employer incentive programs; taxi voucher programs; and extended hours of public transportation.

The descriptions and materials from the college-based programs mention controlling over-consumption by “passengers” but there is little or no mention of the fact that most college undergraduates who are targeted by the programs are younger than 21. However, campuses have other programs that discourage underage drinking.

As demand for alternative sober rides home have increased, private-for-profit companies have emerged to meet this need. Sober Monkeys, for example, not only provides a ride home for the intoxicated individual, but also provides a professional sober driver for the intoxicated person’s vehicle.

Companies such as URide, Uber, and Lyft provide safe rides home much like a taxi would. Another example of safe transportation for those who intend to drink is shuttles to and from nightlife areas. These services allow individuals to schedule a ride to and from their destination. Additionally, some cities, such as Austin, are attempting to encourage the public to utilize these alternative modes of transportation by not ticketing or towing vehicles that are left overnight in the downtown area.

## **Recommendations**

- Ensure that all designated driver programs stress “no use of alcohol” messages for the designated driver.
- Ensure alternative transportation programs do not encourage or enable excessive drinking.
- Ensure that both designated driver and safe ride programs prohibit consumption of alcohol by underage individuals and do not unintentionally promote over-consumption.

### **III. Criminal Justice System**

*Each State should use the various components of its criminal justice system – laws, enforcement, prosecution, adjudication, criminal penalties, administrative sanctions, and communications, to achieve both specific and general deterrence.*

*Specific deterrence focuses on individual offenders and seeks to ensure that impaired drivers will be detected, arrested, prosecuted, and subject to swift, sure, and appropriate criminal penalties and administrative sanctions. Using these measures, the criminal justice system seeks to reduce recidivism. General deterrence seeks to increase the perception that impaired drivers will face severe and certain consequences, discouraging individuals from driving impaired.*

*A data-driven, evidence-based, integrated, multidisciplinary approach and close coordination among all components of the criminal justice system are needed to make the system work effectively. In addition, coordination is needed among law enforcement agencies, on the State, county, municipal and tribal levels to create and sustain both specific and general deterrence.*

#### **A. Laws**

##### **Advisory**

*Each State should enact impaired driving laws that are sound, rigorous, and easy to enforce and administer. The laws should clearly: define the offenses; contain provisions that facilitate effective enforcement; and establish effective consequences. Monitoring requirements should be established by law to assure compliance with sanctions by offenders and responsiveness of the judicial system.*

*Noncompliant offenders should be adjudicated swiftly. The offenses should include:*

- Driving while impaired by alcohol or other drugs (whether illegal, prescription, or over-the-counter), and treating both offenses with similar consequences;*
- A Blood Alcohol Concentration (BAC) limit of 0.08, making it illegal per se to operate a vehicle at or above this level without having to prove impairment;*
- Zero Tolerance for underage drivers, making it illegal per se for persons under age 21 to drive with any measurable amount of alcohol;*
- High BAC (e.g., 0.15 or greater), with enhanced penalties above the standard impaired driving offense;*
- Repeat offender, with increasing penalties for each subsequent offense;*
- BAC test refusal, with administrative sanctions at least as strict as the state's highest BAC offense;*
- Driving with a license suspended or revoked for impaired driving (DWS), vehicular homicide or causing personal injury while driving impaired as separate offenses, with additional penalties;*
- Open container, which prohibits possession or consumption of any open alcoholic beverage in the passenger area of a motor vehicle located on a public highway or right-of-way; and*
- Primary seat belt provisions that do not require that officers observe or cite a driver for a separate offense other than a seat belt violation.*

*Facilitate effective enforcement by enacting laws that:*

- Authorize law enforcement to conduct sobriety checkpoints, in which vehicles are stopped on a nondiscriminatory basis to determine whether operators are driving while impaired by alcohol or other drugs;*
- Authorize law enforcement to use passive alcohol sensors to improve the detection of alcohol in drivers;*
- Authorize law enforcement to obtain more than one chemical test from an operator suspected of impaired driving, including preliminary breath tests, evidentiary breath tests and screening and confirmatory tests for alcohol or other impairing drugs;*

- Authorize law enforcement to collect blood sample by search warrant in any chemical test refusal situation, consistent with other provisions of criminal jurisprudence which allows body fluids to be collected as evidence of a crime; and
- Require mandatory BAC testing of drivers involved in fatal and serious injury producing crashes.

*Effective criminal penalties and administrative sanctions should include:*

- Administrative license suspension or revocation (ALR), for failing or refusing to submit to a BAC or other drug test;
- Prompt and certain administrative license suspension of at least 90 days for first offenders determined by chemical test(s) to have a BAC at or above the State's per se level or of at least 15 days followed immediately by a restricted, provisional or conditional license for at least 75 days, if such license restricts the offender to operating only vehicles equipped with an ignition interlock;
- Enhanced penalties for test refusals, high BAC, repeat offenders, driving with a suspended or revoked license, driving impaired with a minor in the vehicle, vehicular homicide, or causing personal injury while driving impaired, including: longer license suspension or revocation; installation of ignition interlock devices; license plate confiscation; vehicle impoundment, immobilization or forfeiture; intensive supervision and electronic monitoring; and imprisonment;<sup>3</sup>
- Separate and distinct criminal penalties for alcohol- and drug-impaired driving to be applied individually or in combination to a single case;
- Assessment for alcohol or other drug abuse problems for all impaired driving offenders and, as appropriate, treatment, abstention from use of alcohol and other drugs, and frequent monitoring.

*Effective monitoring should include:*

- supervision of out-of-state offenders;
- proven technology (e.g., ignition interlock device, electronic confinement and monitoring) and its capability to produce reports on compliance;
- impaired driver tracking systems; and
- periodic reports on offender compliance with administrative or judicially imposed sanctions;
- Driver license suspension for persons under age 21 for any violation of law involving the use or possession of alcohol or illicit drugs; and
- Statutory and rule support for DWI Courts as a sentencing alternative for persistent DWI offenders.

## **Status**

In Texas' 2010 Impaired Driving Assessment, it was noted that, with certain exceptions, Texas laws contain provisions that substantially meet or exceed the National Highway Traffic Safety Administration's (NHTSA) recommendations for laws that are sound, rigorous, and enforceable. Texas penalties for driving while intoxicated (DWI) are among the strictest in the Nation. These penalties, however, can be circumvented or avoided entirely through the use of diversion, deferral, or pretrial intervention programs.

DWI laws can apply to both minors and adults. The crime of DWI can be established by proof of a driver not having the normal use of physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body, and/or by having blood alcohol concentration (BAC) of 0.08 or more. Texas does not have a "lookback" period that precludes enhancement if

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<sup>3</sup> Limited exceptions are permitted under Federal statute and regulation, 23 U.S.C. 154 and 23 CFR Part 1270.

a previous offense was not within the lookback period of a certain number of years. Accordingly, even prior convictions more than 10 years prior may be utilized for enhancement.

Driving under the influence (DUI) is reserved for minors and individuals under 21 years of age. Under the influence is defined as any detectable amount of alcohol. Texas law has zero tolerance for minors with any detectable amount of alcohol. DUI is a Class “C” misdemeanor with a maximum punishment of a \$500 fine. DUI carries with it an administrative driver license suspension and a separate and additional driver license suspension upon conviction.

#### DWI Penalties

First DWI Conviction misdemeanor	Second DWI Conviction misdemeanor	Third DWI Conviction felony	DWI w/ a Child < 15 felony
At least 3 days jail (if open container in vehicle while DWI, 6 days minimum)  Up to a \$2000 fine  Up to a 1-year Texas driver license suspension	At least 30 days jail  Up to a \$4,000 fine  Up to a 2-year Texas driver license suspension	2 -10 years prison  Up to a \$10,000 fine  Up to a 2-year Texas driver license suspension	Up to 2 years prison  Up to a \$10,000 fine  Up to a 180-day Texas driver license suspension
<p>1. All Texas DWI convictions require completion of either a DWI Alcohol Education Program or a DWI Alcohol Intervention Program.</p> <p>2. In addition to the fine, a first DWI conviction results in a \$1,000 surcharge, paid annually for three years. A second or third conviction results in a \$1,500 surcharge, paid annually for three years. A DWI with a BAC &gt; 0.15 results in a \$2,000 surcharge paid annually for three years.</p>			

A recent appellate court decision has ruled that the warrantless forcible blood draw provisions of the Texas Implied Consent Law violate the U.S. Supreme Court’s decision in *Missouri v. McNeely*, 133 S.Ct. 1552 (2013). See: *Reeder v. State*, 428 S.W.3d 924, 929 (Tex. App. 2014), petition for discretionary review granted (Aug. 20, 2014). The Reeder Court noted that the U.S. Supreme Court vacated the Texas appellate judgment upholding a warrantless blood draw case. As a result, in the future, Texas law enforcement will have to obtain a warrant to forcibly obtain a blood sample, unless the circumstances permit an exception under the McNeely decision.

Texas is fortunate to have the benefit of Section 54.1358 of the Texas Government Code, which provides for Criminal Law Hearing Officers, sometimes referred to as magistrates, who are authorized to review and issue search warrants and arrest warrants as provided by law. In certain jurisdictions, these officers can issue forcible blood draw warrants in addition to judges.

Following the 2010 Texas Impaired Driving Assessment, Texas enacted Tex. Penal Code § 49.04 (d), which provides: “If it is shown on the trial of an offense under this section that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of

0.15 or more at the time the analysis was performed, the offense is a Class A misdemeanor.” With this enactment Texas now complies with the NHTSA recommendation for an enhanced penalty for 0.15 or above offenses. In cases where blood alcohol tests reflect levels in excess of 0.15, prosecutors occasionally recite lower levels in charging documents so as to enable defendants to qualify for lesser penalties or diversion programs.

The Texas Court of Criminal Appeal in *Holt v. State*, 887 S.W.2d 16, 19 (Tex. Crim. App. 1994) ruled DWI roadblocks to be unconstitutional having given the following reason:

“Because a governing body in Texas has not authorized a statewide procedure for DWI roadblocks, such roadblocks are unreasonable and unconstitutional under the Fourth Amendment of the U.S. Constitution unless and until a politically accountable governing body sees fit to enact constitutional guidelines regarding such roadblocks.”

Since the *Holt* decision, no “politically accountable governing body” has enacted guidelines regarding DWI roadblocks. Texas does, however, have a statute that has been utilized to conduct driver license checkpoints. See: Tex. Transp. Code Ann. § 521.025, which provides: “A peace officer may stop and detain a person operating a motor vehicle to determine if the person has a driver’s license as required by this section.” The use of this statute has been held, by at least three Texas appellate courts, to uphold the detention and arrest of impaired drivers, incident to the lawful use of the license checkpoint. See: *Bohren v. State* 2011 WL 3274039 (Tex. App. El Paso 2011); *Lujan v. State* 331 S.W. 3d 768 (Tex. Crim. App. 2011), wherein the court said: “Officers are not required to conduct a license and registration check wearing blinders and ignoring other violations of the law that they observe...” and *Stoppenbrink v. State*, No. 05-07-01426-CR, 2009 WL 225396, (Tex. App. Feb. 2, 2009). In that case the license checkpoint resulted in 44 citations, which included one citation for a minor driving under the influence and three citations for consumption of alcohol by a minor. There were four arrests, two for DWI, one for driving with a suspended license, and one for no driver license.

Community supervision, as provided for in Sec. 13 of Tex. Code Crim. Proc. Ann. art. 42.12, is defined as probation for criminal offenses. This type of sentence is permitted for DWI offenders in Texas. Community supervision requires an individual to complete certain terms of the probation and/or abstain from doing certain acts while on probation. If an individual is permitted to complete community supervision by the court, they will still receive a conviction after they complete the terms of their probation. Criminal proceedings are simply deferred without a judgment of guilt and imprisonment and/or fines are suspended until the alleged offender completes or violates the terms of their probation.

The *2016 Texas Highway Safety Plan* indicates that “Texas does not have a statute that requires assessment for alcohol or other drug abuse problems for all impaired driving offenders” (see page 465). The Crim. Proc. Code § art. 42.12, Sec. 13 (a) provides that “A judge granting community supervision to a defendant convicted of an offense under Chapter 49, Penal Code, shall require as a condition of community supervision that the defendant submit to an evaluation by a supervision officer or by a person, program, or facility approved by the Texas Commission on Alcohol and Drug Abuse for the purpose of having the facility prescribe and carry out a course of conduct necessary for the rehabilitation of the defendant’s drug or alcohol dependence condition.” Accordingly, only convicted DWI offenders are subject to the provisions of the

provisions of art. 42.12. Those defendants who complete DWI diversion programs or have their charges amended or reduced to non-alcohol-related offenses are not required to submit to evaluation or treatment that may be required.

The draft *2016 Texas Highway Safety Plan* contains the categorical statement that, “It is important to note that an offender cannot receive deferred adjudication for an impaired driving offense in the state of Texas.” This is attributed to the provisions of Tex. Code of Crim. Proc. art. 42.12 Sec. 5(d)(1). Pretrial Diversion (PTD) and Pretrial Intervention Programs (PTIP) are available in DWI cases in certain jurisdictions. These programs appear to be a functional equivalent of deferred adjudication. They are touted as a type of probation, which if completed satisfactorily, results in a dismissal of the charge or reduction to a non-alcohol-related offense without a resulting DWI conviction. These diversion programs are generally available only to first-time offenders, although they have been made available to repeat offenders, as well as in DWI felony cases. PTDs and PTIPs are attractive because there are disadvantages to community supervision probation programs including a \$3,000 civil penalty, called a surcharge, in addition to all other mandatory DWI penalties. In the absence of a PTD or PTIP, many DWI offenders take a “straight” conviction, even if it means days in jail or fines plus driver license suspension.

Because PTDs and PTIPs are not statutory, but rather discretionary programs created by District or County Attorneys, it is possible that a defendant, who has a DWI case dismissed following a PTD or PTIP, could conceivably commit a second DWI in a separate jurisdiction and qualify as a first-time offender in the subsequent case. It is for this reason that some states have provided, by statute, that a previous diversion will count as a prior conviction if the driver is convicted of a subsequent DWI. Regulating PTDs and PTIPs by statute can prevent abuses that may otherwise occur when such programs are operated by various prosecutors under varying circumstances.

Texas lacks a comprehensive statewide DWI tracking system. Without such a tracking system neither judges nor prosecutors can accurately determine whether a DWI defendant has previously had the benefit of one or more DWI deferral, diversion, or pretrial intervention programs. Conviction rates cannot be accurately determined as amendments of DWI charges to non-alcohol-related offenses and case dismissals are often counted as convictions when, in fact, they did not result in the imposition of penalties consistent with a DWI case disposition.

In the 2010 assessment it was pointed out that the State’s refusal statute does not have sanctions that are at least as strict as the State’s highest BAC offense. This appears to have been remedied in Tex. Transp. Code Ann. § 724.035, which provides for a minimum suspension of 180 days for a first refusal and two years for a second or subsequent refusal. Under the DWI statute, §521.344, a first offense DWI conviction brings a minimum suspension of 90 days. A first offense conviction with a BAC of 0.15 or more brings a one year suspension. In terms of suspension penalties, the minimums for refusals are more substantial than those for corresponding DWI convictions. Prosecutors occasionally reduce reported BAC levels when they prepare their charging documents.

Texas does not provide criminal penalties for blood or breath test refusals. When making a DWI arrest, peace officers are required to take possession of any Texas or other driver license held by the person arrested and issue the person a temporary driving permit that expires on the 41st day

after the date of issuance. Further, a request for a hearing to challenge the proposed suspension will delay any Administrative License Revocation (ALR) sanctions until a hearing takes place.

An ALR suspension is automatic unless the licensee contests the suspension within 15 days from the date of arrest. If a hearing is not timely requested, the suspension will automatically begin on the 41st day after notice was received. If a hearing is requested, no action will be taken regarding suspension until after the hearing has taken place, even if the hearing takes place more than 40 days after the arrest. In the event of an ALR appeal, the suspension can be delayed for an additional 90 days.

Texas has an open container law. It is a Class C misdemeanor to possess an open container of alcohol in the passenger area of a motor vehicle that is on a public highway or the right-of-way adjacent to a public highway. It does not matter whether the vehicle is moving, stopped, or parked. A fine of up to \$500 may be imposed for having an open alcohol container in a vehicle regardless of whether a person is the driver or a passenger. Having an open container incident to a DWI increases the minimum jail sentence for the DWI from three days to six.

Effective September 1, 2015, section 521.244 of the Texas Transportation Code will provide that a person convicted of DWI, who is restricted to the operation of a motor vehicle equipped with an ignition interlock device, will be entitled to receive an occupational license without a finding that an essential need exists for that person, provided that the person shows evidence of financial responsibility and proof that the person has had an ignition interlock device installed on each motor vehicle owned or operated by the person.

