

# **Texas District & County Attorneys Association**



**FY 2023**

**DWI Prosecutor Task Force Meeting**

**October 12, 2022**

**Pflugerville, TX**



# TEXAS DISTRICT & COUNTY ATTORNEYS ASSOCIATION

## **DWI Prosecutor Task Force Meeting**

**Courtyard by Marriott Austin Pflugerville & Pflugerville**

**Conference Center**

Pflugerville, Texas

October 12, 2022

### **Wednesday, October 12, 2022**

**9:00 a.m. Introductions: State of Impaired & Driving Prosecution**

*All Task Force members*

**10:00 a.m. Texas DRE**

*Carlos Champion*

**10:30 a.m. Impaired Driving Assessment**

**11:00 a.m. DPS Lab**

*TBD*

**12:00 p.m. Lunch (on your own)**

**1:30 p.m. Regional Training & Advanced Trial Advocacy**

**2:30 p.m. DWI Resource Prosecutor Project**

*Clay Abbott*

**3:45 p.m. Report Drafting & Assignments**

**4:00 p.m. Adjourn**

# DWI Prosecutor Task Force Meeting

October 12, 2022  
Pflugerville, Texas

## Registration Roster

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# DWI Prosecutor Task Force Meeting

October 12, 2022  
Pflugerville, Texas

## Registration Roster

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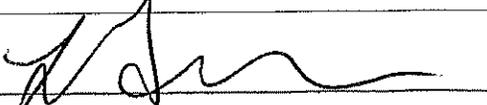
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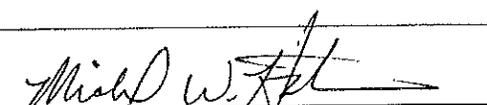
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# DWI Prosecutor Task Force Meeting

October 12, 2022  
Pflugerville, Texas

## Registration Roster

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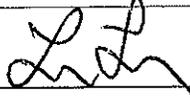
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# DWI Prosecutor Task Force Meeting

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Pflugerville, Texas

## Registration Roster

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# DWI Prosecutor Task Force Meeting

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Pflugerville, Texas

## Registration Roster

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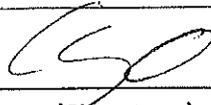
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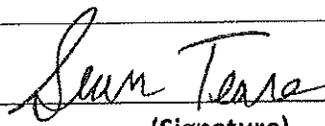
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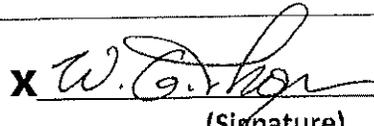
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## Registration Roster

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# DWI Prosecutor Task Force Meeting

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## Registration Roster

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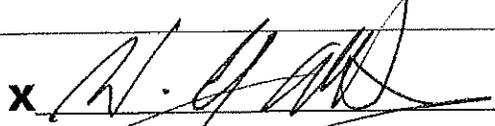
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# DWI Prosecutor Task Force Meeting

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## Registration Roster

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Name: Clay Abbott    
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## Introductions

All Task Force members introduced themselves. Clay Abbott briefly opened the floor for suggestions on training options or issues that needed to be addressed that were not listed on the agenda (included in Task Force members packet). Sean Teare from the Harris County District Attorney's Office suggested a training on blood draws because he is having an issue with defense lawyers in his area revoking the consent for the blood draw after the fact. Two judges have thrown out the blood draw completely and those cases are currently on appeal. For the time being, they are offering breath before blood misdemeanors and not reading DIC -24 implied consent forms on felonies, just going straight to the search warrant. No other jurisdiction was having issues similar to Harris County. Clay asked for Sean or someone from his office to write an article for TDCAA when the two cases on appeal come back on this issue because it will help other prosecutors who run into the same issue in the future. Jessica said that they are having a problem with the Quality Incident reports being challenged by the defense because it didn't come straight from DPS or the prosecutor, Qis are now being uploaded to a public web site Thus the defense has access to Brady information on labs, just not direct notice from the prosecutor or witness.

Paige asked if anyone was getting Brady grievances, and everyone said no. The threats of them are there, but no one has heard or had one filed at this time. Laura said she's seen an issue with late disclosure. For example, you find a video that hasn't been tagged yet and you disclose it within 20 minutes after finding it. Evidence can be suppressed in that case depending on which county you are in because it wasn't disclosed 3 months ago, and it can also lead to Brady grievances being filed. Laura also brought up that it seems like prosecutors are being burdened with getting documents/records that should be the burden of the defense because of the risk/threat of a Brady violation or grievance. She requested that the Task Force come up with a stock response on what documents/records the state (prosecutors) are not burdened to provide so that prosecutors aren't spending time on tracking down documents/records that are not a part of their discovery. Jessica said that the threat of Brady grievances scares her baby prosecutors into agreeing to do more than they are legally required to produce. Clay said that if anyone has a prosecutor in their office that wants to write an article about the Discovery issues that Laura and Jessica discussed, that would be very helpful.

Paige said they have had massive turn over in their law enforcement agencies. She asked if anyone else is having this problem and what are you doing regarding training new and old officers. Over half of the room raised their hands regarding having the issue of officer turn over. Most law enforcement agencies or officers are not able to go to trainings or extra trainings because of staffing issues. Kacey said they have been sending their officers to short trainings (20 to 30 minutes) at roll calls. Alison said they do roll call where she calls in certain officers at certain times and has a short 30-minute training on certain processes. She offered to email what she has used for these trainings. Her office also has 1 ½ hour trainings once a month to make it more accessible. Another thing her office does is let their younger officers know when there is an expert or DRE testifying in a case and have them come sit in to listen.

These discussions were tabled until after the lunch break.

## Texas DRE

Carlos Champion emailed Kaylene the FY2022 DRE report to distribute to all Task Force members (included in Task Force member packet). Clay went over this report with the Task Force. Carlos also emailed Kaylene an updated DRE list and she published it to TDCAA's website. Carlos has been very good about supplying us with that updated list. Clay said if you want an officer to become a DRE, let him know and he'll put you in contact with Carlos. Prosecutors can also send in a recommendation letter for an officer to better their chances. An idea to use STEP or grant funds for overtime funds for DREs in fatal or serious cases or for experts in jurisdictions that don't have a DREs was discussed. **All Task Force members support and agree this should be funded.**

## Impaired Driving Assessment

The Criminal Justice System section (pages 42-79) of the Impaired Driving Program Assessment were given to the Task members for review (included in Task Force member packet). The full assessment was also emailed to everyone in attendance. Clay went over the recommendation on page 49 regarding Enacting a DWI tracking system. **The Task force agrees with the recommendation of a full DWI tracking system so long as it doesn't include unfunded mandates.** Clay then went over the law enforcement recommendations on pages 62-63. **The Task Force voted to be neutral on the first, agree on the second, neutral on 3-7 and agree on last recommendation.** Went over page 68 recommendations. TDCAA's Diversity, Recruitment and Retention Committee will help with the first recommendation. Bringing in our members/prosecutors to speak and putting them on TDCAA's committees/boards/Task Forces is how TDCAA can help with retention. Neutral on 2, 3, 4.

## Break

## DPS Lab

Clay asked Anna Mudd, Renee Hawkins and Haley from the DPS Lab to introduce themselves. Anna contacted Kaylene before the meeting and had her email out a lab presentation (presentation the lab did for Comal County) and the labs' website to the Task Force members for this portion of the Task Force meeting. Opened the floor for questions/concerns. Clay started the conversation by talking about the statute that was past allowing for remote testimony. Anna said they are doing them for mostly hearings, not trials but they still aren't doing a lot of remote testimony. Clay asked the Task Force members if anyone had done remote testimony and a handful said yes. Alison said that in their county, a lot of the remote technology has been taken out of the courtroom since we are back to in person trials. Clay then talked about the proposal through DPS that stops the testing after finding 1 controlled substance. This would make things move faster in the lab. Clay suggests that the toxicologist stop once finding 1 but then send notification to the prosecutor to see if they would like a lab report sent now and have the defendant waive further testing (which would get rid of the Brady issue) or make a decision on further testing by getting a status update. Anna brought up the issues of statutes and the cases that are never going to even get filed that are being worked which means the ones that do need to get worked are not. Clay strongly suggests that prosecutors contact the lab to tell them to go ahead and stop testing after 1, get waiver from defense with option of reversal and then follow up with the lab when a case is closed out. Anna says they are now sending spreadsheets to county offices letting them know what cases they still have open in the lab for them. This lets the prosecutor go through the list and email the lab to know which ones can be closed out. Anna said to let them know if you want one sent monthly or,

if you do get the spreadsheet already and need it sent to someone else, let her them know that as well. Clay asked if anyone would be willing to try the stopping of testing, submitting the waiver of further testing and getting status report/update. Kacey volunteered to draft up language for the waiver and try it out. Haley brought up only having 1 toxicologist being brought in to testify regarding a lab report instead of all the toxicologists that signed it. Clay said he liked the idea of having multiple signatures on the lab report and only having 1 person testify. Would it be worthwhile for Clay to develop an online training with him, Task Force members and the lab to go over these issues, including the Quality Incident issues talked about at the beginning of the meeting. Everyone agreed this would be a good idea. He also asked if the Task Force members agreed with 1) having a toxicologist come in and speak for 1 ½ hours at his regional trainings and 2) getting the toxicologists paid for having to come and speak at the training. Everyone agreed if the lab would be on board and had the staff to allow this. In close, Anna talked about new disclosures and how to access cases and QI's online. Haley let them know that if any updates are made to the disclosure form, she would send it out to every county in Texas.