## **Recommendations**

- **Codify driving while intoxicated (DWI) deferral, diversion, and pretrial intervention programs so as to provide uniform statewide guidelines, requirements, and procedures that regulate the implementation, operation, and applicability of such programs.**
- **Enact reasonable constitutional guidelines through one or more politically accountable governing bodies regarding driving while intoxicated (DWI)/sobriety checkpoints.**
- Utilize driver license checkpoints, pursuant to Tex. Transp. Code Ann. § 521.025, to monitor compliance with motor vehicle statutes related to safe operation on Texas streets and highways in the absence of legislation authorizing sobriety checkpoints.
- **Enact a statute that establishes a uniform statewide driving while intoxicated (DWI) case tracking system in which all DWI charges are required to be charged on specifically numbered uniform traffic citations, the dispositions of which must be reported to a central record keeping system regardless of whether the offense is refiled as an information, indictment, or results in a dismissal, deferral, diversion, amendment, or reduction of the original citation to a non-alcohol-related offense.**



## **B. Enforcement**

### **Advisory**

*States should conduct frequent, highly visible, well publicized, and fully coordinated impaired driving (including zero tolerance) law enforcement efforts throughout the State, utilizing data to focus on locations where alcohol-related fatalities most often occur. To maximize visibility, the State should conduct frequent sobriety checkpoints, periodic saturation patrols, and sustained efforts throughout the year. Both periodic and sustained efforts should be supported by a combination of paid and earned media. To maximize resources, the State should coordinate highly visible, multi-jurisdictional efforts among State, county, municipal, and tribal law enforcement agencies to include liquor control enforcement officers. To increase the probability of detection, arrest, and prosecution, participating officers should receive training in the latest law enforcement techniques. States should:*

- *Ensure that executive levels of law enforcement and State and local government make impaired driving enforcement a priority and provide adequate resources;*
- *Develop and implement a year-round impaired driving law enforcement plan supported by a strategic communication plan which includes:*
  - *periods of heightened enforcement, e.g., three consecutive weekends over a period of 16 days, and frequent sustained coverage throughout the year; and*
  - *high levels of participation and coordination among State, liquor enforcement, county, municipal, and tribal law enforcement agencies, such as through law enforcement task forces.*
- *Deploy enforcement resources based on problem identification, particularly at locations where alcohol-related fatal or other serious crashes most often occur;*
- *Conduct highly visible enforcement that maximizes contact between officers and drivers, including frequent, ongoing sobriety checkpoints and saturation patrols, and widely publicize these efforts - before, during, and after they occur;*
- *Use technology (e.g., video equipment, portable evidentiary breath tests, passive alcohol sensors, and mobile data terminals) to enhance law enforcement efforts;*
- *Require that law enforcement officers involved in traffic enforcement receive standardized state-of-the-art training in the latest law enforcement techniques such as Standardized Field Sobriety Testing (SFST), Advanced Roadside Impaired Driving Enforcement (ARIDE), emerging technologies for the detection of alcohol and other drugs; selected officers should receive training in media relations and Drug Evaluation and Classification (DEC);*
- *Ensure that officers involved in traffic enforcement receive ongoing refresher training in SFST;*
- *Evaluate the effectiveness of advanced training in the identification and apprehension of drug impaired drivers;*
- *Provide training to enhance law enforcement officers understanding of ignition interlock devices;*
- *Expedite the arrest process, e.g., by reducing paperwork and processing time from the time of arrest to booking and/or release;*
- *Evaluate program effectiveness and efficiency through the use of both output and outcome based performance measures including:*
  - *the level of effort, e.g., number of participating agencies, checkpoints conducted, arrests made;*
  - *public awareness;*
  - *reported changes in behavior, e.g., reported number of drinking driving trips; and*
  - *consequences including alcohol-related fatalities, injuries, and crashes.*
- *Use law enforcement professionals to serve as law enforcement liaisons within the State. Their activities would include:*
  - *Serving as a communication bridge between the highway safety office and law enforcement agencies;*
  - *Enhancing law enforcement agencies coordination in support of traffic safety activities;*
  - *Encouraging participation in high visibility enforcement of impaired driving, occupant protection, and other traffic safety enforcement mobilizations; and*

- *Improving collaboration with local chapters of police groups and associations that represent state, county, municipal, and tribal law enforcement.*

## **Status**

There are approximately 168,000 peace officers from 2,645 agencies who patrol the extensive roadway systems within Texas.

Larger municipal agencies such as Houston, Dallas, San Antonio, and Austin Police Departments (PD) provide traffic law enforcement services for a significant percentage of the State's population. Leadership in each of these agencies demonstrates a commitment to traffic safety with an emphasis on impaired driving enforcement, as evidenced through the existence of dedicated traffic enforcement units within their jurisdictions.

In response to a high number of driving while intoxicated (DWI) related collisions, Austin PD has developed a dedicated DWI enforcement unit, comprised of one lieutenant, two DWI unit detectives, three sergeants, two corporals, and 20 officers, whose only responsibilities are the identification and apprehension of DWI offenders. Austin PD has arrested an average of over 5,900 DWI subjects a year since 2002, and reports a significant reduction in the number of DWI-related collisions since the implementation of the DWI enforcement teams.

San Antonio PD also developed a dedicated DWI enforcement unit, comprised of 27 officers. Within the dedicated unit are nine officers that are certified drug recognition experts (DREs). The department has arrested an average of over 2,590 DWI subjects a year since 2008.

San Antonio PD interviews DWI offenders to determine the source of their alcohol. Many of the offenders admit to obtaining their alcohol from a Texas Alcoholic Beverage Commission (TABC) licensed establishment. The department tracks the establishments through Geographic Information System (GIS) and overlays that with crash data. The GIS data are analyzed and used to efficiently deploy law enforcement resources to identified problem areas.

There is concern that in many jurisdictions around the State, DWI laws are neither rigorously enforced, nor prosecuted for varied reasons. This results in erroneous or conflicting statistics regarding total DWI arrests, especially for 2014. The inability to track DWIs significantly impacts efficient data-driven deployment strategies.

Due in part to an increasing number of breath test refusals, some law enforcement agencies use search warrants to obtain blood samples. Blood samples provide for best evidence for a DWI prosecution and frequently yield evidence that suspected DWI drivers also have drugs in their system. This practice has evolved into "No Refusal" emphasis patrols where law enforcement agencies publicize that they will engage in efforts to obtain a warrant for blood in every DWI arrest where the suspect refuses a breath or blood test.

Texas does not currently conduct sobriety checkpoints, and legislative efforts continue to be unsuccessful. Although checkpoints were not authorized in the last legislative session, this issue will likely continue to be attempted.

Texas law enforcement agencies participate in the Selective Traffic Enforcement Program (STEP) or Impaired Driving Mobilizations (IDM) through funding provided by the Texas Highway Safety Office (HSO).

The Texas Highway Patrol Division of the Texas Department of Public Safety (TxDPS) utilized approximately \$10 million in state funds in support of STEP/IDM projects. TxDPS established the Highway Safety Operations Center (HSOC) to enhance statewide highway and public safety by proactively collecting, analyzing, evaluating, and disseminating information related to criminal activity, crashes, and traffic enforcement.

The HSOC will serve as the central point of collection, analysis, evaluation, and dissemination for all traffic enforcement incidents occurring on the State's highways, with an emphasis on major corridors. The data and information will be available to partners to assist in planning effective and efficient traffic enforcement with the overall objective of reducing crime and crashes on the State's highways.

STEP/IDM patrols are conducted in conjunction with public education/information campaigns, consistent with established best practices.

It appears that there is limited coordination of efforts with the TABC during STEP or IDM campaigns, and compliance checks are not conducted in conjunction with DWI enforcement efforts. Although there is a central repository for TABC data, there was little indication of data sharing between law enforcement officers and TABC investigators to prepare deployment strategies.

TABC is actively engaged in "source investigations" that support DWI collision investigations by back tracking to a potential source where alcohol was purchased and/or consumed by an individual involved in a collision. These investigations greatly assist TABC with both their criminal and administrative regulatory responsibilities.

Additionally, TABC mobilized officers for compliance investigations and enforcement during high alcohol consumption events. TABC officers not only deploy to high-risk areas, they conduct investigations along the traditional feeder routes leading to the high-risk areas. This proactive approach is vital to an overall comprehensive enforcement strategy.

Recent TABC enforcement efforts have concentrated on licensed establishments that violate or are deemed at-risk of violating regulations. Primary enforcement of underage drinking (e.g., minor in possession) has shifted to local law enforcement agencies.

TABC has developed a risk-based program to focus on at-risk behavior that may indicate a pattern of bad business practices that could lead to serious violations. This process includes looking for pre-determined factors in the application, examining administrative violation history, and gathering intelligence from other law enforcement and governmental agencies. The key elements of the risk-based enforcement program are: increased inspection frequency for retailers with past histories of public safety violations, a greater emphasis on "after hours" establishments that illegally sell or permit consumption of alcoholic beverages during prohibited hours, and

prioritization of its complaint investigations to give investigations involving allegations of public safety offenses first priority in terms of time and resources.

TABC identifies retailers whose premises have been the scene of an offense with public safety implications, or that have been the subject of multiple complaints alleging such violations. Once identified, these retailers are assigned to one of five priority levels that determine the frequency of TABC inspections. Priority levels are assigned based on the severity and number of past violations or complaints and the length of time since the most recent violation or complaint. At the highest level, locations are inspected bi-weekly. As time passes, so long as no new violations are observed, a business will progress downward through the priority tiers and inspections become less frequent with each downward step. After a 12-month period, retailers are subject only to an annual inspection.

Many law enforcement agencies appear to be appropriately equipped with newer technologies to enhance DWI enforcement efforts. Use of Portable Breath Test (PBT) devices and in-car digital video cameras capture and support officers' testimonial evidence of impairment.

Since 2005, all certified peace officers in Texas receive Standardized Field Sobriety Training (SFST) during their basic academy training. Although there is no mandatory ongoing requirement for SFST recertification, the Texas Commission on Law Enforcement (TCOLE), the agency that regulates licensure of peace officers, offers voluntary recertification training. TCLOSE coordinates SFST instructor recertification training and ensures that instructors remain proficient and up-to-date with curriculum updates.

SFST refresher training has been provided to about 10,000 peace officers through approximately 600 training classes since 2011. To ensure program compliance Texas has appointed an SFST State Coordinator. The coordinator provides standardized update or refresher training curriculum every two years. The 24-hour SFST training course has been reinstated to provide basic training to officers not previously trained.

A need was identified to provide additional DWI training to improve the overall arrest process. The Fundamentals of DWI Investigation & Enforcement Course is an eight-hour course that includes training in updated legal statutes, impaired driving crashes, and blood search warrant procedures.

Since 2007, the Advanced Roadside Impaired Driving Enforcement (ARIDE) program has been offered to peace officers in Texas. Currently, ~~2,627~~2,627 officers have completed the free training. ARIDE is intended to bridge the gap in training between the SFST and Drug Evaluation and Classification Program (DECP)/DRE programs by providing officers with general knowledge related to drug impairment and by promoting the use of DREs in states that have DECP. One of the more significant aspects of ARIDE is the required student demonstration of SFST proficiency.

ARIDE is a 16-hour training course available at no cost to law enforcement agencies in Texas and may be taught by DREs or DRE instructors. Training is conducted under the administration and approval of the DRE Program coordinator. The program is provided through HSO grant funds and coordinated through the College of Criminal Justice at Sam Houston State University

As of 2015, all 50 States now participate in the DRE program. This specialized program deploys highly trained officers to enhance the identification and apprehension of impaired drivers. DRE basic certification trainings are offered three times a year in Texas, and currently 415 officers have completed DRE training. There are 50 DRE students in the final phase of certification training.

FY 2015 DRE Statistics:

Total DRE enforcement evaluations:	1,680
Total DRE training evaluations:	547
Toxicology confirmation rate:	50.74%
Poly Drug Use rate:	35%
Highest detected drug category:	Central Nervous System Depressant

DRE training relies heavily on SFST and the ARIDE program which provide the foundation for the DRE program. Once trained and certified, DREs are highly skilled in the detection and identification of persons impaired by alcohol and/or drugs.

Information was presented that indicated the distribution of DREs either geographically or by law enforcement agency failed to provide adequate statewide coverage. For example, in rural areas the need for a DRE often exceeds the number of trained officers. Many agencies are unable to send officers to the free DRE training since travel costs can be prohibitive. DRE training opportunities may be regionalized if adequate certification locations can be secured.

In previous years, utilizing STEP grants, DRE agencies requested training funds to allow participating DRE officers to attend the annual International Association of Chiefs of Police (IACP) Training Conference on Drugs, Alcohol, and Impaired Driving. This conference shares updated methodologies with DREs to enhance their skills. Officers who desire to attend the conference must have the approval of the State DRE Coordinator to attend.

Using DREs in DWI mobilization patrols is “highly encouraged” by the HSO and appears to be occurring in larger jurisdictions, as specified in the National Highway Traffic Safety Administration (NHTSA), High Visibility Enforcement 410 Incentive Grant application.

DREs are frequently utilized during STEP/IDM deployments, but their use in fatal crash investigations seems inconsistent. No information was provided regarding the number of DWI arrests that occurred as a result of a DRE evaluation, nor of any differentiation in the overall numbers of DWI arrests where an individual was suspected of being under the influence of alcohol, drugs, or a combination of both.

NHTSA recently conducted a survey of alcohol and drug use by drivers that shows the average proportion of drivers on the road during weekend nighttime hours that have alcohol or drugs in their systems. Participating drivers were tested for a large number of potentially impairing drugs using both oral fluid (saliva) and blood samples. The proportion of total drug-positive nighttime weekend drivers increased from 16.3 percent in 2007 to 20.0 percent in 2013/2014, a significant

increase. Blood testing data provided by the Texas Department of Public Safety Crime Lab reveals the increase identified in the survey is consistent.

The Texas Department of Public Safety Crime Lab has chemical testing capabilities for detecting drugs in blood. Texas law does not establish statutory presumptive levels of impairment for identified substances. This makes it extremely difficult, if not impossible, for the State to obtain a conviction for a person driving a vehicle while impaired by common impairing substances such as alprazolam, one of the most widely prescribed medications.

Testimony indicated that DRE blood sample testing is severely backlogged. While the backlog may be partially due to staffing, the DRE protocol further delays sample testing. Current protocols do not require the DRE to include a copy of the face sheet which identifies a specific drug category that may be contained in the sample. Therefore, the toxicologist must test the sample for all seven categories, which not only increases the testing time per sample but also has a substantial fiscal impact.

Texas law enforcement officials recognized that processing DWI arrests was a complex and time consuming process. To address this issue the LEADRS (Law Enforcement Advanced DUI/DWI Reporting System), a web-based reporting system, was developed. Available at no cost from the Texas Municipal Police Association (TMPA), this system is reported to reduce the time needed to complete a DWI report from as much as four to six hours to an average of one and one-half to two hours.

LEADRS is not deployed statewide due to a lack of interoperability with existing agency records management systems; therefore, many agencies use locally developed report writing programs. However, LEADRS may increase the accuracy and efficiency in the completion and timely submission of DWI arrest reports. Information from LEADRS reports is automatically downloaded to TABC for their use in determining risk assessments.

The Texas Department of Transportation (TxDOT) Law Enforcement Liaison (LEL) program assigns personnel to coordinate with law enforcement agencies concerning grant activities within assigned regions. LELs facilitate participation in initiatives such as *Click It or Ticket* (CIOT) and National DWI Crackdown periods. There are five LELs assigned to various regions, yet all of the LELs are based out of Austin. The centralized housing of the LELs impacts the efficiency of the program. Locating regional LELs within the region to which they are assigned would increase efficiency of the program. This can be accomplished as vacancies occur so as not to burden current LELs.

Last year TxDOT, in partnership with local, county, and state law enforcement agencies, developed and executed a plan to address the DWI issue that included the following components:

- Increased high-visibility DWI enforcement through the use of a coordinated STEP on a quarterly basis
- Increased earned media efforts focusing on DWI-related topics
- Increased paid media

In 2014, the Houston-Galveston Area Council received \$140,000 from TxDOT for STEP initiatives. This multi-jurisdiction task force included prosecutors to assist with “No Refusal” warrants. The officers were deployed in the Houston-Galveston area based on crash data.

Texas uses quantitative data to evaluate the progress of their programs. Data supplied by TxDOT indicate that during STEP/IDM enforcement efforts, an average of 96.4 percent of the State’s population was served and 31,392 arrests were made during these efforts.

Traffic fatalities in Texas have increased over the last five years. This tracks with national trends yet with increased STEP activities; a downward trend should be expected if looking at one data source. One must look at the overall crash rate per vehicle miles traveled to determine the overall effectiveness of the STEP grant.

For FY 2014, TxDOT invested nearly \$2.1 million with law enforcement agencies, including Sheriff’s Offices, PDs, and TxDPS to conduct impaired driving enforcement during four quarterly waves plus the Labor Day crackdown. In addition, 15 incentive awards were given to non-funded agencies participating in the Labor Day National Crackdown.

Texas has a well-established process for requiring the use of an ignition interlock device (IID) by persons charged with impaired driving violations. However, law enforcement officers around the State are not familiar with how to recognize an IID, how to determine if the user may be circumventing the device, or how to charge someone found to be in violation of the IID requirements.

Impairment is a factor in approximately 40 percent of all motorcycle crashes in the State; however, there is no specific targeted enforcement program to address the impaired motorcycle problem. Texas’ climate allows motorcycles to operate year round and a search of motorcycle sites indicates many events/rallies are held within Texas. Often large motorcycle events are sponsored by alcohol production companies. Crash data could be analyzed to determine what, if any, correlation these events have with the impaired driving problem so that enforcement can be targeted efficiently. It does not appear these analyses are currently being conducted.

Many law enforcement agencies have motorcycle units and these resources could be utilized to conduct impaired motorcycle enforcement. As highly trained riders, motor officers can combine education with enforcement activities. Motorcycle riders more easily identify with motor officers and education efforts would benefit from the respect for fellow riders. Select motor officers could be detailed to events to walk around and build a relationship with participating riders. The presence of motor officers at motorcycle events may reduce the likelihood of riders departing impaired. It does not appear that these are the current practices.

#### Education:

The State DRE Coordinator provides Drug Impairment for Educational Professionals (DITEP) to secondary educational professionals to recognize the signs and symptoms of drug and/or alcohol impairment. This enables educators to prevent impaired students from driving away from

campus and to serve as a treatment intervention tool to reduce future instances of DWI. Since 2011, there have been 76 DITEP classes resulting in 1,927 educators receiving training.

The State DRE Coordinator conducts Drug Impairment Training for Texas Employers (DITTE). The six-hour training course educates employers on the signs and symptoms of drug impairment (alcohol/illicit drugs/prescription drugs) in order to minimize employee use during work. This allows the employer to provide a safe working environment and safer Texas roadways. Since 2012, there have been 61 DITTE classes resulting in 1,839 employers receiving training.

The State DRE Coordinator conducts Drug Impairment Training for Community Supervision and Parole Officers (DITTCSP). The six-hour training course educates Texas Community Supervision and Parole Officers on traffic safety, especially driving impaired, and how to identify the signs and symptoms of impairment, including alcohol, illicit drugs, and prescription drug use, in a probationer or parolee, and/or other individuals encountered during home and office visits. Since 2014, there have been 8 DITTCSP classes resulting in 304 employees receiving training.

## **Recommendations**

- **Enact a statute that allows well planned and fairly executed sobriety checkpoints.**
- Continue regular Advanced Roadside Impaired Driving Enforcement (ARIDE) training classes that incorporate a refresher of the Standardized Field Sobriety Tests (SFST) and an introduction to drugs that impair driving.
- Continue Standardized Field Sobriety Tests (SFST) refresher training programs for patrol officers.
- Conduct additional Drug Recognition Expert (DRE) training classes to achieve and maintain an adequate contingent of DREs statewide.
- **Expand statewide partners for Drug Recognition Expert (DRE) training through regional training teams.**
- Expand utilization of Drug Recognition Expert (DRE) officers in driving while intoxicated (DWI) mobilizations and fatal collision investigations.
- Enact a statute establishing per se levels for controlled substances.
- Update Drug Recognition Expert (DRE) protocols to require a copy of the face sheet be provided with the blood sample submitted for testing.
- Expand development and deployment of the driving under the influence (DUI) report writing programs to reduce processing time.
- Increase use of Texas Alcoholic Beverage Commission agents in Selective Traffic



Enforcement Program activities.

- Provide regular, ongoing training for prosecutors and members of the judiciary on the principles, effectiveness, and accuracy of Standardized Field Sobriety Tests (SFSTs), the Drug Recognition Expert (DRE) Program, and approved breath testing instrumentation.
- Provide training to law enforcement officers to enable them to properly enforce the Texas ignition interlock device statute.

## C. Prosecution

### *Advisory*

*States should implement a comprehensive program to visibly, aggressively and effectively prosecute, and publicize impaired driving-related efforts, including use of experienced prosecutors, to help coordinate and deliver training and technical assistance to those prosecutors handling impaired driving cases throughout the State. Effective prosecution can include participation in a DWI Court program.*

*Prosecutors who handle impaired driving cases often have little experience, are responsible for hundreds of cases at a time, and receive insufficient training.<sup>4</sup> States should:*

- Make impaired driving cases a high priority for prosecution and assign these cases to knowledgeable and experienced prosecutors;*
- Encourage vigorous and consistent prosecution of impaired driving (including youthful offender) cases, particularly when they result in a fatality or injury, under both impaired driving and general criminal statutes;*
- Provide sufficient resources to prosecute impaired driving cases and develop programs to retain qualified prosecutors;*
- Employ experienced prosecutors, such as State Traffic Safety Resource Prosecutors, to help coordinate and deliver training and technical assistance to prosecutors handling impaired driving cases throughout the State;*
- Ensure that prosecutors who handle impaired driving cases receive state-of-the-art training, such as in Standardized Field Sobriety Test (SFST), Drug Recognition Expert (DRE), and emerging technologies for the detection of alcohol and other drugs. Prosecutors should learn about sentencing strategies for offenders who abuse these substances and participate in multi-disciplinary training with law enforcement personnel;*
- In drug-impaired driving cases, encourage close cooperation between prosecutors, state toxicologists, and arresting law enforcement officers (including DRE). Their combined expertise is needed to successfully prosecute these cases;*
- Establish and adhere to strict policies on plea negotiations and deferrals in impaired driving cases and require that plea negotiations to a lesser offense be made part of the record and count as a prior impaired driving offense; and*
- Encourage prosecutors' participation in DWI Courts as a sentencing alternative for persistent DWI offenders.*

### **Status**

Texas prosecutors are either County Attorneys (CA) or District Attorneys (DA). Their main duty is to represent the State in criminal cases. Both work with law enforcement officers in the investigation and preparation of cases to be heard before the criminal courts. Typically, the CA represents the State in misdemeanor criminal cases and the DA represents the State in felony cases. These prosecutors determine whether prosecution in any given case should be instituted, and they have discretionary authority to allow dispositions that withhold adjudication or conviction in driving while intoxicated (DWI) cases.

Prosecutors in several larger jurisdictions have assisted law enforcement in “no refusal mandatory blood draw programs.” The Texas Department of Transportation has funded some but not all such programs which are intended, not only to prevent refusals, but also to raise

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<sup>4</sup> Robertson, Robyn D. and Herb M. Simpson “DWI System Improvement for Dealing with Hard Core Drinking Drivers: Prosecution.” Ottawa, Traffic Injury Research Foundation, 2002.

public awareness. The prosecutors involved in these programs have provided assistance in drafting and obtaining search warrants to procure blood samples pursuant to Texas Criminal Code of Procedure Art. 18.02(10). The necessity for the use of warrants has resulted from the U.S. Supreme Court's *McNeely* decision. Technology has enabled the warrant application and granting process to be completed by internet.

Prosecutors have observed a recurring trend in DWI cases wherein defendants opt for jail time rather than probation. This is generally attributable to the cost of probation. The reluctance to submit to supervision is a secondary issue. For a first DWI, a Class B misdemeanor, the range of punishment includes a \$2,000 fine, between three days and six months in jail, and up to 100 hours of community service. Probation for the same offense can last up to two years and require a monthly fee of \$60 to \$100, including drug and/or alcohol treatment, along with drug/alcohol screenings, all at the defendant's expense. In the end, individuals charged with a first DWI face the choice of two years' worth of fees, drug or alcohol tests, and possible treatment or a one-time fine and a few days or weeks in jail. Those who accept jail, frequently are permitted to serve it on weekends or participate in a work release program. Permitting DWI offenders to opt out of probation reduces the ability of Texas to supervise offenders and impose conditions calculated to reduce recidivism and promote rehabilitation. Judges do not have to accept pleas in lieu of probation.

The *2016 Texas Highway Safety Plan* contains the categorical statement that, "It is important to note that an offender cannot receive deferred adjudication for an impaired driving offense in the state of Texas." This is attributed to the provisions of Tex. Code of Crim. Proc. art. 42.12 Sec. 5(d)(1). In spite of these provisions, it is evident that the functional equivalents of deferred adjudication exist in the form of Pretrial Diversion (PTD) and Pretrial Intervention Programs (PTIPs). They are available in DWI cases in various, but not all jurisdictions. They are touted as a type of probation, which if completed satisfactorily, results in a dismissal of the DWI charge or an amendment of the charge to a non-alcohol-related offense such as highway obstruction or reckless driving. These diversion programs are generally available only to first-time offenders although information was provided indicating that they are also occasionally utilized in some second offense cases as well as felony cases. Whether a defendant is able to elect a PTIP or PTD depends primarily upon whether it is offered by the local DA or CA and whether a defendant is willing to commit to the conditions of the program. Judges have little or no say as to whether a DWI case will be disposed of by PTD or PTIP.

Defendants who successfully complete PTIP or PTD and have their cases dismissed by the prosecution may be regarded as first-time offenders if they are again charged with DWI. Evidence indicated that even second offense DWIs, as well as cases involving blood alcohol concentrations (BAC) over 0.15, are being reduced to first offenses upon being accepted into diversion programs. Other states have enacted provisions that provide that defendants who have previously had a DWI dismissed will not be permitted again to qualify for PTIP or PTD. Texas has no statutory provisions that govern eligibility for PTD or PTIP. There are no provisions that set forth how a defendant is supervised, if at all, while in PTD or PTIP. There are also no specific requirements for assessment, evaluation, treatment, or other conditions to be fulfilled to complete these programs. Texas lacks a criminal case tracking system making it difficult, if not

impossible, for prosecutors to determine whether a DWI defendant's previous DWI charge or charges have been dismissed or amended through diversion, deferral, or pretrial intervention.

Prosecutor education and training is provided through the Texas District and County Attorney Association (TDCAA).

Texas has one experienced and well-respected Traffic Safety Resource Prosecutor (TSRP). Other states, that are smaller than Texas, both geographically and in population, have more than one TSRP. Texas is unique in that the TSRP program has a sizeable budget of approximately \$600,000. In other states, TSRPs personally provide technical assistance to other prosecutors throughout their state in the form of lending on-site assistance in complex DWI trials and in addressing complex defense motions with potential statewide ramifications. It appears that this type of assistance function is either not welcomed by certain jurisdictions or it is beyond the capabilities of the present TSRP program. It would appear, in comparison to TSRP budgets of other states, that there is sufficient funding to sustain multiple TSRPs.

There appears to be frustration among criminal justice stakeholders that defendants can elect jail time in lieu of probation, thereby avoiding supervision, assessment, or evaluation for addiction, and are seldom referred for treatment. Further, there is frustration that, even where a judge places a defendant on supervision, defendants will intentionally violate thereby hoping to be discharged from further supervision. Prosecutors can object, but not prevent, a judge from permitting jail in lieu of probation. It may not be pleasing to the court or politically expedient to keep urging judges to insist on supervision together with an assessment with referral to treatment if required. There is a benefit to society by prosecutors advocating for supervision and assessment for all DWI offenders.

Some prosecutors are not subject to the "Professional Prosecutors Act" because of the amount of salary earned. Such prosecutors or assistant prosecutors are permitted to engage in the private practice of civil law. Such dual employment opportunities can give rise to the appearance of impropriety. The appearance may arise in cases where an assistant prosecutor has a personal injury practice that also represents victims of impaired drivers who may be prosecuted in the prosecutor's jurisdiction or an adjacent jurisdiction. It may also arise where an assistant prosecutor provides consultant or expert witness services in civil or criminal cases that involve crashes or injuries attributable to impaired driving. This appearance of impropriety could be avoided by prohibiting prosecutors from engaging in private practice.

There appears to be little chance of legislative action to codify constitutional guidelines that would permit operation of sobriety checkpoints, in light of negative appellate decisions. Although this has effectively foreclosed the use of sobriety checkpoints, prosecutor training materials point out that Texas appellate courts have upheld driver license checkpoints, even if such checkpoints result in the arrest for an offense unrelated to the purpose of the checkpoint. See: *Bohren v. State* 2011 WL 3274039 (Tex. App. El Paso 2011); *Lujan v. State* 331 S.W. 3d 768 (Tex.Crim. App. 2011); and *Stoppenbrink v. State* 2009 WL 225396, (Tex.App. 2009). Accordingly, driver license checkpoints can be successfully operated to accomplish valid enforcement and deterrent objectives.

## Recommendations

- **Review the organization, operation, and budget of the office of the Traffic Safety Resource Prosecutor (TSRP) to determine if additional TRSPs should be funded for purposes including on-site assistance to prosecutors, particularly in rural jurisdictions, in the trial of complex DWI felonies and assistance in argument of motions with significant statewide implications.**
- Encourage prosecutors and county attorneys to request judges not permit DWI pleas for jail time in lieu of probation and to urge judges to place convicted DWI defendants on probation with supervision requirements of undergoing drug/alcohol assessment and treatment where indicated.
- Convene a meeting of prosecutors and county attorneys to develop and recommend specific uniform statewide guidelines, standards, and requirements for the operation of DWI Pretrial Diversion and/or DWI Pretrial Intervention programs.
- Adopt statutory guidelines for the operation of pretrial deferral, diversion, and intervention programs.
- Educate law enforcement and other criminal justice stakeholders in how driver license checkpoints can be constitutionally operated and utilized.
- Enact rules of professional conduct and disciplinary rules that either totally prohibit assistant prosecutors from engaging in civil law practice or that limit such civil practice to matters that do not involve issues related to pending criminal matters.

## **D. Adjudication**

### **Advisory**

*States should impose effective, appropriate, and research-based sanctions, followed by close supervision, and the threat of harsher consequences for non-compliance when adjudicating cases. Specifically, DWI Courts should be used to reduce recidivism among repeat and high BAC offenders. DWI Courts involve all criminal justice stakeholders (prosecutors, defense attorneys, probation officers, and judges) along with alcohol and drug treatment professionals and use a cooperative approach to systematically change participant behavior. Where offender supervision<sup>5</sup> is housed within the judicial branch, the guidelines of Section V(A)(1) should be utilized by the judiciary.*

*The effectiveness of enforcement and prosecution efforts is strengthened by knowledgeable, impartial, and effective adjudication. Each State should provide the latest state-of-the-art education to judges, covering Standardized Field Sobriety Testing (SFST), Drug Recognition Expert (DRE), alternative sanctions, and emerging technologies, such as ignition interlock devices (IID).*

*Each State should utilize DWI Courts to help improve case management and to provide access to specialized personnel, speeding up disposition and adjudication. DWI Courts also improve access to assessment, treatment, and sentence monitoring. Each State should provide adequate staffing and training for community supervision programs with the necessary resources, including technology, such as IID, to monitor and guide offender behavior. States should:*

- *Involve the State's highest court in taking a leadership role and engaging judges in effectively adjudicating impaired driving cases and ensuring that these cases are assigned to knowledgeable and experienced judges;*
- *Encourage consistency in the adjudication of impaired driving (including youthful offender) cases, and the imposition of effective and appropriate sanctions, particularly when impaired driving resulted in a fatality or injury;*
- *Provide sufficient resources to adjudicate impaired driving cases in a timely manner and effectively manage dockets brought before judges;*
- *Ensure that judges who handle criminal or administrative impaired driving cases receive state-of-the-art education, such as in technical evidence presented in impaired driving cases, including SFST and DRE testimony, emerging technologies, such as IID, for the detection of alcohol and other drugs, and sentencing strategies for this class of offenders;*
- *Use court strategies to reduce recidivism through effective sentencing and close monitoring by either establishing DWI Courts, encouraging drug courts to hear impaired driving cases, or encouraging other courts to adopt DWI/Drug Court practice. These courts increase the use of drug or alcohol assessments; identify offenders with alcohol or drug use problems; apply effective and appropriate sentences to these offenders, including abstinence from alcohol and other drugs; and closely monitor compliance, leading to a reduction in recidivism;<sup>6</sup>*
- *Eliminate ethical obstacles, such as ex parte or commitment communications, by adopting the current Model Code of Judicial Conduct so that judges can participate more freely in DWI Court administration;*
- *Provide adequate staffing and training for community supervision programs with the necessary resources, including technology such as IID and electronic confinement, to monitor and guide offender behavior and produce periodic reports on offender compliance; and*

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<sup>5</sup> Robertson, Robyn D. and Herb M. Simpson "DWI System Improvement for Dealing with Hard Core Drinking Drivers: Prosecution. Ottawa, Traffic Injury Research Foundation, 2002.

<sup>6</sup> Freeman-Wilson, Karen and Michael P. Wikosz, "Drug Court Publications Resource Guide, Fourth Edition." Alexandria, VA: National Drug Court Institute, 2002.

- *Incorporate into judicial education and outreach administration the position of Judicial Outreach Liaison as a judicial educator and resource on highway traffic safety issues including impaired driving, and as an agent to create more DWI Courts.*

## **Status**

If one is not familiar with the structure of the Texas Judicial System, it can be somewhat daunting to determine which courts have jurisdiction of alcohol-related driving offenses and related matters. Texas does not have a unified state trial court system insofar as it has courts in which judicial officers are not all state officers. Texas judges may be elected or appointed depending on applicable state and local laws as well as geographical and population considerations. District and County Level Courts have jurisdiction in driving while intoxicated (DWI) cases, depending on whether they are prosecuted as felonies or misdemeanors. A description of the various Texas trial-level courts and the their judicial officers and education requirements follows. In each trial court tier Texas judges have the benefit of specialized education programs to enhance their judicial skills in the disposition of DWI issues and cases.

**Municipal Courts** - Judges are appointed or hired by city government. Qualifications are established by the municipality. Jurisdiction includes enforcement of city ordinances and fine only misdemeanors. Judicial Education is provided by the Texas Municipal Courts Education Center. Requirements include 16 hours of continuing education. After two years, eight hours may be satisfied through live presentations, online programs, or a combination thereof.

**Justices of the Peace (Justice Courts)** - These are created by the Texas Constitution. Judges are elected in partisan elections every four years. Qualifications include being a Texas resident for 12 months, a resident of the district for six months, and being a registered voter and age 18 or older. Jurisdiction encompasses fine only misdemeanor cases and civil cases where the amount in controversy is less than \$10,000. When they function as magistrates, they are authorized to issue blood draw warrants, conduct examining trials for felony criminal cases, give magistrates warnings, and set bonds. Judicial education is provided through the Texas Justice Court Training Center. Continuing judicial education (CJE) requirements include 80 hours in the first year and 20 hours thereafter.