### **DWI Regional Training**

Clay discussed last year's programs: Effective Courtroom Testimony, Rolling Stoned: Investigating and Prosecuting the Drugged Driver and Worst-Case Scenario: Impaired Driving Crashes from Crash to Courtroom.

For Rolling Stoned, Jessica and Alison recommended changing Rolling Stoned to Drugged Driving and how to try those cases in front of a jury. Take out the first hour and the toxicology and add in more voir dire. Sean suggested on touching on voir dire in 5 to 10 minutes segments within sections of the program to keep everyone interested. They also suggested dropping some of the marijuana section, but not the majority of it. Keep Egdorf/DRE reconstruction. It was suggested that the course be renamed to Investigating and Prosecuting the Drugged Driver. Heath suggested bringing in individual susceptibility. Laura suggested the first section be No alcohol, no problem. Everyone agreed. Clay said the second section could be Presentation of the drugged driving case and third section could be DRE reconstruction. For the afternoon portion, Jessica said we need to put in SFST and drugged driving. Clay suggested talking about executive function instead of the focus on SFST (mental faculties) and drugged driving. Everyone agrees. Andrew suggested keeping per se limits in the training as well. Clay suggested putting in per se and executive functions with voir dire as the first afternoon section and then scale back on marijuana and add in prescription drugs for the second afternoon section. Everyone agreed. Clay divided up editing responsibilities.

Everyone agreed that Effective Courtroom Testimony should be kept as a training option because officers are still requesting this course and loving it. No edits to this course were suggested.

Everyone agreed that Worst Case Scenario should be kept as a training option. Clay and Andrew will tweak some of the sections/slides before presentation.

Clay suggested another training option/course for basic DWI material which includes vehicle in motion, personal contact, slowing down to get probable cause/beyond a reasonable doubt, SFST clues (alcohol and drugs) and breath and blood/search warrants. Everyone agreed. Name to be determined.

**The Task Force recommended proceeding in 2023 with Effective Courtroom Testimony, Worst Case Scenario, and a new Revisiting Fundamentals program and using the year to rework drugged driving.**

### **Advanced Trial Advocacy Courses**

Clay said Intoxication Manslaughter will be the Advanced course being offered by TDCAA this year (summer 2023). He will suggest everyone that attends the course to watch both voir dire videos and the intoxication manslaughter video on TDCAA's website. Clay and the Task Force members went over the 2018 agenda and divided up speaking responsibilities.

### **DWI Resource Prosecutor Project**

Clay tasked the Task Force members with going over TDCAA's current grant objectives and emailing with any change request or updates for next year's grant proposal. Everyone agreed to proceed with all the notes and trainings set forth in these meeting minutes.

### **Adjourn**



## Texas Drug Recognition Expert Program

### Fiscal Year 2022 Final Report

October 1, 2021: 297 DREs in Texas.  
September 30, 2022: 349.

#### Courses Conducted

##### **DRE Schools**

San Antonio, Texas  
January 31 to March 3, 2022  
Certified **12 new DREs**

Grand Prairie, Texas  
June 6 to July 15, 2022  
Certified **16 new DREs**

Humble, Texas  
July 18 to Aug. 26, 2022  
Certified **11 new DREs**

##### **DRE Instructor School**

Georgetown, Texas  
January 10 to 14, 2022  
Certified **10 new DRE Instructors**

##### **DRE Recertification Classes**

Coppell, Texas  
November 4, 2021

Round Rock, Texas  
November 8, 2021

Humble, Texas  
November 9, 2021

Southlake, Texas  
December 1, 2021

Humble, Texas  
January 19, 2022

San Antonio, Texas  
February 23, 2022

Eules, Texas  
March 21, 2022

Georgetown, Texas  
April 13, 2022

League City, Texas  
May 17, 2022

Grand Prairie, Texas  
June 29, 2022

Humble, Texas  
August 10, 2022

Humble, Texas  
Sept. 12, 2022

Hutto, Texas  
September 14, 2022

Carrollton, Texas  
September 16, 2022

##### **145 DREs recertified in FY 2022.**

We provide TDCAA with a list of Texas DREs on a quarterly basis. The list contains currently certified and recently expired DREs who are in the process of recertification.

## DRE Program Marketing

We attended 27 trainings, seminars, and conferences related to impaired driving enforcement to market the program and where appropriate, recruit potential DRE candidates.

## Program Survey

On August 30, 2022, we sent out a survey, via Survey Monkey, to all Texas DREs to assess their perceptions of the program's effectiveness. The survey was anonymous and probed DRE's experiences as a DRE in their jurisdiction.

Here are some key takeaways from the 137 respondents.

### **Related to their local experiences as a DRE.**

My agency needs more DREs

Somewhat agree to strongly agree: 90%

My agency calls me, or another DRE in my agency, to conduct a drug influence evaluation in every DWI case where the subject is suspected of drug impairment.

Somewhat disagree to strongly disagree: 50%

In my agency, the biggest impediment to being called to perform a drug influence evaluation in DWI cases is the arresting officers.

Somewhat agree to strongly agree: 74%

*Commentary: The results from the three statements above indicate that there is a need for more DREs as well as greater education and awareness regarding the benefits of involving a DRE in all DWI cases where the driver is suspected of drug impairment.*

ARIDE training is needed in my area.

Somewhat agree to strongly agree: 95%

*Commentary: Providing ARIDE training in greater numbers to a wider audience will give the program the ability to address the issues related to the DREs' local experiences, as well as recruiting new DREs into the program.*

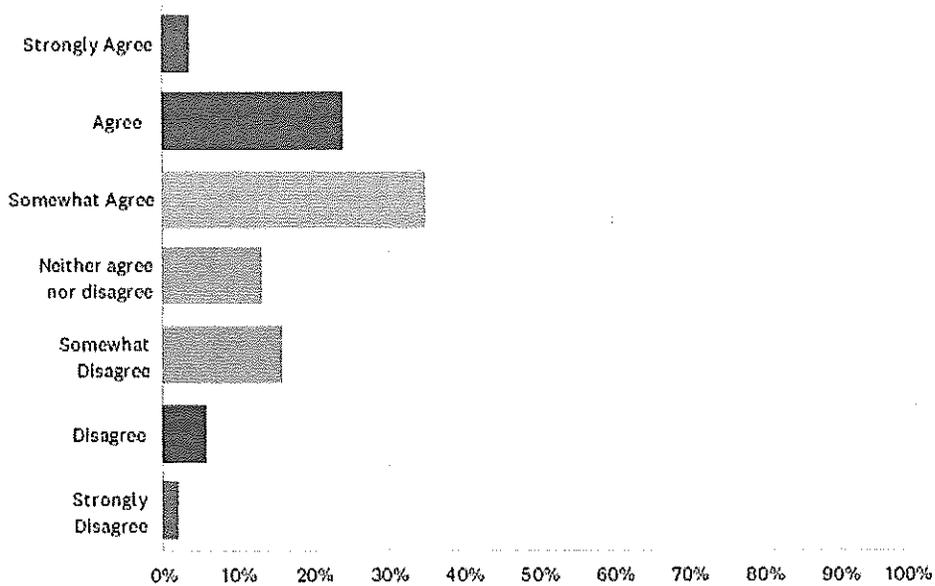
I need training to enhance my ability to effectively testify in court in impaired driving cases.

Somewhat agree to strongly agree: 72%

## Key question related to their perception of prosecutors

Q15 Most prosecutors I interact with know about the DRE Program.

Answered: 137 Skipped: 0



ANSWER CHOICES	RESPONSES	
Strongly Agree	3.65%	5
Agree	24.09%	33
Somewhat Agree	35.04%	48
Neither agree nor disagree	13.14%	18
Somewhat Disagree	16.06%	22
Disagree	5.84%	8
Strongly Disagree	2.19%	3
TOTAL		137



## Highlights for 2022-2023

Advanced Roadside Impaired Driving Enforcement (ARIDE) is now managed by the Texas DRE Program. Our new full-time ARIDE Course Manager / DRE Instructor is Scott Axton, formerly of Euless PD, joins Carlos Champion and Mark Vincent on staff.

We are obligated to teach 30 ARIDE courses but will most likely surpass that. Our ARIDE and DRE course calendar can be viewed by scanning the QR code below.

We have 6 DRE Schools planned for 2022-23

El Paso	October 2022
Georgetown	January 2023
Humble	January 2023
Denton	April 2023
Rio Grande Valley	May 2023
Southlake (DPS school)	July 2023



12+ DRE Recertification

The Texas Drug Recognition Expert Program also received funding to provide specialized DWI training from instructors not normally available to Texas law enforcement. The first of which is:

### **"Don't Fear the Darkside"**

New Braunfels PD, December 14 & 15, 2022

A free two-day course designed for law enforcement officers. During this course, participants will receive training on how to testify under direct and cross examination. This course includes application scenarios where participants will be evaluated by instructors. The course is presented by Integrated Impaired Driving Solutions, LLC and is FREE to all Texas peace officers. The training is made possible through a grant from the Texas Department of Transportation.

Recruiting new DREs and new agencies continues to be a priority. We will be vendors at several conferences and hopefully get to present at one or two. We will visit as many DWI related trainings as we can to introduce ourselves to the criminal justice community.

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### **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>2</sup>*

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<sup>2</sup> Limited exceptions are permitted under Federal statute and regulation, 23 U.S.C. 154 and 23 CFR Part 1270.

- *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**

The Texas statutes contain many provisions that are sound approaches and practices calculated to deter impaired driving. The Texas driving while intoxicated (DWI) statute criminalizes driving while “intoxicated.” Intoxication is defined as either (1) not having the normal use of mental or 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, or (2) having an alcohol concentration of 0.08 or more. Because drugs and alcohol are grouped into the same statute, the penalties are generally the same for DWI-alcohol and DWI-drugs. There are, however, statutory enhancements that only apply to alcohol. For example, having an open container of alcohol or having a blood alcohol concentration (BAC) of 0.15 or greater increases the penalty. Because there is no provision that makes an “open container” of an illegal impairing substance an enhancement for penalty purposes, the presence of alcohol and the illegal substances in the vehicle are not treated equally. Another inequality is that there appears to be no statutory provision to enhance the penalty for driving with a greater level of the illegal impairing substance in the body beyond the detectable presence requirements. Furthermore, it is possible to prove intoxication via alcohol with the 0.08 BAC per se limit. No such per se limit exists for drugs in Texas law.

The penalties provided appear to be reasonably consistent with other Texas statutes that define criminal-law violations.

Texas statutes do not provide enhanced penalties for multiple substances. A Texas statute defines an enhanced penalty for a high BAC. For a first-time offense, the penalty for DWI is a Class B misdemeanor with minimum confinement of 72 hours. The range of punishment is a fine not to exceed \$2,000 and confinement of 72 hours to 180 days. Texas Penal Code Section 49.04(d) then adds that 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. A Class A misdemeanor has a range of punishment of confinement not to exceed one year and a fine not to exceed \$4,000. There appears to be no statute providing an enhanced penalty for multiple impairing substances in the body or increasing amounts of substances in the body. It appears that the enhanced penalty for high BAC has little impact on the actual sentencing of offenders. Texas statutes impose increased penalties for subsequent offenses of impaired driving. An additional conundrum is found with the DWI courts. Only subsequent offenders are eligible to participate in the DWI Courts, but the judges have the discretion to dismiss the charge if the offender complies with the DWI Courts' requirements.

The Texas statute specifies that a chemical test refusal shall be treated with administrative sanctions that are as strict as the state's highest impaired driving offense. Texas Transportation Code Chapter 524 authorizes the Administrative Suspension of Driver's License for Failure to Pass Test for Intoxication and Chapter 724 (C) and (D) covers Suspension or Denial of License on Refusal to provide a breath or blood specimen for DWI cases.

Texas Transportation Code Section 521.457 does not define driving with a suspended or revoked license (DWS) due to impaired driving, vehicular homicide, or causing personal injury while driving impaired as separate offenses, but it does affect the offense class, which increases the severity of punishment. However, it does increase the severity of punishment by increasing the offense from a Class C misdemeanor to a Class B misdemeanor.

Section 521.344 of the Texas Transportation Code requires a suspension of not less than 90 days or more than one year for a first offense. The suspension begins on a date set by the court that is not later than 30 days after conviction. However, the listed exceptions result in inconsistent application of the statute.

Texas statutes set out and mandate enhanced penalties for the following: 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.

The penalties include 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.

Texas Transportation Code 545.413 establishes the "Primary Seat Belt" provisions in the statute. Texas does not require that officers observe or cite a driver for a separate offense in addition to the seat belt violation.

Texas does not have a statute to provide clear standards to 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. The Texas Legislature and Governor have opposed such a statute when one is introduced. The Texas Court of Criminal Appeals held that a statewide plan setting out guidelines by statute is needed to make use of roadblocks constitutional. Until that time, DWI roadblocks are illegal.

The Implied Consent Law for Texas, Code Section 724.012, states that one or more specimens of a person's breath or blood may be taken if the person is arrested for DWI or Boating While Intoxicated and the officer has reasonable grounds to believe the person is intoxicated. The statute authorizes the peace officer to designate the type of specimen to be taken unless the officer believes that as a direct result of an accident occurring as a result of the offense any individual has died, will die, or has suffered serious bodily injury, then the officer shall require a blood specimen.

At this time, Texas law enforcement officers are not relying on the Texas DWI statute to obtain blood samples without warrants. However, Texas Code of Criminal Procedure Art. 18.02 allows a warrant for seizure of any property or item constituting evidence of an offense. This includes a search warrant for blood. Art. 18.067 allows a search warrant issued to collect a blood specimen from a person suspected of committing an intoxication offense to be executed in any county adjacent to the county in which the warrant was issued and by any law enforcement officer authorized to make an arrest in the county of execution. Thus, the State provides evidence of the statutory authorization to obtain blood or urine.

Texas Transportation Code Sec. 724.012(a-1) requires the taking of a specimen of a person's blood if the person is arrested for an intoxication offense under Chapter 49 of the Penal Code. If the person refuses to provide a specimen and the officer reasonably believes that as a direct result of an accident that occurred as a result of the offense the officer believes that any individual has died, will die, or has suffered serious bodily injury, the officer is required to obtain a specimen.

A peace officer may not require the taking of a specimen under this section unless the officer:

- (1) obtains a warrant directing that the specimen be taken; or
- (2) has probable cause to believe that exigent circumstances exist.

Texas statutes do not mention or authorize saliva testing or preliminary breath tests.

Only motor vehicle and watercraft operators are subject to mandatory BAC testing. Motorcycle operators, but not pedestrians or bicyclists, are subject to this statute.

The Texas statutes do not mandate assessment for alcohol or other drug abuse problems for ALL impaired driving offenders and, as appropriate, treatment, abstention from the use of alcohol and other drugs, and frequent monitoring.

In Texas, community supervision is the term for what others may call probation. 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 Department of State Health Services 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. The assessment is not required for other dispositions such as work release or other programs.

Another area of concern is the deterrence of younger drivers from DWI. The Texas statute provides that "A minor commits an offense if the minor operates a motor vehicle in a public place, or a watercraft, while having any detectable amount of alcohol in the minor's system." There is no mention of driving with an impairing substance except under the Impaired Driving code. There is concern that the impaired driving cases where the driver is impaired by substances other than alcohol are increasing. The advisory recommends making it illegal per se for persons under age 21 to drive with any other impairing substance.

The Texas statute clearly authorizes a judge receiving a defendant for supervision to impose terms of community supervision on the defendant. A judge who receives a defendant for supervision as authorized by Section 510.017, Government Code, may impose on the out of state defendant any term of community supervision authorized by this chapter.

In contrast, there is no statute available for review that sets out how a defendant leaving for another state will be supervised.

Texas has statutory requirements to use proven technology (e.g., ignition interlock device, electronic confinement, and monitoring) with the capability to produce reports on compliance for use both judicially and administratively. However, the language of the statute is not as mandatory as it would seem. See:

(a) Except as provided by Subsection (b), a magistrate shall require on release that a defendant charged with a subsequent offense under Sections 49.04 - 49.06, Penal Code, or an offense under Section 49.07 or 49.08 of that code:

(1) have installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant, a device that uses a deep-lung breath

analysis mechanism to make impractical the operation of a motor vehicle if ethyl alcohol is detected in the breath of the operator; and

(2) not operate any motor vehicle unless the vehicle is equipped with that device.

(b) The magistrate may not require the installation of the device if the magistrate finds that to require the device would not be in the best interest of justice.

While the statute mandates that the magistrate require a device in the first part, in a subsequent section the statute gives the judge an out from the mandate. A significant gap exists between reporting the order and the installment of the device. Companies protect data and a statutory requirement to share data is needed.