**Constitutional County Courts** - These courts and their judges are authorized by the Texas Constitution. County Court judges are elected in partisan elections every four years. Qualifications include residency in the county and being 18 years or older. County judges have jurisdiction over Class A and B misdemeanors including DWI. Judicial functions vary from county to county. The judges preside over a five member commissioners' court that has budgetary and administrative authority over county government operations. Judicial education is provided by the Texas Association of Counties. CJE requirements include 30 hours the first year and 16 hours thereafter.

**Statutory County Courts (County Courts at Law)** - These courts are created by statute. Judges are elected in partisan elections every four years. Qualifications include being a U.S. citizen, age 25 or older, two year residence in county, and being a licensed attorney who has practiced law or served as a judge for four years. Jurisdiction is determined by the creating

statute. The minimum jurisdiction is Class A and B misdemeanors including DWI, civil up to \$200,000, and probate in the absence of a statutory probate court. Required judicial education is provided by the Texas Center for the Judiciary. CJE requirements include 30 hours the first year and 16 hours thereafter.

**District Courts** - These are created by statute. Judges are elected in partisan elections every four years. Qualifications include being a U.S. citizen, age 25-74, residency in the district for two years, being a licensed attorney who has practiced law or served as a judge for four years. Jurisdiction encompasses: general Jurisdiction, felonies and misdemeanors involving DWI, official misconduct, family law, civil, juvenile, and contested probate cases. Judicial education is provided by the Texas Center for the Judiciary. CJE requirements include 30 hours the first year and 16 hours thereafter.

Whether a defendant charged with DWI is adjudicated guilty or convicted depends not only on the actions of a judicial officer, but on the action of the County Attorney (CA) or District Attorney (DA) prosecutors. Prosecutors in a number of Texas jurisdictions have implemented defacto (non-statutory) diversion programs that either provide for dismissal of DWI charges upon successful completion or the reduction of the DWI to a non-alcohol-related offense. Where DWIs are reduced to non-alcohol-related offenses, license suspension or revocation is no longer required. The difficulty with such defacto programs is their lack of transparency in that they are not subject to court approval nor are the provisions of these programs placed upon the record in open court. This lack of transparency can only be avoided by implementing a comprehensive criminal case tracking and information system that will enable judges, prosecutors, and the public to determine if a DWI defendant has previously had a DWI charge dismissed or diverted as a result of a diversion, deferral, or pretrial intervention program.

In a number of states, DWI diversion programs are controlled by statutes, which prohibit successive participation in such programs. These states also provide methods for diversion dispositions to be flagged on driver license records to alert both prosecutors, judges, and the public that a defendant's previous DWI was diverted or reduced to a non-alcohol-related offense.

Texas Government Code section 54.1356 authorizes appointment of a "Criminal Law Hearing Officer." This officer, sometimes referred to as a "magistrate," has limited concurrent jurisdiction over criminal cases filed in the district courts, statutory county courts, and justice courts of the county. The jurisdiction of the criminal law hearing officer is limited to the following: 1) determining probable cause for further detention of any person detained on a criminal complaint, information, or indictment filed in the district courts, statutory county courts, or justice courts of the county; 2) committing the defendant to jail, discharging the defendant from custody, or admitting the defendant to bail, as the law and facts of the case require; 3) issuing search warrants and arrest warrants as provided by law for magistrates; and 4) as to criminal cases filed in justice courts, disposing of cases as provided by law, other than by trial, and collecting fines and enforcing judgments and orders of the justice.

Texas is a leader in the implementation and operation of "DWI/Drug Courts." At present there are DWI and DWI hybrid courts. These are courts that strive to teach accountability while reducing recidivism in cases of individuals who have been charged with DWI offenses. A



DWI/Drug Court is a 12-month or longer program that integrates local criminal justice resources, case management, and substance abuse treatment to rehabilitate targeted repeat DWI and misdemeanor drug possession offenders in lieu of incarceration. The typical Texas DWI/Drug Court team consists of an assigned judge, prosecutor from the CA's Office, a defense attorney, representatives of the community supervision and corrections department, and treatment providers. The team works together for the common goal of helping participants recover from substance dependency. Unfortunately, DWI defendants who successfully complete DWI/Drug Court programs do not enjoy the advantage of having their cases dismissed or downgraded as is the case with drug-only defendants. This leaves the DWI defendants with convictions and sizeable monetary burdens, which hinder return to productivity and social responsibility.

Pursuant to the Texas Government Code, drug courts are mandatory in counties with a population of more than 200,000. If there is no separate DWI court, procedures must be established to include DWI offenders in the drug court program. DWI drug courts are eligible for funding from state and federal grants that are administered by any Texas agency provided that they comply with all programmatic best practices recommended by the Texas Specialty Courts Advisory Council and the Texas Judicial Council. DWI drug courts are also funded by a \$60 fee assigned on any Class B or higher DWI or drug offense. Given the size of Texas' population and its vast geographical expanse, there is a pressing need for more DWI courts.

In a number of Texas jurisdictions defendants charged with misdemeanor DWI offenses choose to spend time in jail rather than endure months on probation. They seek to avoid the probation conditions and the thousands of dollars in fees and surcharges that probation requires. In some jurisdictions, they also avoid probation conditions that would require assessment and possible referral to treatment. In *Ivey v. State*, 277 S.W.3d 43, 52 (2009), the Texas Court of Criminal Appeals ruled that pursuant to Tex. Crim. Proc. Code Article 42.12, Section 3(a) it was up to the judge to decide whether it is, "...in the best interest of justice, the public, and the defendant to impose community supervision. It was not up to the defendant to determine whether or not it is in his own best interest to be placed on probation." Accordingly judges have the discretion to disallow DWI defendants to avoid probation by opting for jail time only.

The *2016 Texas Highway Safety Plan* indicates that "Texas does not have a statute that requires assessment for alcohol or other drug abuse problems for all impaired driving offenders." However, Crim. Proc. Code § art. 42.12, Sec. 13 (a) provides that "a judge granting community supervision to a defendant convicted of an offense under Chapter 49, Penal Code, shall require as a condition of community supervision that the defendant submit to an evaluation..." This statute is not applicable to DWI defendants who enter diversion, deferral, or pretrial intervention programs in which the DWI charge is dismissed or reduced to a non-alcohol-related offense.

The disposition of DWI cases in Texas varies greatly from jurisdiction to jurisdiction. In some, judges do not engage in effective case management, which results in cases languishing without dispositions for up to five years. In other jurisdictions, diversion, deferral, and pretrial intervention programs are extensively utilized to dispose of large numbers of DWI cases with great efficiency. Those highly efficient jurisdictions utilize diversion, deferral, and pretrial programs that provide defendants with a means of avoiding conviction by having their cases dismissed or reduced to non-alcohol-related offenses. By dismissing or reducing DWIs to non-

alcohol-related offenses, defendants are able to avoid the substantial penalties and driver license sanctions that would otherwise be mandated if the DWI case resulted in a conviction. While the use of diversion, deferral, and pretrial intervention programs is generally available to first-time offenders, there is evidence that some jurisdictions also make such dispositions available to second-time offenders and those charged with felony DWIs.

Some states have instituted caseload monitoring programs for judges to track their pending case loads. These monitoring programs enable the judge to determine whether attention needs to be paid to ensure timely disposition of criminal cases including DWI. Caseload monitoring also assists courts and judicial systems in determining if additional judicial personnel may be necessary to ensure timely disposition of criminal cases.

Because Texas lacks a DWI case tracking system, both criminal justice stakeholders and the public are unable to effectively monitor the disposition of DWI cases on a statewide basis. In some jurisdictions DWI cases that are dismissed by diversion or deferral or that are reduced to non-alcohol-related offenses are reported as “convictions.” In other jurisdictions these cases are not counted as convictions and a defendant who commits a second DWI offense can be treated as a first-time offender. Without an effective statewide DWI case tracking system, meaningful statistics, such as conviction rates, cannot be compiled using existing record keeping. Without an effective statewide case tracking system, DWI offenders are able to commit multiple offenses without suffering enhanced penalties, and they are able to escape supervision that would ensure meaningful assessment and possible referral to treatment.

## **Recommendations**

- Convene a task force to investigate and report, to the Governor and Legislature, the current deficient state of driving while intoxicated (DWI) record keeping and DWI case disposition practices so that appropriate remedies, statutory or otherwise, can be fashioned to address and cure such deficiencies.
- Continue funding for the further establishment and expansion of driving while intoxicated (DWI)/Drug Courts and for the training of judges, prosecutors, and other personnel needed to operate such courts.
- Encourage judges to not permit driving while intoxicated (DWI) defendants to avoid probation where the best interests of the defendant and the public would be served by requiring the defendant to be supervised to complete assessment for alcohol and/or drug addiction and possible referral for treatment.
- Monitor pending caseloads in those jurisdictions in which there are delays exceeding 24 months in the disposition of driving while intoxicated (DWI) cases.
- **Enact a driving while intoxicated (DWI) statute that would enable DWI/Drug Court judges, upon motion from the prosecutor, to reward those who successfully complete a DWI/Drug Court program of one year or longer in duration, by waiving surcharges/fines.**

## **E. Administrative Sanctions and Driver Licensing Programs**

### **Advisory**

*States should use administrative sanctions, including the suspension or revocation of an offender's driver's license; the impoundment, immobilization, or forfeiture of a vehicle; the impoundment of a license plate or suspension of a vehicle registration; or the use of ignition interlock devices. These measures are among the most effective actions that can be taken to prevent repeat impaired driving offenses.<sup>7</sup>*

*In addition, other driver licensing activities can prove effective in preventing, deterring, and monitoring impaired driving, particularly among novice drivers.*

### **E-1. Administrative License Revocation and Vehicle Sanctions**

#### **Advisory**

*Each state's Motor Vehicle Code should authorize the imposition of administrative penalties by the driver licensing agency upon arrest for violation of the state's impaired driving laws.*

*Administrative sanctions allow the licensing agency to maintain its authority to determine the safety and competence of the driver to whom it has issued a license and to determine whether, at any time, continued provision of driving privileges is warranted. Administrative sanctions provide for consistency and uniformity of both sanction and treatment of offenders, apart from the political or social viewpoints of the various judicial jurisdictions within a state. The code should provide for:*

- *Administrative suspension of the driver's license for alcohol and/or drug test failure or refusal;*
- *The period of suspension for a test refusal should be longer than for a test failure;*
- *Prompt suspension of the driver's license within 30 days of arrest, which should not be delayed, except when necessary, upon request of the State;*
- *Vehicle sanctions, including suspension of the vehicle registration, or impoundment, immobilization, or forfeiture of the vehicle(s) of repeat offenders and individuals who have driven with a license suspended or revoked for impaired driving; and*
- *Installation of ignition interlock device(s) on the offender's vehicle(s) until a qualified professional has determined that the licensee's alcohol and/or drug use problem will not interfere with their safe operation of a motor vehicle. Specific agencies within a State should be given responsibility and authority for oversight of the interlock program, including vendor selection, certification, and monitoring; review of data downloaded from the individual devices; and responsibility for administrative rules that guide sanctions for circumvention or other non-compliance with ignition interlock licensure. Licenses for drivers required to have ignition interlock devices installed on vehicles that they operate should be easily identifiable by law enforcement officers, either by virtue of a different colored background on the license or large print indicating that an ignition interlock device is required.*

#### **Status**

Texas laws provide for administrative driver license revocation and the process is managed through the Department of Public Safety (DPS), which houses both driver licensing and Administrative License Revocation (ALR) functions. License withdrawal hearings are guided by the Administrative Procedures Act.

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<sup>7</sup> Robertson, Robyn D. and Herb M. Simpson "DWI System Improvement for Dealing with Hard Core Drinking Drivers: Prosecution. Ottawa, Traffic Injury Research Foundation, 2002

Mandatory driver license suspensions will result, pursuant to statute, from refusal to submit to a breath or blood test, or for any person over 21 years of age whose blood or breath test shows a blood alcohol concentration (BAC) of 0.08 or more; or, for persons under 21 years of age, whose BAC shows any detectable amount of alcohol.

Driver licenses will also be suspended for conviction of the following offenses: driving while intoxicated (DWI) by use of alcohol or drugs; intoxication manslaughter or intoxication assault; failure to stop and render aid; causing death or injury to anyone while operating a motor vehicle; involuntary manslaughter; any offense punishable as a felony under the motor vehicle laws of Texas; overtaking and passing a school bus (subsequent conviction); boating while intoxicated; evading arrest; driving while license invalid; displaying or possessing a fictitious or altered driver license or ID card; providing false information or documents when applying for a driver license; making, selling, or possessing a document deceptively similar to a driver license or ID card issued by DPS; graffiti; fictitious license plate, registration certificate, or safety inspection sticker; possessing more than one valid driver license or ID card; fraudulent government records; and racing a motor vehicle on a public highway or street.

Further, DPS has the authority to suspend or revoke the driver license of any driver, after they are afforded due process through an opportunity for a hearing, for any of these reasons: driving while license is invalid; causing a serious crash while driving a motor vehicle; becoming incompetent to drive; repeated violations of traffic laws, including: four or more traffic convictions occurring separately within any 12-month period or seven or more traffic convictions within any 24-month period; failure to complete a drug education program as required upon conviction of a drug offense; failure to provide medical information when requested; failure to take or pass a test when requested; fleeing or attempting to flee from a law enforcement officer; commission of an offense in another state, which if committed in Texas would be grounds for suspension or revocation; failure to stop for a school bus (second conviction); or violation of a probation order set by a previous hearing.

Automatic suspension of the driver license for persons under 21 years of age will occur for convictions or failure to comply with the following offenses: alcoholic beverage code offenses, including minor in possession; attempt to purchase alcohol by a minor; purchase of alcohol by a minor; consumption of alcohol by a minor; misrepresentation of age by a minor.

**Periods of administrative restraint for alcohol/drug-related offenses:**

Refusal to submit to blood/breath testing	180 days
Refusal, subsequent offense	2 years
Refusal with prior alcohol conviction	2 years
DWI, first offense	90 days
DWI, first offense, driver under 21 years of age	1 year
DWI, second offense	180 days

DWI, second offense, driver under 21 years of age	18 months
DWI, third or subsequent offense	180 days

DPS administers the Driver Responsibility Program which authorizes DPS to assess surcharges, in addition to any license withdrawal, based on conviction of specific traffic offenses. The State also administers a point system for traffic violations and assigns points for convictions which are added to the driver record. The surcharge may be assessed for points and/or for convictions. When conviction information is received from the courts, DPS assigns points which remain on the driver record for three years.

Two points are assigned for a Texas or out-of-state traffic conviction or three points for a Texas or out-of-state conviction of a traffic offense that resulted in a crash. A surcharge is assessed when the driver has six or more points on his/her driver record within three years. The driver is required to pay an additional \$100 surcharge for the first six points and \$25 for every point after six.

**Surcharges based on convictions are as follows:**

<b>Conviction</b>	<b>Surcharge Amount</b>
Driving While Intoxicated, first offense	\$1,000
DWI, two or more offenses	\$1,500
DWI with BAC of 0.16 or higher	\$2,000
No Insurance	\$250
Driving While License is Invalid, Cancelled, Suspended or Revoked	\$250
No Driver License (includes expired license, or no CDL or required endorsement)	\$100

For convictions listed in the table above, a driver is assessed a surcharge each year for three years. Points are not assessed to these convictions. These surcharges must be paid within 105 days or the driver license will be suspended for failure to comply. This surcharge has been described as an incentive for prosecutors to plea-bargain impaired driving charges to benefit the violator by avoiding these charges.

Vehicle sanctions such as vehicle or plate impoundment, immobilization, and forfeiture are not used in Texas.

Ignition interlock devices are among the sanctions that may be ordered by judges. The law makes such devices mandatory for repeat offenders and for first offenses where the BAC was in excess of 0.15. However, it was reported that, even in cases where statute mandates interlock assignment; courts do not uniformly require the device.

Much research has been conducted related to ignition interlock programs in the U.S. This includes studying specific offender populations, various measures of recidivism, and evaluation periods. The general conclusions are that ignition interlock devices are effective in reducing recidivism of first-time DWI offenders. For repeat offenders,

studies conclude that ignition interlock reduced subsequent DWI behavior by those offenders while the interlock was installed on the vehicle.

Most important, the data downloaded from the devices can be used effectively to predict future DWI recidivism risk. Offenders with higher rates of failed BAC tests have higher rates of post-ignition interlock recidivism.<sup>8</sup>

According to a study of 28 states, there are several types of interlock programs in use in the U.S. These programs fall into three general categories:

**Administrative** - A department of motor vehicles or similar agency requires the installation of an interlock device as a condition of licensing for a suspended driver, for license reinstatement,

**Judicial** - The courts mandate an interlock device for offenders, either pre-trial or post-conviction, or

**Hybrid** - These programs include features of both the administrative and judicial approaches.

The advantage of administrative programs is that they are more uniformly applied to offenders throughout a jurisdiction, resulting in the likelihood of higher installation rates. Generally, there are a smaller number of agencies and departments involved in an administrative program, so processes are more streamlined and cost effective. Sanctions for non-compliance relate to the driving privilege or driver license.

The advantage of the judicially-administered program is that the courts have the legal authority to ensure compliance. Court-administered programs are also able to require pre-trial interlock use, impose additional sanctions for noncompliance or tampering with the interlocks, and mandate offender participation in substance abuse treatment programs.

The hybrid approach can incorporate the strengths of both the administrative and judicial systems within the State's legal framework, thereby developing a more efficient and effective program. However, hybrid programs face the challenge of coordination between the administrative and judicial systems, as well as a potential for increased costs associated with the involvement of a larger number of governmental entities.

The study notes that in order to achieve a high rate of ignition interlock use, the following programmatic aspects should be considered:

- The program should have strong interlock requirements and incentives, coupled with effective penalties for non-compliance
- Program management should be strong: monitoring, uniformity, coordination, and education
- Data and resources are necessary to support program management and to evaluate changes in program design<sup>9</sup>

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<sup>8</sup> Mayer, R. (2014, February). Ignition interlocks – A toolkit for program administrators, policymakers, and stakeholders. 2nd Edition. (Report No. DOT HS 811 883). Washington, DC: National Highway Traffic Safety Administration.

This study points out obstacles to success for interlock programs and notes:

The Responsible Driver Act in Texas requires a fine of \$1,000 per year over a 3-year period for an offender to be eligible for relicensure, in addition to other DWI-related fees. These expenses may discourage offenders from serving a probation that requires interlocks and may require treatment. It is estimated that in recent years approximately 75 percent of DWI offenders in Texas plead to jail time and risk driving on suspension rather than going on probation with interlocks.

Further, the report notes the importance of assignment of responsibility and accountability for effective coordination of the data related to the individual devices and the program as a whole. It is noted that a number of agencies and individuals may have a need to know who is required to install and maintain ignition interlock devices, and that the data should be used to evaluate the program's effectiveness. Tracking of installations, violations, and completion of the interlock requirement must be possible. Entities such as the courts, the DMV, vendors, and law enforcement have a need to know that all aspects of offender behavior can be tracked.

Rules outlining violations and their consequences, including attempts in consecutive months to start the vehicle with BACs above 0.02, for example, must be made clear to violators at the outset. In order to reinstate a driver license, the violator should produce a contract indicating an ignition interlock has been installed in their vehicle(s).

Data specifying client violations should be provided on a regular basis to the agency tasked with oversight of the program, and such violations should be addressed promptly. Eligibility for license reinstatement should be predicated upon a period of compliance including no attempts to start the vehicle with excessive BAC and no tampering or attempted circumvention of the device.

Studies conducted by William Rauch of the State of Maryland's interlock program demonstrated that during the last 45 days of the interlock program requirement, 89 percent of the participants continued to record failed starts, one as many as 97 times in those 45 days. Thus, there continues to be a need to evaluate offenders prior to their leaving the program to determine their readiness for independence. A criterion-based method may be the most appropriate means to determine when to remove the interlock requirement, rather than having the offender simply exhaust the revocation period.

According to the Traffic Injury Research Foundation, "without monitoring, valuable opportunities to respond to persistent attempts to drink and drive or to reinforce compliance with the device are lost. Monitoring behavior and providing feedback to offenders is a critical element of alcohol interlock applications." Currently in Texas, this oversight is not consistent.

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<sup>9</sup> Casanova-Powell, T., Hedlund, J., Leaf, W., & Tison, J. (2015, May). Evaluation of State ignition interlock programs: Interlock use analyses from 28 States, 2006–2011. (Report No. DOT HS 812 145). Washington, DC: National Highway Traffic Safety Administration, & Atlanta: Centers for Disease Control and Prevention.

Failure to monitor interlock drivers will tend to negate the treatment effect of the device. Once interlock-mandated drivers realize that monitoring is lax or non-existent, the behavior changing effect of the device will likely be degraded or lost as well. Without positive outcomes that are elicited from monitoring, support for the program's continuation or enhancement will likely be the final victim. In fact, the biggest potential loss is opportunity – opportunity to reduce impaired driving in a meaningful way.

Communication with Texas's law enforcement officers about the ignition interlock program needs improvement. When asked about their ability to easily identify an interlock-restricted license, officers indicated none had been issued as yet. This is not the case, as over 30,000 Texas drivers have interlocks installed in their vehicles. Yet, the licenses for those who have interlock requirements simply note the restriction on the front of the license. This lack of an obvious indicator of ignition interlock requirement is an impediment to enforcement.

The 2010 Texas Impaired Driving Assessment recommended a programmatic review of Texas' ALR program. A review was subsequently conducted which evaluated ALR for its deterrent effects, but did not specifically analyze Texas' ALR program and its relationship and interface with criminal cases. Lack of awareness of the existence of the analysis document was reported. Such review should determine whether the sanctions effected through criminal prosecution and license restriction substantially overlap in the administrative and criminal processes and the extent to which, if any, the administrative hearing negatively impacts the outcome of the criminal trial.

The regulatory function of the licensing agency is to determine whether or not persons seeking driver licenses are competent to operate motor vehicles and ensure they do not, as a result of such licensure, pose a threat to other road users by virtue of their driving behavior. Administrative license withdrawal is used much more broadly than as a punishment for or deterrent to impaired driving and most licensing agencies have authority to withdraw the license or driving privilege for a wide range of improper driving behavior, incapacity, and criminal activity. As a result, ALR provides the agency with an avenue to revoke or suspend driving privileges for dangerous drivers.

Research indicates that many drivers whose privilege or license to drive has been withdrawn continue to drive without a driver license. However, there is value in providing a means by which to reassert compliance with driving laws, whether by virtue of an ignition interlock-restricted license or fully reinstated driving privilege. Persons without valid driver licenses are overrepresented in crash involvement, particularly fatal crash involvement. One study found that “20 percent of all fatal crashes—one fatal crash in five—involves at least one improperly licensed driver.”<sup>10</sup>

While law enforcement indicated that they do not attend administrative hearings, hearings section data belie that fact. Data presented show that only 20 percent of those notified of

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<sup>10</sup> *Unlicensed to Kill*, Griffin III, Lindsay I. and Sandra DeLaZerda, for AAA Foundation for Traffic Safety, June 2000.



an administrative license suspension or revocation actually request a hearing; the remaining 80 percent, then, accept the action without objection. Of those hearings held, 72 percent are resolved in the State's favor.

The value of the administrative process is its speed, consistency, and efficiency. This is particularly true in Texas, where the criminal justice process in DWI cases can languish for months or years, due to court and forensic testing backlogs. It was reported that most administrative revocations have been completed by the time the criminal case is adjudicated, resulting in few rescissions of administrative sanctions still in effect when criminal cases are dismissed or there is no finding of guilt.

Administrative sanctions are initiated upon arrest in DWI cases. When the breath sample exceeds the per se 0.08 (or other appropriate amount for those under 21 years of age, or who hold a commercial driver license), the officer takes possession of the violator's driver license and serves a notice of license suspension, then issues a temporary driving permit (if the person has a valid driving privilege) to allow an opportunity for due process. Permits for persons holding commercial driver licenses do not, by law, go into effect for 24 hours following arrest. Copies of reports, permits, and the confiscated driver license are sent to the driver license agency within five business days following the arrest. DPS, in turn, notifies the driver by mail of the revocation and advises of the right to a hearing.

The scope of the DWI administrative hearing is limited to whether: the person had an alcohol concentration of a level specified by Section 49.01(2)(B), Penal Code,

While operating a motor vehicle in a public place or while operating a watercraft; or the person was a minor on the date that the breath or blood specimen was obtained and had any detectable amount of alcohol in the minor's system while operating a motor vehicle in a public place or while operating a watercraft; and whether reasonable suspicion to stop or probable cause to arrest the person existed. If the administrative law judge finds in the affirmative on each issue, the suspension is sustained. For refusals, hearing scope is limited to whether: (1) reasonable suspicion or probable cause existed to stop or arrest the person; (2) probable cause existed to believe that the person was: operating a motor vehicle in a public place while intoxicated; or operating a watercraft powered with an engine having a manufacturer's rating of 50 horsepower or above while intoxicated; (3) the person was placed under arrest by the officer and was requested to submit to the taking of a specimen; and (4) the person refused to submit to the taking of a specimen on request of the officer.

It was reported that there is differential treatment of DWI cases by the courts in various jurisdictions and regions of the State. The lack of agency discretion afforded in the administrative revocation process ensures that more consistent and equitable treatment of offenders results from that process than from criminal proceedings.

There is currently room for additional efficiency in the administrative process due to the large number of subpoenas issued by defense attorneys, and the fact that the State is

allowed a single continuance of the hearing should the officer not appear or not be able to appear.

## **Recommendations**

- Ensure that ignition interlock monitoring is effective and that information about violations has some impact on the non-compliant user.
- Notify and/or train law enforcement officers about the ignition interlock program and license so that they are able to recognize an interlock-restricted license and take appropriate action for non-compliance.
- Resolve the continued concern about the administrative hearings' negative impact on criminal cases based on a study the interaction of administrative and criminal proceedings.
- Conduct a study of the effect of the Responsible Driver Act surcharges on subsequent compliance and relicensure of drivers to determine if alternative source of revenue should be sought.
- Provide accountability for the ignition interlock program by specifying in law or policy to whom responsibility for review of driver behavior and sanction of non-compliance belongs.
- Enact a law that allows vehicle sanctions to be used for driving while intoxicated (DWI) convictions.

## **E-2. Driver Licensing Programs**

### ***Advisory***

*Each state's driver licensing agency should conduct programs that reinforce and complement the state's overall program to deter and prevent impaired driving, including:*

- (1) *Graduated Driver Licensing (GDL) for novice drivers. GDL programs have been widely evaluated and all studies, although results vary significantly, have shown a reduction in crash and fatality rates.*

*States' GDL program should involve a three-stage licensing system for beginning drivers (stage 1 = learner's permit; stage 2 = provisional license; and stage 3 = full license) that slowly introduces the young, novice driver to the driving task by controlling exposure to high risk driving situations (e.g., nighttime driving, driving with passengers, and driving after drinking any amount of alcohol). The three stages of the GDL system include specific components and restrictions to introduce driving privileges gradually to beginning drivers. Novice drivers are required to demonstrate responsible driving behavior during each stage of licensing before advancing to the next level.*

*Each stage includes recommended components and restrictions for States to consider when implementing a GDL system.*

### *Stage 1: Learner's Permit*

- *State sets minimum age for a learner's permit at no younger than 16 years of age;*
- *Pass vision and knowledge tests, including rules of the road, signs, and signals;*
- *Completion of basic driver training;*
- *Licensed adult (who is at least 21 years old) required in the vehicle at all times;*
- *All occupants must wear seat belts;*
- *Zero alcohol while driving;*
- *Learner's permit is visually distinctive from other driver licenses;*
- *Must remain crash and conviction free, including violations of the seat belt, zero tolerance, speed, and other GDL provisions, for at least six consecutive months to advance to the next level;*
- *Parental certification of 30 to 50 practice hours; and*
- *No use of portable electronic communication and entertainment devices while driving.*

### *Stage 2: Intermediate (Provisional) License*

- *Completion of Stage 1;*
- *State sets minimum age of 16.5 years of age;*
- *Completion of intermediate driver education training (e.g., safe driving decision-making, risk education);*
- *All occupants must wear seat belts;*
- *Licensed adult required in the vehicle from 10 p.m. until 5 a.m. (e.g., nighttime driving restriction) with limited exceptions (i.e., religious, school, medical, or employment related driving);*
- *Zero alcohol while driving;*
- *Driver improvement actions are initiated at lower point level than for regular drivers;*
- *Provisional license is visually distinctive from a regular license;*
- *Teenage passenger restrictions – not more than 1 teenage passenger for the first 12 months of Intermediate License. Afterward, limit the number of teenage passengers to 2 until age 18;*
- *Must remain crash and conviction free, including violations of the seat belt, zero tolerance, speed, and other GDL provisions, for at least six consecutive months to advance to the next level; and*
- *No use of portable electronic communication and entertainment devices while driving.*

### *Stage 3: Full Licensure*

- *Completion of Stage 2;*
- *State sets minimum age of 18 for lifting of passenger and nighttime restrictions;*
- *Zero alcohol while driving; and*
- *Visually distinctive license for drivers under the age of 21.*

(2) *A program to prevent individuals from obtaining and using a fraudulently obtained, counterfeit, or altered driver's license including:*

- *Training for alcoholic beverage sellers to recognize fraudulent or altered licenses and IDs and what to do with these documents and the individuals attempting to use them;*
- *Training for license examiners to recognize fraudulent documents and individuals seeking to apply for them; and*
- *A means by which to ensure that individuals cannot obtain driver licenses using multiple identities.*

## Status

Texas has many of the fundamental elements of a model graduated driver licensing (GDL) law in its statutory framework. State law requires the following:

- Learner permits are issued at age 15 for those applicants who have completed driver education.
- The minimum holding period for a permit is six months prior to getting a license or restricted license.
- Thirty hours of supervised driving time is required, of which 10 must be at night.
- A license or restricted license can be issued at age 16.
- Intermediate licenses are restricted to no driving between midnight and 5 a.m. (secondary enforcement)
- Except for family members, passengers are limited to one passenger younger than 21 years of age. (secondary enforcement)
- The minimum age at which restrictions can be lifted is 18.

Texas also has a zero tolerance law which states that it is illegal per se for persons under 21 to drive with any measurable amount of alcohol in their systems. Primary enforcement of the seat belt law is allowed.

Persons who hold a minor restricted license are subject to administrative suspension of 90 days for conviction of one moving violation within a 12-month period. For juveniles under 17 years of age, conviction of drug or driving while intoxicated (DWI) charges can result in a suspension of one year or until the licensee's 19<sup>th</sup> birthday.

Minor age driver licenses are visually distinguishable in that they are printed vertically (regular Texas driver licenses are printed horizontally). The license reads "Under 21 DL" on the top in red and "Under 21 until MM/DD/YYYY" next to the photo.

While there is no requirement for alcohol server training in the State, the Texas Alcoholic Beverage Commission provides incentives for licensed establishments that do train all servers by creating a "safe haven" for licensees whose employees sell liquor inappropriately without their knowledge when servers have been trained. Server training is offered statewide and includes information on recognizing false identity documents and on what steps to take when a fraudulent ID document is discovered.

The State's driver licensing examiners are trained in fraudulent document recognition, and the system has security features in place to prevent individuals from obtaining licenses under multiple identities.

GDL programs and other State programs to prevent underage drinking and driving are important because of the fact that teenagers are twice as likely as adults to be involved in crashes. The inexperienced driver, particularly the 16 year old novice, is most at risk. Sixteen year olds are three times more likely to be involved in a crash as 17 year old

drivers. Factors that increase the dangers of inexperience include risk-taking behavior, distractions, drinking and driving, and driving at night.

For 15 to 20 year olds, motor vehicle crashes are the leading cause of death in the United States. Fatal crashes involving teens involve alcohol 30 percent of the time and failure to wear seat belts. Nighttime driving restrictions, which were included in GDL programs, resulted in a 60 percent crash reduction for teens during night hours. In all, GDL provisions resulted in an overall 20 percent crash reduction nationwide in a study conducted by Johns Hopkins University.

Aside from its driver licensing programs, the state of Texas has a number of community coalitions that actively support prevention of youth alcohol use and drinking and driving. Texans Standing Tall includes outreach to military members about consequences of alcohol use and impaired driving. Other driving-focused programs for youth stress parental involvement and responsible driving behaviors including information about alcohol and impaired driving.

### **Recommendations**

- None

## IV. Communication Program

*States should develop and implement a comprehensive communication program that supports priority policies and program efforts, including high visibility enforcement (HVE). Communication strategies should specifically support efforts to increase the public perception of the risks of detection, arrest, prosecution, and sentencing for impaired driving. Additional communication strategies should address underage drinking, impaired driving, and reducing the risk of injury, death, and the resulting medical, legal, social, and other costs if there are specific programs underway in the community. Communications should highlight and support specific program activities underway in the community and be culturally relevant and appropriate to the audience.*

### **Advisory**

*States should:*

- *Focus their publicity efforts on creating a perception of risk of detection, arrest, prosecution, and punishment for impaired driving;*
- *Use clear, concise enforcement messages to increase public awareness of enforcement activities and criminal justice messages that focus on penalties and direct costs to offenders such as loss of license, towing, fines, court costs, lawyer fees, and insurance;*
- *Employ a communications strategy that principally focuses on increasing knowledge and awareness, changing attitudes, and influencing and sustaining appropriate behavior;*
- *Develop a year-round, data-driven, strategic, and tactical communication plan that supports the state's priority policies and programs such as alcohol's effects on driving and consequences of being caught driving impaired or above the state's zero tolerance limit;*
- *Implement a communication program that:*
  - *Uses messages that are coordinated with National campaigns and messages that are culturally relevant and linguistically appropriate;*
  - *Considers special emphasis during holiday periods and other high risk times throughout the year, such as New Year's, 4th of July, Labor Day, Halloween, prom season, and graduation;*
  - *Uses paid, earned, and donated media coordinated with advertising, public affairs, news, and advocacy; and*
  - *Encourages communities, businesses, and others to financially support and participate in communication efforts.*
- *Direct communication efforts at populations and geographic areas at highest risk or with emerging problems such as youth, young adults, repeat and high BAC offenders, and drivers who use prescription or over-the-counter drugs that cause impairment;*
- *Use creativity to encourage earned media coverage, use of a variety of messages or "hooks" such as inviting reporters to "ride-along" with law enforcement officers, conducting "happy hour" checkpoints or observing under-cover liquor law enforcement operations, and use of social media;*
- *Monitor and evaluate the media efforts to measure public awareness and changes in attitudes and behavior; and*
- *Ensure that personnel who are responsible for communications management and media liaison are adequately trained in communication techniques that support impaired driving activities.*

### **Status**

The Texas Department of Transportation (TxDOT), Communications and Marketing Office is responsible for the Highway Safety Office's public information, communications, and media. Each TxDOT District Office has a Public Information Officer (PIO).