Statutory requirements for permitting/approval of the device for use in Texas criminal justice agencies should be improved. Over 800 Justices of Peace (JPs) are serving in the magistrate role. That role includes the initial advising of rights and setting of bond conditions. The JPs issue occupational driver licenses for instances where the defendant has refused or failed to take a blood or breath test. Monitoring of installation of interlock remains with the magistrate until criminal charges are filed. Texas statute allows the judge to discount the device costs by up to 50 percent.

All parts of the criminal justice system are concerned about the risk of increase of impaired driving with any legalization of marijuana.

Texas has no statutory nor rule support for DWI Dockets or Courts as a sentencing alternative for persistent DWI Offenders.

The statute requires reports about supervision to be provided to the courts and judicial authorities. Knowing what percentage of the defendants are monitored by technology would be a first step in understanding the effectiveness of the statute. The recent "Damon Allen" statute on criminal history went into effect in April 2022. The statute provides that the Sheriff will prepare the public safety report if the Sheriff agrees and a Judge orders. This is a small step but at least it acknowledges the need for a robust and complete criminal history record.

Periodic reports on offender compliance with administrative or judicially imposed sanctions are required by statute. It is up to each individual department policy and supervision officer discretion to determine the frequency of offender reporting requirements. For example, there is no statute that says a defendant on probation for DWI first offense has to report to an officer once a month. Additionally, the type of sanction imposed for violations, e.g., defendant had an ignition interlock violation last month and so the probation officer is going to increase monthly reporting requirements, is determined by each department's policy, the supervision officer, and the courts.

The state has not enacted statutes nor promulgated consistent administrative rules to implement impaired driver tracking systems across the entirety of the impaired driving countermeasure system. The failure to statutorily require a DWI tracking system impedes the effective management of impaired driving cases from arrest to post adjudication. Therefore, the Texas statutes do not protect the innocent drivers and bystanders on the roads of Texas.

What is not clear is how consistently Texas applies its statutes and how often and for what reasons the penalties are mitigated. The statistics as reported are very helpful in understanding the flow of cases. It is not clear that the harshness of the statutes overcomes the disjointed applications. The statutes are not deterring impaired driving, particularly when the driver is impaired by multiple substances. The large number of dismissals may indicate that the effectiveness of the statutes is diminished by the inconsistent applications of the statutes. The gap in the statutory provisions indicates the possibility of inconsistent and not comprehensive provisions for when the driver is impaired by multiple substances.

While some statutes can be improved, the single most needed and likely to enhance the Texas work to prevent impaired driving would be a statute giving strong incentives to all keepers of the criminal justice data points for impaired driving offenses to make sure that the records systems communicate data to each other. Without complete and accurate data from a comprehensive system tracking every DWI offense from stop through post adjudication, the public is not protected from the repeat DWI offenders.

### **Recommendations**

- **Enact a statute that establishes a driving while intoxicated (DWI) tracking system by giving strong incentives to all keepers of impaired driving offenses data to make sure that the records systems communicate data to each other to track every DWI 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**

### **Introduction**

Law enforcement plays a significant role in executing the State's traffic safety programs. Texas law enforcement has the responsibility of reducing fatal and serious injury crashes through high visibility enforcement and engagement efforts. Moreover, law enforcement agencies are still rebuilding stakeholder relationships from the 2020 social unrest issues. The State has 254 counties with a population of nearly 29 million people. There are 2,730 different law enforcement agencies serving the great people of the Lone Star State.

The challenges surrounding law enforcement's ability to adequately address impaired driving incidents involve the following:

- officer vacancies
- lack of chief and sheriff emphasis on impaired driving (overall)
- competing priorities
- population growth
- communication and information sharing among other criminal justice impaired driving stakeholders

The lack of law enforcement staffing is prevalent in Texas, and this is a major detriment affecting law enforcement executives and community stakeholders to address the on-going issues surrounding crime reduction, traffic enforcement, and specifically, proactively addressing impaired driving. Impaired driving cases have always been about looking beyond the traffic stop, which necessitates the need for adequate staffing. When staffing is significantly reduced maintaining minimal "patrol" coverage becomes the priority. In addition to staffing, competing interests such as the on-going U.S.-Mexico border operations, repairing police defunding decisions, law enforcement leadership not prioritizing impaired driving efforts, rapid population growth, and communication or sharing information among other criminal justice stakeholders.

The State reported no internal communications to law enforcement executives emphasizing impaired driving. However, some agencies do emphasize the tone to remove impaired drivers through pre- and post- media messaging.

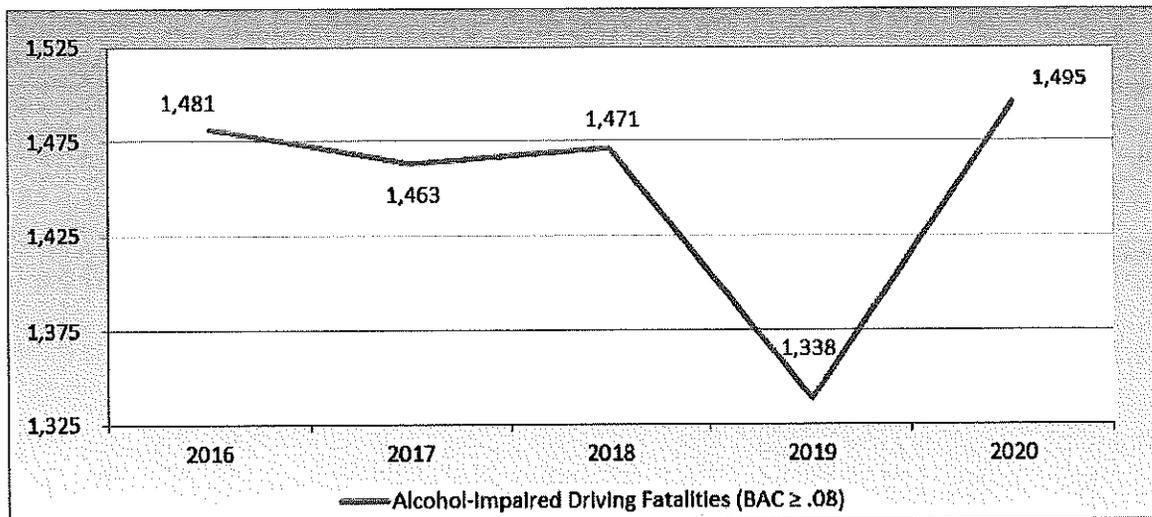
The State uses enforcement, media, outreach, and prevention-focused projects at local and statewide levels to reach the overall driving public with an emphasis on the identified high risk population groups and high-risk areas/communities. Projects including ignition interlock device, driving while intoxicated (DWI) Bond Condition program, and supervised probation are focused on preventing recidivism among high-risk offenders. Moreover, DWI judicial education, a DWI Judicial Liaison, and a DWI Resource Prosecutor are part of the Highway Safety Plan (HSP) to assist with reducing DWI recidivism. Texas funds and supports law enforcement to increase the number of impaired driving arrests during grant funded activities and focuses on alcohol-impaired fatalities which continue to be a statewide problem. Funding for enforcement as well as for impaired driving and drugged driving training for law enforcement officers are also a part of the HSP. The courses include Standardized Field Sobriety Testing (SFST), Advanced Roadside Impaired Driving Enforcement (ARIDE), and the Drug Recognition Enforcement (DRE) program among others. The Texas Department of Transportation (TxDOT) uses impaired-driving crash data to proactively recruit law enforcement agencies into selective traffic enforcement program (STEP) by discussing the data with that agency's representatives.

A leadership and communications plan are the foundations for impaired driving education and enforcement efforts. Leadership must emphasize impaired driving education and enforcement **as a priority** through data collection, officer and stakeholder

training, intentional on-going saturation patrols, and officer recognition. Simultaneously, these efforts must be done with stakeholder involvement, e.g., partnering agencies, prosecutors, non-profits, media (including social media), and community leadership engagement (i.e., decision-makers and those that allocate and/or influence funding) and later evaluated for program effectiveness.

According to the Fiscal Year (FY) 2023 Texas Highway Safety Plan, there were 1,495 alcohol-impaired driving fatalities in Texas in 2020. Texas ranks in the top 10 states nationally for alcohol-related fatalities per 100 million vehicle miles traveled (VMT) for FY2020, the most current year for which data is available.