The TxDOT Communications and Marketing Office oversees sustained impaired driving public education efforts as well as specific emphasis periods and areas, including:

- Christmas/New Year's Day holidays
- Football (professional, collegiate, and high school)
- Hispanic
- College and Young Adult
- Labor Day

The paid media contractors: Enviromedia; Guerra, Deberry & Coody; and Sherry Matthews Advocacy Marketing provide impaired driving creative and media buys for television, radio, billboards, social media (Facebook, Twitter), internet site advertising, and geo-messaging. Texas uses "Drink, Drive, Go to Jail" for its primary impaired driving message. The total cost of the media buyers' service and media buys is \$2,660,000. The contractors have been successful in negotiating an additional \$3,200,000 in added value and earned media at no cost.

### **Recommendations**

- Develop a Communications Plan that includes a well-thought-out plan to deliver life-saving highway safety messages to the intended audiences and traffic safety partners.
- **Evaluate Highway Safety Office marketing to ensure its messages are reaching target audiences.**

## **V. Alcohol and Other Drug Misuse: Screening, Assessment, Treatment, and Rehabilitation**

*Impaired driving frequently is a symptom of the larger problem of alcohol or other drug misuse. Many first-time impaired driving offenders and most repeat offenders have alcohol or other drug abuse or dependency problems. Without appropriate assessment and treatment, these offenders are more likely to repeat their crime. One-third of impaired driving arrests each year involve repeat offenders.<sup>11</sup> Moreover, on average, individuals with alcohol or other drug abuse problems, drive several hundred times within two hours of drinking before they are arrested for driving while impaired.<sup>12</sup>*

*States should have a system for identifying, referring, and monitoring convicted impaired drivers who are high risk for recidivism for impaired driving.*

*Nationally, the number and diversity of problem solving courts has grown dramatically. One such problem solving model is the DWI Court. These courts provide a dedicated docket, screening, referral, and treatment and intensive monitoring of impaired driving offenders. States and localities that implement DWI Courts should ensure that they are established and operated consistent with the Guiding Principles recommended by the National Center for DWI Courts.*

*[www.dwicourts.org/sites/default/files/ncdc/Guiding\\_Principles\\_of\\_DWI\\_Court\\_0.pdf](http://www.dwicourts.org/sites/default/files/ncdc/Guiding_Principles_of_DWI_Court_0.pdf)*

*In addition, alcohol use leads to other injuries and health care problems. Almost one in six vehicular crash victims treated in emergency departments are alcohol positive, and one third or more of crash victims admitted to trauma centers—those with the most serious injuries - test positive for alcohol. Studies report that 24-31 percent of all emergency department patients screen positive for alcohol use problems. Frequent visits to emergency departments present an opportunity for intervention, which might prevent these individuals from being arrested or involved in a motor vehicle crash, and result in decreased alcohol consumption and improved health.*

*Each State should encourage its employers, educators, and health care professionals to implement a system to identify, intervene, and refer individuals for appropriate substance abuse treatment.*

### **A. Screening and Assessment**

*Each State should ensure that all convicted impaired drivers are screened for alcohol or other substance abuse and dependency. The most immediate screening should take place in the criminal justice system. However, states should also encourage its health care professionals, employers, and educators to have a systematic program to screen and/or assess drivers to determine whether they have an alcohol or drug abuse problem and, as appropriate, briefly intervene or refer them for appropriate treatment. Many individuals who are drivers and who have alcohol or other drug abuse problems present themselves in a variety of settings, e.g., emergency departments, in which Screening and Brief Intervention (SBI) and referral are appropriate and serve to prevent the individual from being involved in a future impaired driving crash or arrest.*

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<sup>11</sup> Repeat DWI Offenders in the United States. “Washington, DC: NHTSA Technology Transfer Series, Traffic Tech No. 85, February 1995.

<sup>12</sup> On average, 772 such episodes, according to Zador, Paul, Sheila Krawchuck, and Brent Moore, “Drinking and Driving Trips, Stops by Police, and Arrests: Analyses of the 1995 National Survey of Drinking and Driving Attitudes and Behavior.” Washington, DC: U.S. Department of Transportation, NHTSA Technical Report No. DOT HS 809 184, December 2000.



## A-1. Criminal Justice System

### ***Advisory***

*Within the criminal justice system, people who have been convicted of an impaired driving offense should be assessed to determine whether they have an alcohol or drug abuse problem and to determine their need for treatment. The assessment should be required by law and completed prior to sentencing or reaching a plea agreement. The assessment should be:*

- *Conducted by a licensed counselor or other alcohol or other drug treatment professional or by a probation officer who has completed training in risk assessment and referral procedures;*
- *Used to decide whether a treatment and rehabilitation program should be part of the sanctions imposed and what type of treatment would be most appropriate;*
- *Based on standardized assessment criteria, including validated psychometric instruments, historical information (e.g., prior alcohol or drug-related arrests or convictions), and structured clinical interviews; and*
- *Appropriate for the offender's age and culture using specialized assessment instruments tailored to and validated for youth or multi-cultural groups.*

### **Status**

Texas does not have a statute that requires assessment for alcohol or other drug abuse problems for all impaired driving offenders. Article 42.12 §13 (a)(2) mandates judges to order an assessment for alcohol or other drug abuse problems for offenders placed on probation.

The substantial deficiencies in impaired driving related data systems render it impossible to determine how many individuals are screened or assessed for alcohol or substance abuse problems and/or how many are referred for treatment.

Some offenders are screened as a function of community supervision (probation), but data on this population are not available. There are no uniform standardized screening protocols required for supervision.

Article 42.12, Section 13(h), Code of Criminal Procedure requires persons convicted of first offense driving while intoxicated (DWI) and receiving probation, to attend and successfully complete an educational program certified by the Department of State Health Services. Offenders who participate in the program are subject to some screening but screening is not required and there are no uniform standardized protocols. In 2014, approximately 37,000 first offenders enrolled in the first offender program and 10,400 enrolled in the Intervention (repeat offender) program. While no reliable total DWI arrest figures were available, it was estimated that total arrests were between 75,000 and 100,000. Thus, it appears that between 50 and 62 percent of drivers participate in any level of intervention with far fewer receiving assessment and treatment.

### **Recommendations**

- **Develop and implement a driving while intoxicated (DWI) tracking system.**

- Require the use of uniform and standardized screening protocols in community supervision (probation).
- Require the use of uniform and standardized screening protocols in all driving while intoxicated (DWI) education programs.

## A-2. Medical and Other Settings

### **Advisory**

*Within medical or health care settings, any adults or adolescents seen by health care professionals should be screened to determine whether they have an alcohol or drug abuse problem. The American College of Surgeons mandates that all Level I trauma centers, and recommends that all Level II trauma centers, have the capacity to use Screening and Brief Intervention (SBI). SBI is based on the public health model which recognizes a continuum of alcohol use from low risk, to high risk, to addiction. Research from the Centers for Disease Control and Prevention indicates that an estimated 25 percent of drinkers are at risk for some harm from alcohol including impaired driving crashes. These individuals' drinking can be significantly influenced by a brief intervention. An estimated four percent of the population has a serious problem with alcohol abuse or dependence. A brief intervention should be conducted and, if appropriate, the person should be referred for assessment and further treatment.*

*SBI can also be implemented in other settings including: Employee Assistance Programs (EAP), schools, correctional facilities, at underage drinking party dispersals, and any setting in which at-risk drinkers are likely to make contact with SBI providers. Screening and brief intervention should be:*

- *Conducted by trained professionals in hospitals, emergency departments, ambulatory care facilities, physicians' offices, health clinics, employee assistance programs, and other settings;*
- *Used to decide whether an assessment and further treatment is warranted;*
- *Based on standardized screening tools (e.g., CAGE, AUDIT or the AUDIT-C) and brief intervention strategies;<sup>13</sup> and*
- *Designed to result in referral to assessment and treatment when warranted.*

### **Status**

Screening, Brief Intervention, and Referral to Treatment (SBIRT) is utilized in trauma centers in Texas; however, it is unclear how many centers use SBIRT on a consistent basis.

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<sup>13</sup> For a discussion of assessment instruments, see: Allen, John and M. Columbus (Eds.), NIAAA Handbook on Assessment Instruments for Alcohol Researchers (2nd edition). Rockville, MD: National Institute on Alcohol Abuse and Alcoholism, 2003. For an overview of alcohol screening, see: "Screening for Alcohol Problems – An Update," Bethesda, MD: National Institute on Alcohol Abuse and Alcoholism, Alcohol Alert No. 56, April 2002. For a primer on helping patients with alcohol problems, see: "Helping Patients with Alcohol Problems: A Health Practitioner's Guide," Bethesda, MD: National Institute on Alcohol Abuse and Alcoholism, NIH Publication No. 04-3769, Revised February 2004.

In 2013, Texans Standing Tall (TST) received funding from the Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention's (CSAP) Service to Science Evaluation Enhancement Program to implement and evaluate TST's Screening and Brief Intervention (SBI) project. TST is translating research on SBI for risky alcohol use into practice as a primary prevention tool on college campuses. SBI for alcohol use is an evidence-based intervention to reduce risky drinking and related behaviors and is a recommended strategy by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) and the National Highway Traffic Safety Administration (NHTSA). TST's project is innovative in that SBI is implemented as a primary prevention tool prior to an alcohol-related injury or violation.

TST partners with colleges and universities to implement the project on four-year and two-year public and private campuses. A higher-risk population, typically first-year students, fraternity/sorority students, or athletes, is selected and invited to participate. Students complete an alcohol use screening tool (the World Health Organization's AUDIT), receive a score sheet with information about alcohol use, and then have the option to meet with an interviewer who has been trained in motivational interviewing.

The interviewer and the student discuss contributing factors and consequences of their alcohol use. The student identifies any problems that occur because of his/her drinking and considers options for change.

### **Recommendations**

- Implement Screening, Brief Intervention, and Referral to Treatment procedures in healthcare settings throughout Texas.
- Implement Screening, Brief Intervention, and Referral to Treatment procedures on college campuses throughout Texas.

## **B. Treatment and Rehabilitation**

### ***Advisory***

*Each State should work with health care professionals, public health departments, and third party payers, to establish and maintain programs for persons referred through the criminal justice system, medical or health care professionals, and other sources. This will help ensure that offenders with alcohol or other drug dependencies begin appropriate treatment and complete recommended treatment before their licenses are reinstated. These programs should:*

- *Match treatment and rehabilitation to the diagnosis for each person based on a standardized assessment tool, such as the American Society on Addiction Medicine (ASAM) patient placement criteria;*
- *Provide assessment, treatment, and rehabilitation services designed specifically for youth;*
- *Provide culturally appropriate treatment and rehabilitation services;*
- *Ensure that offenders that have been determined to have an alcohol or other drug dependence or abuse problem begin appropriate treatment immediately after conviction, based on an assessment. Educational programs alone are inadequate and ineffective for these offenders;*
- *Provide treatment and rehabilitation services in addition to, and not as a substitute for, license restrictions and other sanctions; and*
- *Require that offenders, who either refused or failed a BAC test, and/or whose driver's license was revoked or suspended, complete recommended treatment, and that a qualified professional has determined the offender has met treatment goals before license reinstatement.*

### **Status**

Article 42.12, Section 13(h), Code of Criminal Procedure requires persons convicted of first offense driving while intoxicated (DWI) and receiving probation, to attend and successfully complete an educational program certified by the Department of State Health Services (DSHS).

Failure to complete the program within 180 days (unless an extension was granted) from the date probation was granted will result in the offender's driver license being revoked. The license cannot be reinstated until the educational program is completed.

The standardized program is 12 hours in length and is designed to help DWI offenders increase their knowledge about alcohol and drugs as these substances relate to driving skills, to identify their own individual drinking/drug use and driving patterns, and to assist them in developing plans which will reduce the probability of future DWI behavior.

Specific course topics include alcohol/drug and traffic safety problems, Texas laws relating to DWI, effects of alcohol/drugs on humans, alcohol/drugs and driving task abilities, chemical dependency, symptoms of dependency, sources of assistance, costs of DWI, and decision-making.

Article 42.12, Section 13(j), Code of Criminal Procedure requires persons convicted of subsequent DWI offenses to attend a program for "repeat offenders" approved by DSHS. Failure to complete the program will result in the offender's driver license being revoked until the program has been completed.

This standardized program is 32 hours in length and is designed for multiple DWI offenders and/or others who have alcohol/drug related problems which the first offender program was not designed to address. The program purpose is to intervene in the alcohol/drug abusing lifestyles of the offenders in order to encourage entry into treatment where indicated, as well as to prevent further substance abuse related problems.

Specific course topics include lifestyle issues, values, self-esteem, positive thinking vs. irrational beliefs, responsibility, physiological/psychological effects of drugs, alcoholism, chemical dependency, how drug abuse affects family members, co-dependency, Al-Anon, treatment options, 12-Step Self-Help Groups, peer pressure, relapse prevention, problem solving, and action planning.

These education programs include screening but do not utilize uniform standardized procedures.

Texas has established funding for DWI/Drug Courts, which integrate screening and assessment, treatment, and rehabilitation while monitoring impaired drivers. This integrated monitoring process helps improve compliance among offenders and is aimed at reducing recidivism. Currently 36 courts are operating either as dedicated DWI Courts or Drug Courts that serve DWI offenders, i.e., hybrid courts.

### **Recommendations**

- Expand the availability of driving while intoxicated (DWI) courts in Texas.
- Require the use of uniform and standardized screening protocols in all driving while intoxicated (DWI) education programs.

## **VI. Program Evaluation and Data**

### **A. Evaluation**

#### ***Advisory***

*Each State should have access to and analyze reliable data sources for problem identification and program planning as well as to routinely evaluate impaired driving programs and activities in order to determine effectiveness. Development of a Strategic Highway Safety Plan and a Highway Safety Plan, are starting points for problem identification and evaluation efforts. Problem identification requires quantifying the problem, determining the causes, and identifying available solutions. Strategies should be evaluated for their cost effectiveness and potential for reducing crash risk. Evaluations should include measurement of activities and outputs (process evaluation) as well as the impact of these activities (outcome evaluation). Evaluations are central to the State's traffic safety endeavors and provide a guide to future projects and evaluations. Evaluations should:*

- Be planned before programs are initiated to ensure that appropriate data are available and adequate resources are allocated to the programs;*
- Identify the appropriate indicators to answer the question: What is to be accomplished by this project or program?*
- Be used to determine whether goals and objectives have been met and to guide future programs and activities;*
- Be organized and completed at the State and local level; and*
- Be reported regularly to project and program managers and policy makers.*

*The process for identifying problems to be addressed should be carefully outlined. A means for determining program/project priority should be agreed upon, and a list of proven methodologies and countermeasures should be compiled. Careful analysis of baseline data is necessary and should include historical information from the crash system. Other data that are useful for evaluation include data from other records systems as well as primary data sources such as surveys. Record systems data include state and driver demographics, driver histories, vehicle miles traveled, urban versus rural settings, weather, and seat belt use. Survey data can include attitudes knowledge and exposure to risk factors.*

*The Traffic Records Coordinating Committee can serve as a valuable resource to evaluators by providing information about and access to data that are available from various sources.*

#### **Status**

Evaluation of individual grant-funded projects and programs is an integral part of Texas' impaired driving effort. The State's request for proposals indicates the need for each grant applicant to provide data related to the project which the applicant hopes to implement. Further, the State ensures that grant-funded projects include activities in addition to maintenance of current effort by the requesting agency.

Texas' highway safety grants are managed by an eGrants system which streamlines oversight and makes application more efficient. Targets, strategies, and performance measures are noted, and applicants are made aware of the State's priorities. For the impaired driving program, much of the data related to problem identification is garnered from the Texas Crash Records Information System (CRIS). CRIS has been under development for several years and has been enhanced to provide timely, accurate, and complete crash data. Currently, crash data are available in the system three days after the completion of the crash investigation. Half a million

records are added to the system each year and the system has 20,000 users. A majority of the crash reports are now completed by officers using automated field data collection systems. The State has provided middleware for law enforcement agencies with various data collection software to ensure all data are entered into CRIS without repeating data entry. Data from the Fatality Analysis Reporting System are also used.

Future enhancements that data users noted would assist with more in-depth analysis include searchable narrative files and a specific list of contributing factors to the crash from which officers could choose. In addition, the primary contributing factor should be designated.

Several of the State's sub grantees whose projects relate to impaired driving described how they evaluate the success of their programs or projects. The most specific evaluations related to training and media outreach. One training program produced substantial measurable results. The Texas Employer Program: *Our Driving Concern* is traffic safety outreach for Texas employers to implement best practices and policies, reduce impaired driving and risky substance use, promote safe driving practices among employees and their families, and decrease the number of crashes and fatalities. This program provides information and support for employers to incorporate on-going traffic safety education into their safety culture.

Employers shared outcomes from the implementation of this training program. It is now being used by employers on an on-going basis to present consistent traffic safety education and messaging to employees that focus on driver behavior on and off the job. For example, the city of Corpus Christi recognized that having a dedicated safety coordinator for each city department would foster a culture of traffic safety from within. They have a team of full-time Safety Coordinators, certified through the National Safety Council's Defensive Driving Course, who serve as instructors with individual departmental responsibilities and have since witnessed a significant decrease in the number of collisions and associated monetary losses. In addition, the *Our Driving Concern* Program was incorporated into the weekly new hire orientation and used in departmental traffic safety education. The results were: auto liability claims decreased 28 percent, monetary paid claims decreased 57 percent, and vehicle collisions decreased seven percent.

After implementing the *Our Driving Concern* training, the City of Sugarland reported experiencing an 83 percent decrease in crash-related costs and a 31 percent decrease in crash-related claims in fiscal year 2014, and no crash-related fatalities.

Spectra Energy in Houston reported a 50 percent reduction in preventable vehicle incidents since the implementation.

While these efforts produced measurable and impressive results, evaluation of the results of enforcement efforts was less available, due to issues with data availability that will be discussed in section VI. B of this report.

Texas has an active Traffic Records Coordinating Committee that needs to be involved in the determination of the best way to evaluate enforcement efforts being undertaken in the State that relate to impaired driving.

## **Recommendations**

- Include in the electronic crash system a list of appropriate factors which contributed to the crash from which the officers can select, to include a means of designating which factor was the primary one.
- Engage the Traffic Records Coordinating Committee to develop the database needed for impaired driving enforcement evaluation from the core data systems of the State Traffic Records System, including citation/adjudication, driver, vehicle, roadway, crash, and injury surveillance.



## **B. Data and Records**

### ***Advisory***

*The impaired driving program should be supported by the State's traffic records system and use data from other sources, such as the U.S. Census, the Fatality Analysis Reporting System (FARS), and the Crash Outcome Data Evaluation System (CODES). The traffic records system should be guided by a statewide traffic records coordinating committee that represents the interests of all public and private sector stakeholders. The state traffic records system should:*

- *Permit the State to quantify:*
  - *the extent of the problem, e.g., alcohol-related crashes and fatalities;*
  - *the impact on various populations;*
  - *the level of effort dedicated to address the problem, e.g., level of enforcement activities, training, paid and earned media; and*
  - *the impact of the effort, e.g., crash reduction, public attitudes, awareness, and behavior change.*
- *Contain electronic records of crashes, arrests, dispositions, driver licensing actions, and other sanctions of DWI offenders;*
- *Permit offenders to be tracked from arrest through disposition and compliance with sanctions; and*
- *Be accurate, timely, linked, and readily accessible to persons authorized to receive the information, such as law enforcement, courts, licensing officials, and treatment providers.*

### **Status**

The fatalities and associated societal costs that result from impaired driving continue to be a substantial concern in the state of Texas. Efforts in the State have made it easier to assess crash location and to some extent to layer location information from citations onto that data to assess how enforcement impacted the crash incidence in those areas and throughout the State. However, a significant and substantial dataset is missing. This lack of data makes evaluation of the problem and the enforcement solutions nearly impossible to determine.

The State has no means by which to gather statewide data related to impaired driving arrests and their outcomes. There is no central repository of arrest data and the numbers that have been cited by representatives of various State entities range from approximately 72,000 to 100,000 arrests. Without this basic and fundamental data element, it is impossible to determine how the courts adjudicated these arrests. Adjudicators report using pre-trial diversion or intervention for many cases. Cases which are plea-bargained may be reported as dismissals, even though violators were convicted of alternate charges. There is no record of cases which prosecutors chose not to bring forward due to lack of evidence. As a result, it is impossible to determine which of the violators – by age, ethnicity, driving history, crash-involvement, or blood alcohol concentration (BAC) level – were actually finally convicted of driving while intoxicated (DWI). This lack of ability to track arrests through the system makes it impossible to quantify the extent of the DWI problem, or to gauge the effectiveness of various interventions, treatments, assessments, or lack thereof. Thus, the expense of funds for various countermeasures cannot be deemed effective.

With the effective implementation of the Crash Reporting Information System (CRIS), data that were not readily available in the past are now timely and accurate. Other electronic systems

have been provided in an effort to improve reporting related to impaired driving arrests. These include the Law Enforcement Advanced driving under the influence (DUI)/DWI Reporting System (LEADRS) and the blood draw warrant template available on [mynorefusal.com](http://mynorefusal.com). Besides these advances, driver licensing data are reportedly easily and quickly obtained. The Texas Office of Court Administration has submitted a proposal to the Texas Department of Transportation to secure funding to plan for a statewide eCitation system. The proposed system would provide a single/uniform platform that law enforcement could use to facilitate the electronic transmission and recording of citations.

The best means by which to address Texas's DWI problem is impossible to discern without the most basic of information. This problem is exacerbated by the fact that expungement is regularly and effectively used by defense attorneys to remove arrest and conviction data from the State's files, including the driver history file. As a result, it is possible that one person could have multiple "first" offenses, since prior offenses may have been successfully removed from the data sets available to the courts, the police, and the Department of Public Safety (DPS).

This lack of ability to track offenders precludes the analysis of which interventions were most successful in preventing recidivism. In fact, expungement of records from the driver file and court records makes it impossible to determine whether recidivism even occurred.

The number of cases that were not filed due to lack of evidence is an important factor in determination of adequacy of police training, and takes away a major means of determining what types of remedial training or improvements to current training could be made to improve these cases.

As DWI offenders move through the criminal justice system, it is important to know what types of assessment, treatment, therapy, or education each received in order to determine which was most successful. The same is true for offenders who were assigned to ignition interlock. And it continues to be true for those who have complied with all sanctions, but who have never reinstated their driving privilege. It is important to know the extent to which the substantial surcharges are impacting the ability of violators to come into subsequent compliance.

The State lacks a comprehensive DWI tracking system that could serve to assist in the State's development of a well-conceived plan to address impaired driving. The National Highway Traffic Safety Administration has developed a Model Impaired Driving Record Information System (MIDRIS) which provides a blueprint for system development. Their report states,

"Without a comprehensive approach, offenders are not charged or sentenced appropriately because law enforcement officers, prosecutors, and judges do not have access to the individual's driving or criminal history. This lack of critical information can plague the impaired driving community and create gaps in the DWI system. MIDRIS addresses a lack of follow up information. A necessary component for a successful impaired driving prevention program is the likelihood an individual will be caught and properly prosecuted. In some cases, law enforcement officers, prosecutors, and judges may not even know if individuals have completed their sentences. A system that does not provide adequate or timely information about offenders to law enforcement officers, prosecutors, judges,

probation officers, and others seriously undermines the integrity of the criminal justice system and the deterrent effect of sanctions. It weakens the effectiveness of impaired driving programs and the millions of dollars that are spent to conduct these programs each year. An inadequate traffic records system places additional administrative burdens on already overburdened agencies that must track, often manually, impaired driving cases from arrest through prosecution, adjudication, and disposition.”<sup>14</sup>

A comprehensive DWI tracking system allows the State to:

- Charge and sentence offenders appropriately, based on their driving histories;
- Manage impaired driving cases from arrest through completion of court and administrative sanctions;
- Identify populations, trends, and problematic components of the overall impaired driving control system;
- Adequately gauge DWI trends and the effectiveness of a range of education, information, enforcement, legislative, and other countermeasures;
- Provide stakeholders with adequate and timely information to fulfill their responsibilities;
- Provide key decision-makers (law enforcement, DPS, prosecutors, judges, etc.) with adequate and timely information to allow equitable imposition of charges and penalties; and
- Reduce the administrative burden on system stakeholders and improve efficiency while increasing the deterrent effect of State laws and processes.

Without a full dataset of arrests, dispositions (including initial dismissals, plea bargains, diversions, pre-trial interventions, and cases that were not filed), it will continue to be difficult, if not impossible, to impact the impaired driver problem in Texas. A comprehensive DWI tracking system is a substantial endeavor. However, it is undoubtedly more cost effective and will provide more return on investment than continuing to address impaired driving without any way to measure the impacts of various strategies.

## **Recommendations**

- **Develop a driving while intoxicated (DWI) tracking system to enable analysis of the impaired driving problem in the State.**
- Engage the Traffic Records Coordinating Committee in determining the source and location of various data elements that are needed in an effective driving while intoxicated (DWI) tracking system.
- **Provide funding for an eCitation system such as the one proposed by the Texas Office of Court Administration.**

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<sup>14</sup> <http://www.nhtsatsis.net/MIDRIS/resources.htm>

## C. Driver Records Systems

### **Advisory**

*Each State's driver licensing agency should maintain a system of records that enables the State to: (1) identify impaired drivers; (2) maintain a complete driving history of impaired drivers; (3) receive timely and accurate arrest and conviction data from law enforcement agencies and the courts, including data on operators as prescribed by the commercial driver licensing (CDL) regulations; and (4) provide timely and accurate driver history records to law enforcement and the courts. The driver license system should:*

- *Include communication protocols that permit real-time linkage and exchange of data between law enforcement, the courts, the State driver licensing and vehicle registration authorities, liquor law enforcement, and other parties with a need for this information;*
- *Provide enforcement officers with immediate on-the-road access to an individual's licensing status and driving record;*
- *Provide immediate and up-to-date driving records for use by the courts when adjudicating and sentencing drivers convicted of impaired driving;*
- *Provide for the timely entry of any administrative or judicially imposed license action and the electronic retrieval of conviction records from the courts; and*
- *Provide for the effective exchange of data with State, local, tribal, and military agencies, and with other governmental or sovereign entities.*

### **Status**

Texas driver records are available in a timely manner for use in analysis of traffic safety programs. Planners indicate that they can receive appropriate driver data very quickly. Prosecutors indicate that they use driver history data regularly in prosecuting traffic cases. There were no concerns about the content or availability of the driver file. Driver information is available to officers on the street as well.

Conviction data from the courts are regularly sent to the Department of Public Safety and added to the driver history file. One concern that arose about the completeness of the driver file is the fact that some driving while intoxicated (DWI) convictions are the subject of expungement orders from the courts. It was noted that those convictions are also removed from the driver history file.

Because the driver file is the licensing authority's only means by which to assess driver fitness, it is imperative that those convictions remain on the driver history file, even if they are ordered removed from the public driver record. Driver history data are used by administrative hearing officers, driver improvement analysts, law enforcement, prosecutors, and judges to determine appropriate sanctions for drivers. Without full information, drivers may be charged with DWI, first offense, when enhanced sentencing for multiple convictions should be ordered.

Since the driver history file is not publicly available, it is unnecessary to expunge the conviction from that file. Conviction expungement makes it impossible for regulatory and enforcement authorities to effectively perform their statutory functions.

The driver history file is an essential element of the State's ability to ensure that the dangerous driver is sanctioned in some appropriate way. Its information should not be truncated and it should stand to ensure that drivers are regulated and charged appropriately.

## **Recommendations**

- Enact legislation that prevents removal of driving while intoxicated (DWI) conviction data from the driver history.

## AGENDA

Texas Impaired Driving Assessment  
 The DoubleTree Austin Hotel  
 6505 N Interstate 35  
 Austin, TX 78752-4346  
 August 16 – 21, 2015

Sunday, August 16 <sup>th</sup> , 2015	
<b>6:30 – 8:00 PM</b>	<p><b>Welcome</b>                      Introductions and Presentations by:</p> <ul style="list-style-type: none"> <li>• Terry Pence, <i>Traffic Safety Section Director</i>, Texas Department of Transportation's (TxDOT) Traffic Operations Division</li> <li>• Jim Hollis, <i>Traffic Safety Programs Director</i>, TxDOT Traffic Operations Division</li> <li>• Frank Saenz, <i>Impaired Driving Program Manager</i>, TxDOT Alcohol and Other Drugs Countermeasures Program</li> <li>• Lauralea Bauer, <i>Underage Impaired Driving Manager</i>, TxDOT Alcohol and Other Drugs Youth Programs</li> </ul>
Monday, August 17 <sup>th</sup> , 2015	
<b>8:00 – 8:45 AM</b>	<p><b>Program Management and Strategic Planning</b></p> <ul style="list-style-type: none"> <li>• Terry Pence, <i>Traffic Safety Section Director</i>, Texas Department of Transportation's (TxDOT) Traffic Operations Division</li> <li>• Frank Saenz, <i>Impaired Driving Program Manager</i>, TxDOT Alcohol and Other Drugs Countermeasures Program</li> <li>• Lauralea Bauer, <i>Underage Impaired Driving Manager</i>, TxDOT Alcohol and Other Drugs Youth Programs</li> <li>• Larry Krantz, <i>Program Manager</i>, Law Enforcement Grants, TxDOT Police Traffic Services (via phone)</li> </ul>
<b>8:45 – 9:45 AM</b>	<p><b>Strategic Planning</b></p> <ul style="list-style-type: none"> <li>• D.J. Jeffries, <i>Planner</i>, Traffic Safety, TxDOT</li> <li>• Frank Saenz, <i>Program Manager</i>, TxDOT Alcohol and Other Drugs Countermeasures Program, TxDOT</li> <li>• Melissa Walden, <i>Program Manager &amp; Senior Research Scientist</i>, Texas A&amp;M Transportation Institute (TTI). <i>Project Manager</i> for the Statewide Impaired Driving Task Force and Technical Assistance Project</li> <li>• Terry Pence, <i>Traffic Safety Director</i>, TxDOT</li> <li>• Lauralea Bauer, <i>Underage Impaired Driving Manager</i>, TxDOT</li> </ul>
<b>9:45 – 10:00 AM</b>	<b>Break</b>

Monday, August 17 <sup>th</sup> , 2015 (Continued)	
<b>10:00 – 11:05 AM</b>	<p><b>Criminal Justice System – Laws</b></p> <ul style="list-style-type: none"> <li>• Clay Abbott, <i>State DWI Resource Prosecutor</i>, Texas District and County Attorneys Association (TDCAA)</li> </ul>
<b>10:00 – 11:05 AM</b>	<p><b>Prosecutor and Law Enforcement Training – Partnering for Improved Processing (Law Enforcement/Judicial)</b></p> <ul style="list-style-type: none"> <li>• Clay Abbott, <i>State DWI Resource Prosecutor</i>, Texas District and County Attorneys Association (TDCAA)</li> </ul>
<b>11:05 – 11:15 AM</b>	<b>Break</b>
<b>11:15 – 12:30 PM</b>	<p><b>Strategic Highway Safety Planning / CRIS</b></p> <ul style="list-style-type: none"> <li>• Larbi Hanni, Branch Manager, TxDOT</li> <li>• Darren McDaniel, Safety Engineer, TxDOT</li> <li>• David Palmer, <i>Major</i>, Texas Department of Public Safety (TxDPS)</li> <li>• Nina Leung, <i>Epidemiologist III</i>, Texas Department of State Health Services (DSHS)</li> </ul>
<b>12:30 – 1:30 PM</b>	<b>Lunch</b>
<b>1:30 – 2:00 PM</b>	<p><b>Structure/Regulations</b></p> <ul style="list-style-type: none"> <li>• Mindy Carroll, <i>Director Education and Prevention Division</i>, Texas Alcoholic Beverage Commission (TABC)</li> <li>• Major Harry Nanos, Texas Alcoholic Beverage Commission (TABC)</li> </ul>
<b>2:00 – 3:05 PM</b>	<p><b>Prevention, Community, and Treatment</b></p> <ul style="list-style-type: none"> <li>• Celeste Lunceford, <i>Manager Offender Education Group</i>, Texas Department of State Health Services (via phone)</li> <li>• Nicole Holt, <i>Executive Director</i>, Texans Standing Tall (TST)</li> <li>• Nina Saint, <i>Curriculum Director</i>, SafeWay Driving Systems</li> <li>• Robbi Smith, <i>Traffic Safety Specialist</i>, TxDOT</li> <li>• Mona Lisa Zertuche, <i>Traffic Safety Specialist</i>, TxDOT</li> </ul> <p>Resources</p> <ul style="list-style-type: none"> <li>• Nancy Pryor, <i>Project Specialist &amp; Office Manager</i>, Texans Standing Tall (TST)</li> </ul>
<b>3:05 – 3:25 PM</b>	<b>Break</b>

Monday, August 17 <sup>th</sup> , 2015 (Continued)	
<b>3:25 – 4:20 PM</b>	<p><b>Prevention, Education, and Outreach</b></p> <ul style="list-style-type: none"> <li>• Russell Henk, <i>Program Director for Teens in the Driver Seat</i>, Texas A&amp;M Transportation Institute (TTI)</li> <li>• Mary Hill, <i>Research Specialist for College Aged Prevention Programs</i>, TTI</li> <li>• Dannell Thomas, <i>Director of Safety Education K-12</i>, Education Service Center Region 6</li> <li>• John McNamee, <i>Affiliate Executive Director</i>, Mothers Against Drunk Driving (MADD) – Southeast Texas Office</li> <li>• Dan Worley, <i>Program Coordinator for RED Program</i>, Baylor Scott and White Hillcrest Medical Center</li> <li>• Laura Dean-Mooney, <i>Program Coordinator for Watch UR BAC</i>, Texas A&amp;M AgriLife Extension Service</li> </ul>
<b>4:30 – 4:50 PM</b>	<p><b>Wrap-up and Hanging Issues</b></p> <ul style="list-style-type: none"> <li>• Frank Saenz, <i>Program Manager</i>, TxDOT Alcohol and Other Drugs Countermeasures Program</li> <li>• Melissa Walden, <i>Program Manager &amp; Senior Research Scientist</i>, Texas A&amp;M Transportation Institute (TTI)</li> </ul>
<b>4:50 – 5:15 PM</b>	<p><b>Prevention, Education, and Outreach (Continued)</b></p> <ul style="list-style-type: none"> <li>• Lisa Robinson, <i>Program Manager for Employer Education Program in Texas</i>, National Safety Council</li> </ul>