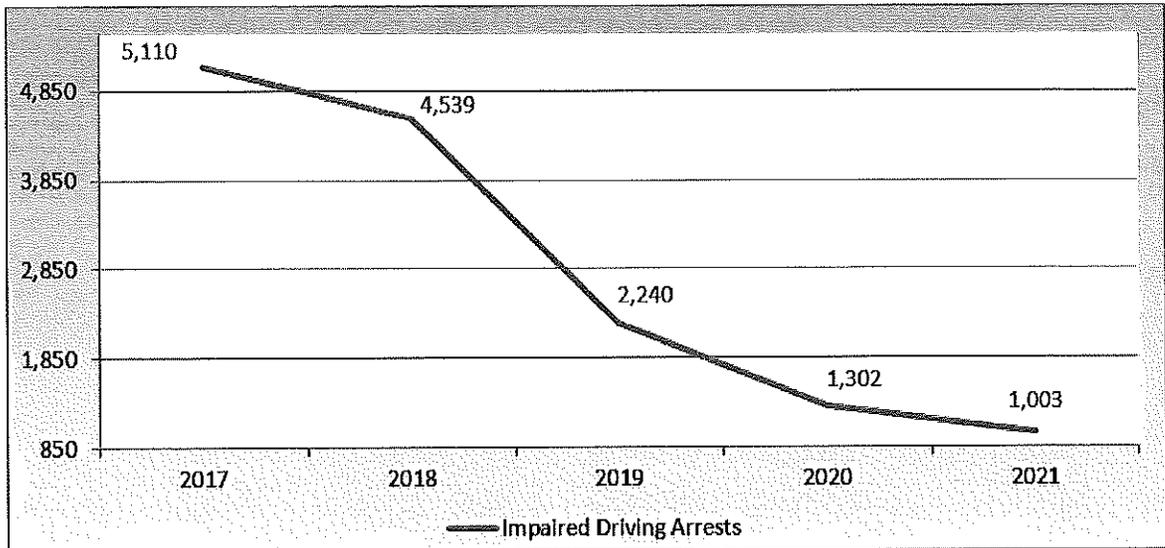
### Alcohol-Impaired Driving Fatalities - BAC $\geq$ .08 (C-5)



Source: Fatality Analysis Reporting System (FARS April 9th, 2022)

During this same period, the number of arrests resulting from grant-funded impaired driving enforcement activities decreased.

## Impaired Driving Arrests/Funded Enforcement Activities (A-2)



Source: Department of Transportation TRF-BTS eGrants, June 5th, 2022

According to [www.texasshsp.com](http://www.texasshsp.com), 61 percent of impaired driving fatal and serious injury crashes occur between 9 p.m. and 4 a.m. with additional factors cited:

- intersections: 24 percent
- arterials: 48 percent
- state roads: 65 percent
- urban: 50 percent
- single vehicle: 63 percent
- speeding: 26 percent

### Law Enforcement Planning, Communication, and Resources

The State employs an Impaired Driving Task Force that meets three times a year as a group. Members serve on subcommittees representing the following:

- awards
- education
- legislative
- research
- drug impaired driving

The Texas Impaired Driving Task Force (TxIDTF) is a multi-disciplinary group representing the Traffic Safety Division, Breath Alcohol and Toxicology, Communication, Data and Traffic Records, Driver Licensing, Education, Enforcement, Ignition Interlock Program, Judiciary, Prosecution, Research, and Treatment. This task

force is responsible for updating the State's Impaired Driving Plan each year. Besides increasing impaired driving training, the State has one specific strategy for law enforcement broken in four action plans:

- traffic enforcement
- data-driven approach
- law enforcement training
- sobriety checkpoints

Additionally, the State incorporates strategies to increase education for all roadway users on the impact of impaired driving and its prevention, improving mobility options for impaired road users, and increases resources (data and training) for prosecutors and officers surrounding drugged driving.

The State also uses data-driven funding model for STEP projects that prioritize impaired driving enforcement by weighting K (Fatal) and A (Suspected Serious Injury) crashes heavier than the other crash types resulting in agencies with higher DWI-KA crashes receiving more funds for STEP-Comprehensive (year-long enforcement in all 12 months) projects. For STEP-IDM - Impaired Driving Mobilization; 4 two-week mobilizations each FY, the same data is focused on agencies with high numbers of DWI-KA crashes and high frequency (DWI-KA vs. Total-KA) and/or high Texas State Trend Over-Representation Model (TxSTORM) values as recruiting targets for the Traffic Safety Specialists (TSS) and Law Enforcement Liaisons (LELs). TxSTORM is a multi-agency product of the Texas Traffic Records Coordination Committee designed to identify crash-related trends and facilitate the efficient deployment of resources. The intent is for LELs and the TSS community to focus recruiting efforts on jurisdictions with high values in the categories above and get them involved in STEP. This in turn helps the agency move to the front of the line for SFST refreshers and ARIDE trainings and other Texas Commission of Law Enforcement (TCOLE) and STEP-related training options.

The State, through data analysis, has identified the following STEP dates for High Visibility Enforcement—Impaired Driving Mobilization (IDM): Christmas/New Years, Spring Break, Independence Holiday, and Labor Day Holiday period. Interestingly, most agencies do not participate in STEP IDM. Of the 2,730 law enforcement agencies, less than 30 agencies were actively participating during this assessment.

Texas conducts the Texas Statewide Traffic Safety Awareness Attitude Awareness Survey through a grant with Texas A&M Transportation Institute. The last survey was conducted in 2020. Moreover, the statewide impaired driving campaign conducts quarterly surveys, which was last conducted in June 2022.

According to the *Texas Statewide Traffic Safety Awareness Attitude Awareness Survey: 2020 Results*, impaired driving enforcement campaign messages are seen and heard by Texas drivers, as evidenced by the majority (74.0%) of Texans surveyed who reported they had read, seen or heard an impaired driving enforcement message within the past year. Most Texas drivers (62.7%) believe it is very likely that impaired drivers will be

arrested. Almost a quarter of the survey respondents (23.1%) were not sure of the legal blood alcohol concentration (BAC) limit for intoxication in Texas, with an additional 22.1 percent selecting an incorrect response. The most often cited influence on reducing impaired driving is concern over being in a crash due to impairment effects. The least often cited influence for both was an employer policy. Most Texas drivers (62.7%) believe it is very likely that impaired drivers will be arrested.

Similarly, the goal of the *Impaired Driving Wave 5 2022 Statewide Survey* was to understand impaired attitudes and behaviors, understand how many Texans know Texas laws and penalties, and gain insight on potential messaging strategies.

#### Behaviors and Beliefs:

1. Three percent of respondents drink or use other drugs at least a few times a week to the level that would impair their driving.
2. Getting liquor “at home” is listed as the #1 place (20%) with grocery stores and liquor stores tied for second (18%). The least frequented places are sporting events, festivals/concerts, and alcohol delivery services.
3. Birthday is the occasion for which the most people report drinking (67%) and select it as #1 (44%) as the event for which they drink the most. New Year’s Eve/New Year’s Day is second.
4. Seventy-nine percent are confident (54% very) in their ability to know when they are impaired, yet 34 percent said the reason they drove impaired was that they thought they were okay when they really weren’t.
5. When asked what the biggest obstacle to a sober ride was, 42 percent said they didn’t expect to be impaired (30% selected this as the #1 reason).
6. Sixty-seven percent say they know they are not okay to drive because they feel buzzed, drunk, or high.
7. Respondents are more comfortable with themselves than with others driving after drinking or using other drugs.
8. Forty percent admit to driving under the influence; at the top, rationale was that they just plan to be careful (49%) and know their limits (42%). They average 2.6 excuses per respondent.
9. Most were willing to do all except take a breathalyzer or rideshare.
10. Seventy-five percent were likely to consider an alternative way home after first drink or when starting to feel buzzed.

#### Consequences:

1. Eighteen percent of respondents had been pulled over while impaired.
2. Nine percent received a DWI when pulled over.
3. Fifty-five percent received a ticket when pulled over.

#### Knowledge of the Law:

1. Sixty-two percent know the current legal limit in Texas and 77 percent know that regardless of their blood alcohol level, they are breaking the law if their driving is impaired by alcohol or other drugs.
2. Seventy percent think they will spend time in jail for DWI, but only 13 percent know the average cost of a DWI.

Interestingly, both surveys had no specific questions regarding drugged impaired driving.

Public information is routinely provided prior to each DWI enforcement campaign. The State uses a variety of mediums to deliver messages. The State provides press releases (pre- and post-) along with a variety of social media platforms. Each agency participating in STEP IDM is required to conduct pre- and post- media outreach with campaign results.

The State utilizes the Law Enforcement Advanced Data Reporting System (LEADRS), which is funded by the Texas Department of Transportation (TxDOT). The design of the system is to streamline the DWI arrest process, improve report quality for prosecution, and provide statistical data to TxDOT. As a result of this system, 74 percent of those recently surveyed said they could complete an entire DWI arrest in less than two hours. LEADRS streamlines the DWI process by:

- removing the traditional narrative style report format
- standardizing the DWI questionnaire and other forms
- auto-populating information and eliminating redundancy
- obtaining electronic blood search warrant signatures
- providing electronic associated search warrant forms
- automating system checks for errors

LEADRS provides agencies with detailed and granular level reports regarding impaired driving contacts. This advanced system allows police executives to make informed decisions about impaired driving enforcement. Moreover, LEADRS captures point-to-point establishment consumption locations to assist the Texas Alcoholic Beverage Commission to extract data to assist in their investigations.