Tuesday, August 18 <sup>th</sup> , 2015	
<b>8:00 – 9:05 AM</b>	<p><b>High Visibility DUI Enforcement Campaigns</b></p> <ul style="list-style-type: none"> <li>• Tracy Powers, <i>Captain</i>, San Antonio Police Department</li> <li>• Woodrow Halstead, <i>First Assistant Criminal District Attorney</i>, Bexar County Criminal District Attorney's Office</li> <li>• Kevin Harris, <i>Corporal</i>, College Station Police Department</li> <li>• Richard Mabe, <i>Detective</i>, Austin Police Department</li> </ul>
<b>9:05 – 9:15 AM</b>	<b>Break</b>
<b>9:15 – 10:20 AM</b>	<p><b>Impaired Driving Enforcement</b></p> <ul style="list-style-type: none"> <li>• David Palmer, <i>Major</i>, Texas Department of Public Safety (TxDPS)</li> <li>• Bill E. Waybourn, <i>Chief of Public Safety</i>, City of Dalworthington Gardens</li> <li>• Joe Macias, <i>Lieutenant</i>, Mission Police Department</li> <li>• Kristi Whitley, <i>Officer</i>, Cedar Park Police Department</li> <li>• Donald Egdorf, <i>Officer</i>, Houston Police Department</li> <li>• Mike Jennings, <i>Detective</i>, Austin Police Department</li> <li>• Susan Cotter, <i>Sergeant</i>, Harris County Sheriff's Office</li> </ul>
<b>10:20 – 10:45 AM</b>	<b>Break</b>



Tuesday, August 18 <sup>th</sup> , 2015 (Continued)	
<b>10:45 – 11:30 AM</b>	<b>Criminal Justice System – Legislature and the Courts</b> <ul style="list-style-type: none"> <li>• Laura Weiser, <i>State Judicial Liaison</i>, Texas Center for the Judiciary (TCJ)</li> </ul>
<b>11:30 – 12:00 PM</b>	<b>Toxicology</b> <ul style="list-style-type: none"> <li>• Jamie Mraz, <i>Forensic Scientist III</i>, Toxicology Section, Texas Department of Public Safety (TxDPS)</li> <li>• Meda Nix, <i>Forensic Scientist II</i>, Texas Department of Public Safety (TxDPS)</li> </ul>
<b>12:00 – 1:00 PM</b>	<b>Lunch</b>
<b>1:00 – 2:10 PM</b>	<b>Prosecution/Adjudication</b> <ul style="list-style-type: none"> <li>• Warren Diepraam, <i>First Assistant Criminal District Attorney</i>, Waller County District Attorney’s Office</li> <li>• Tyler Dunman, <i>Assistant District Attorney</i>, Montgomery County District Attorney’s Office</li> <li>• Todd Jermstad, <i>Department Director – Bell/Lampasas Counties</i>, Community Supervision &amp; Corrections Division</li> </ul>
<b>2:10 – 2:35 PM</b>	<b>Break</b>
<b>2:35 – 3:45 PM</b>	<b>Sanctions</b> <ul style="list-style-type: none"> <li>• John Lipscombe, <i>Judge</i>, Blackwell-Thurman Criminal Justice Center</li> <li>• Troy Walden, <i>Associate Research Scientist</i>, Texas A&amp;M Transportation Institute (TTI)</li> <li>• Annette Beard, <i>Judicial Services Liaison</i>, Smart Start, Inc.</li> </ul>
<b>3:45 – 4:35 PM</b>	<b>Driver Licensing/Administrative Sanctions</b> <ul style="list-style-type: none"> <li>• Lanette Rusmisl, <i>ALR Director of Hearings</i>, Texas Department of Public Safety (TxDPS)</li> <li>• Melissa Eager, <i>Conviction Reporting Program Supervisor</i>, Texas Department of Public Safety (TxDPS)</li> </ul> <p>Resource:</p> <ul style="list-style-type: none"> <li>• Amy Calhoun, <i>Program Supervisor</i>, Enforcement and Compliance Service, Texas Department of Public Safety (TxDPS)</li> </ul>
<b>4:35 – 5:30 PM</b>	<b>Communications Programs</b> <ul style="list-style-type: none"> <li>• Summer Latham, <i>Account Director</i>, Enviromedia</li> <li>• Ted Burton, <i>Executive Vice President</i>, Enviromedia</li> <li>• Doug Stratton, <i>Account Service Director</i>, GDC Marketing &amp; Ideation</li> <li>• Jose Marrero, <i>Senior Vice President</i>, Sherry Matthews Advocacy Marketing</li> <li>• David Ocamb, <i>Account Director</i>, Sherry Matthews Advocacy Marketing</li> <li>• Shalandra Rogers, <i>Program Manager</i>, TxDOT</li> </ul>

**Wednesday, August 19<sup>th</sup>, 2015**

<b>8:00 – 9:00 AM</b>	<p><b>Training for Enforcement</b></p> <ul style="list-style-type: none"> <li>• Michael Antu, <i>Special Services Division Chief</i>, Texas Commission on Law Enforcement</li> <li>• David McGarah, <i>Program Manager for Texas SFST</i>, Texas Municipal Police Association</li> <li>• Kevin Ryan, <i>Program Instructor for LEADRS</i>, Texas Municipal Police Association (TMPA)</li> <li>• Charles Ortiz, <i>Program Manager for LEADRS</i>, TMPA</li> <li>• Cecil Marquart, <i>Project Director and Drug Evaluation Classification Program (DECP) State Coordinator</i>, Sam Houston State University</li> <li>• Jim Kuboviak, <i>Director of Law Enforcement Mobile Video Institute</i>, University of Houston</li> <li>• Lynda Walker, <i>Law Enforcement Liaison</i>, Texas Municipal Police Association</li> </ul>
<b>9:00 – 9:55 AM</b>	<p><b>DWI Courts</b></p> <ul style="list-style-type: none"> <li>• Laura Weiser, <i>Judicial Resource Liaison</i>, Texas Center for the Judiciary (TCJ)</li> <li>• Roberto Ruiz, <i>Court Manager</i>, Bexar County DWI Court</li> </ul>
<b>9:55 – 10:30 AM</b>	<p><b>Medical, Treatment, Assessment, and Substance Abuse</b></p> <ul style="list-style-type: none"> <li>• Jayson Aydelotte, <i>General Surgeon</i>, University Medical Center at Brackenridge</li> <li>• Kristin Tobey, <i>OSAR (Outreach, Screening, Assessment, and Referral) Counselor</i>, Texas Department of State Health Services (DSHS)</li> </ul>
<b>10:30 – 10:45 AM</b>	<b>Break</b>
<b>10:45 – 11:30 AM</b>	<p><b>Judicial Education</b></p> <ul style="list-style-type: none"> <li>• Laura Weiser, <i>Judicial Resource Liaison</i>, Texas Center for the Judiciary (TCJ)</li> <li>• Hope Lochridge, <i>Executive Director</i>, Texas Municipal Courts Training Center (TMCTC)</li> <li>• Jay Johnson, <i>Interim Judicial Program Manager</i>, Texas Association of Counties (TAC)</li> <li>• Rob Daniel, <i>Program Attorney</i>, Texas Justice Court Training Center (TJCTC)</li> </ul>

**Wednesday, August 19<sup>th</sup>, 2015 (Continued)**

<b>11:30 – 12:15 PM</b>	<b>State Leadership Panel - Questions and Answers</b> <ul style="list-style-type: none"><li>• Terry Pence, <i>Traffic Safety Director</i>, TxDOT</li><li>• Frank Saenz, <i>Program Manager</i>, TxDOT Alcohol and Other Drugs Countermeasures Program</li><li>• Melissa Walden, <i>Program Manager &amp; Senior Research Scientist</i>, Texas A&amp;M Transportation Institute (TTI)</li><li>• Laura Weiser, <i>State Judicial Liaison</i>, Texas Center for the Judiciary (TCJ)</li><li>• Shalandra Rogers, <i>Program Manager</i>, Texas Department of Transportation (TxDOT)</li></ul>
<b>12:15 – 1:15 PM</b>	<b>Lunch</b>
<b>1:15 PM -</b>	<b>Assessment Team Report Development</b>

**Thursday, August 20<sup>th</sup>, 2015**

<b>8:00 AM – Completion</b>	<b>Assessment Team Report Development</b>
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**Friday, August 21<sup>st</sup>, 2015**

<b>8:00 – 10:00 AM</b>	<b>Assessment Team Report Briefing</b>
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## **ASSESSMENT TEAM CREDENTIALS**

### **DAVID W. ENNIS**

David Ennis is a highly skilled law enforcement professional with over 33 years of progressive experience in directing and leading law enforcement agencies goals and objectives. His extensive military and civilian police experience includes planning, developing and managing police operations. His diverse assignments have included patrol, major crimes, traffic safety, administration, grants management, budgeting, and emergency operations.

David is currently the Chief of Police for the Naval Support Activity Annapolis Police Department and serves as the agency's Drug Recognition Expert (DRE) coordinator. He is the sole Traffic Safety Specialist III in Maryland law enforcement and serves on the Executive Committee. He is also a member of the Maryland Impaired Driving Coalition, Motorcycle Safety Coalition, the 2015 Maryland Highway Safety Office DUI Conference Committee, and the Maryland Chiefs of Police Traffic Safety Committee.

As a Lieutenant with the Anne Arundel County Police Department, David managed the Maryland Region 2 – DRE program. He developed the “35 to Save Lives” traffic enforcement initiative to reduce crashes as well as both the 2014 Maryland Highway Safety Summit and the Managing Traffic Enforcement Programs statewide training course.

David received his Masters and Bachelor degrees in Management from Johns Hopkins University and was the 2012 recipient of the Johns Hopkins University Public Safety Leadership Award. In recognition of his contributions and achievements he has made over the course of his career, he has been selected to receive the J. Stannard Baker Award for Highway Safety this October.

## **JUDGE KARL B. GRUBE**

Judge Grube served as a County Court Judge in St. Petersburg, Florida, since his election to that office in 1976. In 2006 he took senior status after 30 years of service in the Florida State Judiciary. He received his Bachelor of Science degree in Business Administration from Elmhurst College, in Illinois, his Juris Doctor degree from Stetson University in Florida and 1992 was awarded a Masters Degree in Judicial Studies from the University of Nevada.

Prior to assuming the bench, he served as an assistant public defender followed by private practice, which included being city attorney for Redington Beach, Florida. Judge Grube was elected president of the Florida Conference of County Court Judges and has served as assistant dean of the Florida New Judges College. In 1991 he was elected chairperson of the American Bar Association's National Conference of Special Court Judges.

Judge Grube authored law review articles related to impaired driving, motor vehicles, and constitutional criminal procedure. These include: Analyzing the Videotaping of Drunk Driving Suspects as an Act Police Discretion, *Law/Technology*, Vol. 22 No. 2 1989, Radar Speed Measurement: The Controversy Continues *Fla. Bar Journal* Vol. 54 No. 6. 1980, A Restitution Program for Uninsured Offenders in Traffic Court *State Court Journal* Vol. 6 No. 1 1982, and Electronic Plea Taking at Florida's Weekend First Appearance Hearings, *Stetson Law Review*, 1992. He presently serves as a member of the Florida "DUI Programs Review Board" which monitors and conducts site inspection visits of all facilities that conduct DUI programs in the State of Florida.

He is active in teaching on both state and national levels having celebrated his 25<sup>th</sup> anniversary as a member of the faculty of the National Judicial College (NJC). At present Judge Grube serves as the ABA/NHTSA Judicial Outreach Liaison for the Southeast Region (Region IV). He also serves as the Associate Dean of the Florida College of Advanced Judicial Studies.

## **ROBERT P. LILLIS**

Rob Lillis is President of Evalumetrics Research and has been providing planning, research and evaluation services to youth development, traffic safety, substance abuse, criminal justice, education, health and mental health programs at the state and local level for over 35 years. He provides evaluation services for school districts for a variety of special programs including 21st Century Learning Center programs, after-school mentoring programs, and environmental education programs. He also provides planning, research, and evaluation services for Drug Free Community Grant programs and serves as evaluation consultant to the Allegany Council on Alcoholism and Substance Abuse (ACASA) and numerous other local substance abuse prevention and youth development programs. Rob has served as the evaluator for the Ontario County Juvenile Drug Treatment Court, the Finger Lakes Drug Court, Ontario County Youth Court, the Finger Lakes Child Abuse Response Team-Child Advocacy Center and the Ontario County Family Support Center. He also has conducted outcome studies for the Yes Pa Foundation, character education program.

Rob was the primary source of research support to the governor and Legislature during the debate on the 21 year old minimum drinking age law in New York. He also served on the consultant panel for the U.S. General Accounting Office Special review of Minimum Drinking Age Laws.

Since 1991, Rob has served as a member of the Impaired Driver Assessment Consultant Team for the National Highway Traffic Safety Administration (NHTSA) and has conducted over 60 assessments of prevention and treatment programs in 35 states, Puerto Rico, and for the Indian Nations. He was the recipient of the 2011 NHTSA Public Service Award.

## **MICHAEL R. STOUT**

Mike is the Business Manager for Illinois State Employees Association – Laborers’ Local 2002 which is the collective bargaining representative for a large group of State of Illinois managers and administrators. He has held several other positions in organized labor including Director of Governmental Affairs in the Central States for the International Brotherhood of Teamsters and Director of Operations for the Laborers’ International Union of North America, Midwest Region.

Mike was also employed by the Illinois Department of Transportation for over 18 years, where he first served in an entry level position as a Transportation Analyst, later as the Deputy Director of Finance and Administration, and seven years as the Director of Traffic Safety and Governor’s Representative for Highway Safety. He was in charge of state and federal oversight of the United States Department of Transportation (USDOT), National Highway Traffic Safety Administration (NHTSA) and USDOT, Federal Motor Carrier Safety Administration programs. In addition, he administered the State’s traffic records, motorcycle training, data, and data evaluation programs. Mike also served on the Governor’s Highway Safety Association (GHSA) Executive Board as a regional representative and was twice elected Treasurer. He has served on numerous traffic safety related boards, committees, and commissions including impaired driving, occupant protection, and teen driving. Notably, Mike served on the Illinois Secretary of State’s Graduated Driver’s License Task Force that drafted the legislation establishing the State’s graduated driver’s license law.

In 2007, Mike, the Ford Motor Fund, and the Allstate Foundation developed the Illinois Operation Teen Safe Driving (OTSD). The OTSD is a first of its kind in the nation annual program that challenges the creativity of high school students from every geographical area in Illinois to develop and implement community-based programs to reduce fatalities and injuries due to motor vehicle crashes. The OTSD has been honored and received numerous awards locally, statewide, and nationally including the Harvard University’s Kennedy School of Government, GHSA’s Peter O’Rourke Special Achievement Award, the Non-Profit Public Relations Awards Luncheon in Washington, D.C., and the USDOT National Roadway Safety Award.

Since 2013, Mike has served as a member of Impaired Driving and Occupant Protection Consultant teams for NHTSA in Connecticut, New Jersey, Louisiana, Mississippi, Maine, Texas, and West Virginia.

In 2011, Mike received the USDOT NHTSA, “Safety Champions Award” and was also recognized by the Students Against Destructive Decisions (SADD) with an “Outstanding Contributions Award.” In 2008, he received the Illinois State Police “Directors Award of Distinction.”

## **JOAN VECCHI**

Joan Vecchi retired as the Senior Director of the Colorado Motor Vehicle Division, with responsibility for driver licensing, traffic records, driver control activities, vehicle titling and registration, motor carrier services, vehicle emissions, and motor vehicle investigations. Her duties included policy development and legislative strategy development related to traffic safety and prevention of identity theft.

Joan holds an undergraduate degree in Criminal Justice and a Master's Degree in Management with emphasis in Human Relations and Organizational Behavior. Having worked in Motor Vehicle for nine years, her previous work experience includes 12 years as a Denver Police Officer/Sergeant, 6 ½ years as State Liquor Enforcement Field Operations Supervisor, and three years as a Department of Revenue Program/Budget Analyst. During the course of her employment with the state of Colorado, Joan was responsible for the implementation of many new programs, including limited stakes gaming, tobacco enforcement and mandatory interlock.

Joan is the past President of the Association of Transportation Safety Information Professionals. She has participated as a member of the consensus body for the 7<sup>th</sup> edition of the ANSI D16.1 Motor Vehicle Traffic Accident Classification, and has participated as a team member in 45 state Traffic Records Assessments since 2002 as well as facilitated several dozen others.

As a member of the Colorado Persistent Drunk Driver Committee, she worked with a multi-disciplinary team to develop proposals for education and prevention activities related to persistent drunk driving, and made recommendations for funding of a variety of initiatives including DUI courts and curriculum review for alcohol education. She also participated as a team member for the state's Teen Motor Vehicle Alliance, which worked to provide information to teen drivers and their parents about motor vehicle laws and safety issues.

Joan was a member of the Colorado Traffic Records Coordinating Committee and was chair during the state's revision of its Traffic Accident Report form.