#### **Law Enforcement Liaisons**

The State has six law enforcement liaisons (LELs). Each is assigned several districts (no more than six) and is responsible for recruiting law enforcement grantees. Texas LELs are all former or active Texas law enforcement officers. Combined, they have a total of 136 years of law enforcement experience. The LELs are the primary communication bridge between the Traffic Safety Division and law enforcement agencies.

The purposes of the State's LELs are to:

- promote, support, and assist with traffic safety programs throughout the State of Texas
- assist Texas Department of Transportation staff with grant programs as requested
- market and instruct all LEL grant course curricula
- support partner organizations with traffic safety events
- achieve all grant goals and objectives

Each LEL performs the following duties:

- trains agencies and partner organizations on TxDOT-funded programs, grant administration, and eGrants
- works closely and develops a strong working relationship with TxDOT, Traffic Safety Specialists, and partner organizations
- markets and promotes the HSP and TxDOT-funded programs
- attends traffic safety related conferences, community events, and safety fairs
- maintains child passenger safety certifications as a technician or instructor
- assists with media activities
- acts as a spokesperson when requested at traffic safety events
- develops and updates course curricula as necessary
- performs other duties as assigned by the LEL Program Manager

The LEL program works with command staff at local agencies to help them obtain funding for STEP programs funded by TxDOT and provide heat maps (crash locations). Those STEP programs include funding for impaired driving mobilizations. LEADRS program provides agencies using the system with detailed reports regarding impaired driving stops. Focus on Reducing Impaired Driving Among Youth (FRIDAY); Alcohol and Drug Abuse Prevention (ADAPT); and Drug Impairment Training for Educational Professionals (DITEP) programs train educational professionals to better recognize signs of impairment. These classes are available to all ranks of law enforcement and educational professionals.

The LELs are primarily evaluated on meeting with law enforcement agencies, assisting at Child Passenger Safety events, conducting presentation, and attending community events.

Lastly, LELs disseminate information to law enforcement and the public through the Texas LEL program website [www.buckleuptexas.com/step-program-resources](http://www.buckleuptexas.com/step-program-resources).

**DWI Arrests/Incidents, Sobriety Checkpoints, and High-Visibility Enforcement**

For three straight years, DWI arrests are declining in Texas:

- 2018: 98,349
- 2019: 97,539
- 2020: 82,597

Sobriety checkpoints are not authorized in Texas. *Holt v. State*, 887 S.W.2d 16 (Tex. Crim. App. 1994) held that a statewide plan setting out guidelines is needed to make use of roadblocks constitutional. Until that time, DWI roadblocks are illegal. The Texas Legislature has been presented with bills for more than 10 sessions and it has never made it out of committee. For the past three sessions, the bill has not even found a sponsor.

The TxDOT Traffic Safety Division (TRF) requires all STEP IDM grantees to participate in high-visibility enforcement (HVE). The State has four two-week HVE periods. Education and Community Outreach HVE, media relations, and community education are key factors in the success of the program. TRF ultimately maintains the statistical data of STEP IDM results which include the number of stops, enforcement hours, citations, and arrests.

**Ignition Interlock Device**

The State employs a combination of mandatory and “at the judge’s discretion” ignition interlock device orders for DWI offenses.

	Code(s)	1 <sup>st</sup> Offense	Enhanced	Subsequent
<b>Driving While Intoxicated, Boating While Intoxicated, or Flying While Intoxicated Bond Conditions</b>	<b>CCP 17.441</b>	Discretion of Judge	0.15 BAC or Higher, Discretion of Judge	Mandatory
<b>Intoxication Assault, Intoxication Manslaughter, DWI w/Child Passenger</b>		Mandatory	N/A	Mandatory
<b>As a condition of probation – Driving While Intoxicated, Boating, Flying, Intoxication Assault, Intoxication Manslaughter</b>	<b>CCP 42A.408</b>	Discretion of Judge	0.15 BAC or Higher, Mandatory	Mandatory, not less than 50 percent supervision period
<b>Driving While Intoxicated, Boating</b>	<b>CCP 42A.408</b>	Mandatory	N/A	N/A

<b>While Intoxicated: As a condition of deferred adjudication</b>				
<b>Defendants under 21 years of age, if placed on probation – Driving While Intoxicated including Boating and Flying, Intoxication Assault, Intoxication Manslaughter</b>	<b>CCP 42A.408(e),  TTC 521.342 (b)</b>	Mandatory, not less than 50 percent supervision period	N/A	Mandatory, not less than 50 percent supervision period
<b>Condition of issuance of occupational license – if defendant has been convicted of an offense of DWI, Intoxication Assault, Manslaughter</b>	<b>TTC 521.246</b>	Mandatory	N/A	Mandatory, not less than 50 percent

The defendant shall obtain the device before the 30th day after the date the defendant is released on bond; or before the 30th day after conviction if placed on probation.

Texas Transportation Code (TTC) **521.2465 requires** interlocks for first-time offenders with a blood alcohol concentration (BAC) of 0.08 or greater for a period of 90 days to one year if they choose to drive during a license suspension. Interlocks can still be ordered by the courts. TTC **521.2465** allows for persons arrested for DWI to apply for an ignition interlock device (IID) 15 days after arrest, or the person can choose not to drive. The time periods a person must go on an IID are:

- 1st offense, 0.08 BAC or greater: 90 days to one year if they choose to drive during a license suspension
- 2nd offense: 180 days to two years
- 2nd or 3rd offense: one year to two years

**Government Code Sec. 411.0731** allows a person convicted of DWI with a blood alcohol concentration of less than 0.15 to petition for an order of nondisclosure of criminal history related to the offense. A person can petition for the order only if they:

- Have never been convicted or placed on deferred adjudication community supervision for another offense, other than fine- only traffic offenses
- Has successfully completed community supervision and any confinement term
- Have paid all fines, costs, and restitution

A person may petition the court that placed them on community supervision for an order of nondisclosure only on or after:

- Successful completion of community supervision and had an interlock device on the vehicle for no less than 6 months, then the individual can file 2 years after completing community supervision.
- If no interlock device was on vehicle, then the wait time is 5 years from when probation successfully completed.

A person who completes a sentence following a first DWI conviction (along with confinement, financial obligations) may petition the court only on or after:

- Successful completion of individual's sentence and had an interlock device on the vehicle for no less than six months, then the individual can file 3 years after completing sentence.
- If the court that imposed the sentence did not order an interlock condition, then the individual can file 5 years after completing sentence.

The Judges in Texas may use discretion in some cases and in others it is mandatory. Currently, the state does not train law enforcement in the IID process and does not know how many IIDs are in circulation.

### **Law Enforcement Training**

The State provides impaired driving training to law enforcement, which includes SFST, ARIDE, and DRE. Moreover, the State provides SFST Refresher training and SFST/DRE Instructor Development Courses (as needed). An eight-hour in-person SFST Refresher Course is also available for certified officers. However, the State did not indicate if an SFST refresher class is required within a specified timeline of working the DWI enforcement grant.

The State provides many training opportunities for law enforcement. The curricula utilized by Texas includes the National Highway Traffic Safety Administration (NHTSA)/International Association of Chiefs of Police (IACP) SFST course, NHTSA/IACP ARIDE, NHTSA/IACP DRE Training, and an eight-hour in-person SFST Refresher Course. The State also delivers Drug Impairment Training for Educational Professionals (DITEP); FRIDAY; and Alcohol and Drug Abuse Prevention Training (ADAPT) to a variety of stakeholders groups.

The Texas Drug Evaluation and Classification Program (DRE Program) has gone through some recent organizational change. Both the organization providing program oversight and the DRE State Coordinator are new to the TxDOT TRF. The State currently has less than 340 certified and credentialed DREs.

A three-year review of available data from Texas indicates the following:

- 2021: 486 DRE Enforcement Evaluations / 83 percent toxicology confirmation rate
- 2020: 783 DRE Enforcement Evaluations / 90 percent toxicology confirmation rate
- 2019: 1,420 DRE Enforcement Evaluations / 83 percent toxicology confirmation rate

\*Note: All enforcement evaluations may not have been entered into the national DRE tracking system due to a significant delay involving laboratory toxicology results.

The State reported collaboration among law enforcement, prosecutors, and toxicologists in impaired driving related training. The State's DWI Resource Prosecutor provides training to both prosecutors and law enforcement utilizing the following curricula:

- Investigating and Prosecuting the Drugged Driver
- Effective Courtroom Testimony
- Worst Case Scenario: Impaired Driving Crashes from Crash to Courtroom

The State does not specifically integrate Collision Reconstructionists with DREs. Additionally, the State has not incorporated an Alcohol Workshop during training for prosecutors and judges.

According to the Texas DPS Crime Laboratory, the Top 12 Most Reported Drugs or drug metabolites are the following:

- Carboxy THC (49.4%)
- Alprazolam (27.3%)
- Methamphetamine (24.2%)
- Delta 9 THC (21.3%)
- Hydroxy Delta 9 THC (16.3%)
- Benzoylcegonine (15.8%)
- Amphetamine (14.9%)
- Clonazepam (6.1%)
- Hydrocodone (6.1%)
- Phencyclidine (5.2%)
- Flualprazolam (4.8%)
- Morphine (4.5%)

### **Recommendations**

- Enhance law enforcement's ability to receive grant funds to focus on impaired driving efforts.

- **Recruit additional Drug Recognition Experts (DREs) and provide agency priority in counties or jurisdictions with no DREs.**
- **Create and fund driving while intoxicated officer positions to focus on impaired driving enforcement.**
- Mandate Drug Recognition Experts to provide consultation services when investigating a serious injury or fatal collision involving a suspected impaired driver.
- **Support the expansion of Law Enforcement Advanced Data Reporting System (LEADRS).**
- Encourage the Texas Chiefs of Police Association and the Sheriffs' Association of Texas to develop traffic safety committees.
- Require the Law Enforcement Liaison Program to focus more on impaired driving and developing relationships at the city and county government levels.
- **Increase forensic laboratory capacity to screen and confirm toxicological specimens submitted by law enforcement AND timely produce toxicology reports.**

## 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>3</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.*

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<sup>3</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.

## Status

The priority of Driving While Impaired (DWI) cases varies widely with prosecutors in Texas. While the Texas District and County Attorneys Association (TDCAA) has not issued a high-level statement setting DWI prosecution as a high priority, it is conducting an update of the 2013 Impaired Driving Prosecutor Listening Session and the 2013 Report will be updated in December 2022. The 2013 Listening Session yielded good information. It is expected that the 2022 Session will provide equally valuable and updated insight for the improvement of the prosecution of DWI cases in Texas. Also, the update has the potential to provide important insight as to the impact of COVID-19 on the prosecution of DWI cases.

In Texas, the prosecutors assigned to DWI cases have varied levels of knowledge and experience. Not surprisingly, there is a need to encourage experienced prosecutors to stay in the DWI arena. One reason is because understanding the importance of effective prosecution is not intuitive to many lawyers. The second reason is that successful prosecution of DWI cases requires a skill set and a knowledge base that takes time and money to develop. The best prosecutors often have more lucrative career options that will draw them away from the impaired driving prosecution. They have families and responsibilities that compel them to consider other career options after they get basic training. Finally, election sweeps can have an adverse impact on the longevity of prosecutors' careers.

Texas has a State Prosecutor longevity bonus payment that, while not focused on impaired driving, is a good first step in retaining experienced prosecutors. The Texas prosecutors have an active Diversity and Retention Committee. The TDCAA President appointed a committee to research and recommend ways in which the Legislature might help shore up the compensation issues that adversely impact both elected and assistant prosecutors and other staff. Although the efforts are not exclusively traffic safety related, TDCAA has identified retention as a major goal of the organization. Numerous pilot programs are underway. In addition, the Traffic Safety Resource Prosecutor (TSRP) specifically recruits prosecutor specialists for subcontract opportunities in the DWI Resource Prosecutor grant. At this time, TDCAA has nine subcontractors all of whom serve on the DWI Prosecutor Task Force and remain as subject matter experts in their own offices and areas.

The Texas prosecutors are engaged in 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. Focused on vehicular cases, at least six Texas jurisdictions have specialized Vehicular Crime sections. Many more have a designated subject matter expert. TDCAA publishes an Intoxication Manslaughter publication. While not every year, TDCAA delivers a weeklong Intoxication Manslaughter Advanced Advocacy course. Texas Prosecutors use both Chapter 49 (Intoxication Offenses) of the Penal Code as well as Felony Murder charges on impaired driving death cases. Using the Felony Murder Statute (Sect 19.02 PC) over 20 Texas jurisdictions have obtained life sentences for felony repeat offenders that took a

life while driving while impaired. Although the length and severity imposed by some sentences are striking, questions are raised by the numbers of dismissals and the numbers of multiple repeated offenses by one driver and the number of repeat offenders. Many Texas jurisdictions impose decades long and even life sentences for repeat DWI in non-crash cases.

The Texas prosecutors who handle impaired driving cases receive evidence-based training, such as Standardized Field Sobriety Test (SFST), Drug Recognition Expert (DRE), and emerging technologies for the detection of alcohol and other drugs. TDCAA publishes DWI Investigation and Prosecution materials. These are provided every 4 years to every Texas Prosecutor and to every attendee of the Prosecutor Trial Skills Program held twice a year by TDCAA. About 85 percent of new Texas Prosecutors attend that program. Resources on SFSTs, DREs, Blood Testing, Breath Testing, and much more are free and available at [www.TDCAA.com/resources/DWI](http://www.TDCAA.com/resources/DWI). There are dozens of hours of training video, documents, a full SFST review document, articles, a full summary of all Texas DWI cases, and much more. The TDCAA web site demonstrates the activities of TDCAA. The prosecutors' education opportunities appear to meet their needs with relevant and up to date content.

The data in the chart below suggests that it is time to look at the prosecution practices for improvement possibilities. The obvious question is what do these numbers demonstrate? The second question is what are the dispositions for the misdemeanors and the "wet reckless" equivalents? Texas uses the "Obstructing a Highway" statute as its DWI escape, much like other states use the reckless driving statute.

<b>TEXAS DEPARTMENT OF PUBLIC SAFETY CRIME RECORDS SERVICES</b>				
Reporting Years	2017	2018	2019	2020
Total number of DWIs reported	90,376	97,660	98,497	82,597
Number of DWI charges resulting in release with no charges	4,010	2,303	4,474	1,994
<b>Pleas associated with DWI charges</b>				
Plea not guilty	2,701	861	2,398	463
Plea guilty	52,076	21,687	39,601	9,323
<b>Count of final dispositions for DWI charges</b>				
Conviction of Original Offense	36,575	15,739	27,511	6,909
Conviction other than the original offense	15,690	5,985	12,036	2,454
Dismissals	8,108	2,021	8,312	1,434

Prosecutors seek dispositions that employ sentencing strategies for offenders who abuse impairing substances other than alcohol. Texas statute, Art. 42A.257, requires EVALUATION FOR PURPOSES OF ALCOHOL OR DRUG REHABILITATION.

- (a) The judge shall direct a supervision officer approved by the community supervision and corrections department or the judge, or a person, program, or other agency approved by the Department of State Health Services, to conduct an evaluation to determine the appropriateness of, and a course of conduct necessary for, alcohol or drug rehabilitation for a defendant and to report the results of that evaluation to the judge, if...

It would be useful to see the data showing the numbers of those adjudicated who receive the evaluation for purposes of alcohol or drug rehabilitation and received the recommended services. However, these data are not available.

The Prosecutors do not interact in any reported fashion with tribal prosecutors.

Texas reports that Prosecutors, but not tribal prosecutors, participate in multi-disciplinary training with law enforcement personnel. Obviously COVID-19 disrupted the previous training programs, but they have been restarted. The State reports that, excluding Tribal agencies, relationships with the Department of Public Safety Alcohol and Toxicology Labs and the TSRP are excellent. Every new Toxicologist has a half-day session with the TSRP as part of training. The TSRP provides constant technical assistance and liaison efforts. The TSRP trains upwards of 700 officers a year. TDCAA also makes hours of recorded training materials available to academies and police trainers. The TSRP works in very close connection with both the DRE Coordinator and the SFST Coordinator. The TSRP is available to officers statewide for technical assistance. The TSRP works with Texas Commission on Law Enforcement on legislative update curriculum and on impaired driving education issues.

The State does not have any policies on plea negotiations and deferrals in impaired driving cases. There is no requirement that plea negotiations to a lesser offense be made part of the record and count as a prior impaired driving offense established and adhered to as routine. The current operating status is that many diversions later have the records expunged. There are no actual lesser offenses to DWI. Cases are often reduced to Obstruction of a Highway. This charge is a flag to other Texas prosecutors that there is a DWI reduction.

The major jurisdictions in Texas have DWI Courts, but there are jurisdictions that do not have DWI Courts. There is no data available that show the numbers and the percentage of eligible defendants that have access to DWI courts. Texas does not have a statewide repository for DWI information and statistics. The State reports components exist that if linked with adequate design structure could become a statewide repository for DWI data. At the present time, the records are incomplete and attempts to gather a complete record

are expensive and take many person hours of investigators' efforts. There are no plans to build the needed system.

## **Recommendations**

- Create a forward-looking plan to attract and retain driving while intoxicated prosecutors.
- **Write a white paper setting out the requirements and rationale for a complete driving while intoxicated tracking system.**
- Obtain technical assistance to determine if and how the prosecutors' case management systems currently in use can share data and what other agencies might be included in the sharing.
- Engage prosecutors in a visioning process to design a comprehensive plan to advance the prosecution of driving while intoxicated cases.

## **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>4</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*

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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.

*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; and*
- *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>5</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*
- *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**

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<sup>5</sup> Freeman-Wilson, Karen and Michael P. Wikosz, "Drug Court Publications Resource Guide, Fourth Edition." Alexandria, VA: National Drug Court Institute, 2002.

From top to bottom, Texas does not have a unified state court system starting with the courts of last resort. The Texas Court of Criminal Appeals is the court of last resort in criminal matters. The Supreme Court of Texas is the court of last resort for civil matters. The disconnectedness of the two courts of last resort is reflected throughout the justice system.

The Texas Court of Criminal Appeals is Texas's highest court in the State for criminal cases. The State reports that the Court takes a leadership role in effective adjudication of impaired driving. The Texas Court of Criminal Appeals assists the lower courts by resolving conflicts between the courts of appeals. Blood search warrants have been heavily litigated, and the Texas Court of Criminal Appeals has issued opinions that offer guidance to the trial courts.

However, the civil court administers the admission to the practice of law. The Texas Court of Criminal Appeals sets the requirements for continuing legal education for the judges with criminal court jurisdiction. The law trained judges have different continuing legal education requirements than the non-law trained judges. Civil courts have trial rules of procedure, but the criminal courts have local trial rules only. The Texas Court of Criminal Appeals does not assign judges or otherwise supervise the work of the local judges. The Texas Court of Criminal Appeals does not assign driving while intoxicated (DWI) cases to knowledgeable and experienced judges.

Not all judicial officers are 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 DWI cases, depending on whether they are prosecuted as felonies or misdemeanors. The following Tribal Courts are in Texas: Alabama-Coushatta Tribe of Texas Tribal Justice System, Kickapoo Traditional Tribe of Texas Tribal Court, and the Ysleta del Sur Pueblo Tribal Court. The state courts and tribal courts do not interact. Each system is separate and currently there are no plans in place to communicate formally between the two systems.

Texas has 254 counties with an enormous variation in geographic size as well as the size of the population. There are 1,365 municipal judges. Some are elected; most are appointed. Some are law trained and some are not. Urban and rural courts have different challenges, but rural courts cannot find staff that are qualified.

Texas has a large number of specialty courts including DWI/Drug Courts. Texas Government Code, Sec.123.006 requires counties with a population of 200,000 or more to establish a drug court program. Sec. 123.005 allows counties to establish a drug court program exclusively for persons arrested for, charged with, or convicted of an offense involving the operation of a motor vehicle while intoxicated. If the county does not establish a separate program, they must employ procedures designed to ensure that a person arrested for, charged with, or convicted of a second or subsequent offense involving the operation of a motor vehicle while intoxicated participates in the county's existing drug court program. Drug Courts and DWI Courts receive funding from both

state and federal sources. In the 2021 legislative session, the legislature enacted the Ruben Reyes Act and provided that one percent of the mixed beverage tax is to be deposited to the credit of the specialty court account for use by the criminal justice division within the Governor's office. Gov. Code Sec. 183.053.

However, little factual information is available about operations of these courts although the guess was that there are about 30 DWI courts. No data was provided to show how many courts exist or how many defendants are handled by these courts. Because there is no statewide or even local DWI tracking system in Texas, a determination of whether a defendant had a subsequent DWI offense is not possible. The courts are reported to have evaluators, but the validity of any evaluation is highly questionable if they do not have access to valid data. Even a simple spreadsheet showing how many impaired driving cases are handled by each specialty court with a breakdown of dispositions of those cases in each court could help identify jurisdictions that have a DWI court.

Not all citizens within Texas, in fact not many citizens, have access to DWI Courts. Although information was presented about one tribal court, there is no data to use to reach a conclusion.

Texas does not encourage consistency in the adjudication of impaired driving (including youthful offender) cases. Certainly, the huge variation in the courts militates against any imposition of effective and evidenced-based sanctions, particularly when impaired driving resulted in a fatality or injury. Texas does not track the timeliness of the adjudication of impaired driving cases.

The Texas Center for the Judiciary, Texas Association of Counties, Texas Municipal Courts Education Center, and Texas Justice Courts Training Center all have training on impaired driving. These organizations collaborate on a yearly training in which all court levels come together for impaired driving education. The Texas Center for the Judiciary and the Texas Association of Counties also collaborate on two DWI Summits each year. These summits are held in smaller, more rural areas to give judges in those areas a chance to attend an impaired driving training without travel time and costs. It is not clear which judges attend the trainings and how often the various judges attend. Tribal judges are not invited to attend.

Some Texas courts employ strategies to reduce recidivism through evidence-based sentencing and close monitoring. However, the disposition of DWI cases in Texas varies greatly from jurisdiction to jurisdiction. What data that is available is inadequate to show outcomes from all courts for comparison and contrast of strategies used by the different courts.

DWI Courts have increased the use of drug or alcohol assessments proven reliable and validated for assessing offenders with alcohol or drug use problems. Texas requires the use of the Texas Risk Assessment System (TRAS), but courts have gone beyond that assessment to better determine risk and needs for impaired driving offenders. They have received training on Computerized Assessment and Referral System (CARS) and the

Impaired Driving Assessment (IDA). Those courts use a combination of assessment tools depending on the offender.

Because Texas does not have a statewide DWI tracking system, it is not clear to what extent the courts are applying effective and appropriate sentences to these offenders, including abstinence from alcohol and other drugs, and closely monitoring compliance, leading to a reduction in recidivism. In some courts it is likely that close monitoring for compliance is available. Sentencing varies greatly from jurisdiction to jurisdiction. Some courts use DWI Courts, Diversion, and deferral programs to effectively and efficiently sentence DWI offenders.

Texas has eliminated ethical obstacles, such as ex parte or commitment communications, to allow the judges to participate more freely in DWI Court administration. A comment has been added to the Texas Code of Judicial Conduct stating: "It is not a violation of Canon 3B (8) for a judge presiding in a statutory specialty court, as defined in Texas Government Code section 121.001, to initiate, permit, or consider any ex parte communications in a matter pending in that court." However, in non-drug court setting, traditional ethical standards remain. The current statute allows the court with jurisdiction to modify any condition of community supervision at any time. CCP 42A.051(b). Probation officers, who are an extension of the court, routinely notify the courts "ex parte" regarding violations via amended order memos.

Texas has community supervision programs. The Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) administers adult community supervision in Texas. Although the division does not work directly with offenders, it distributes state aid to local community supervision and corrections departments (CSCDs). TDCJ-CJAD's role is to ensure that services are provided in accordance with strategic plans and state standards. As mandated by the Texas Code of Criminal Procedure and approved by the Texas Board of Criminal Justice, TDCJ-CJAD develops minimum standards for core CSCD services. TDCJ-CJAD tracks and evaluates CSCD programs, approves program budgets, performs fiscal audits, and maintains the Community Supervision Tracking System (CSTS). Texas community supervision officers are trained and certified by TDCJ-CJAD.

Court staff receives some training on ignition interlock devices. Through a Texas Department of Transportation grant, the Texas A&M Transportation Institute developed and provides training to judges and judicial staff, prosecutors and staff, and probation departments on ignition interlock devices. Information on the training, including the curriculum topics and participants for the last two years, was provided.

The current state Judicial Outreach Liaison (JOL) has held the position for the past nine years. The JOL serves as a judicial educator and resource on highway traffic safety issues including impaired driving, as well as acts as an agent to create more DWI Courts. The JOL is a frequent lecturer, coordinator, and resource on highway safety issues, and teaches at and coordinates an annual training for all DWI Courts. That training has a

basic component for new DWI Court teams and team members and an advanced component for existing and experienced DWI Court teams and team members.

There was mention of how outdated statutes are confusing and time consuming for prosecution and adjudication. The extent of the problem is not clear. If the statutes are causing the courts to work with less efficiency, then some analysis of how the statutes might be amended to streamline adjudication would be worth the effort.

In looking at the adjudication of DWI in Texas the single most pressing problem is data. For a judge who sets bond or imposes a penalty, it is imperative to know the defendant's record. Until the courts have a data repository making the defendants history available to all judges, there will be an unnecessary burden in making good bond and sentencing decisions.

### **Recommendations**

- Invite the tribal court judges and staff to attend the Texas driving while intoxicated training.
- Inventory the information systems currently in use by all existing courts that adjudicate driving while intoxicated cases.
- **Work with Law Enforcement Advanced Data Reporting System (LEADRS) and other justice information systems to design a path forward to have a driving while intoxicated tracking system.**

## **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>6</sup>*

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

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<sup>6</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

## 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**

The Texas Department of Public Safety, Driver License Division is responsible for all driver license processes from testing and issuance of credentials to suspension or revocation of a license. Texas has an implied consent statute and comprehensive license sanctions related to impaired driving offenses. The alcohol-related offenses include misdemeanor driving while intoxicated (DWI) and felony classification Intoxication

Assault and Intoxication Manslaughter. This administrative process is independent of the judicial process and associated criminal penalties for impaired driving. Administrative license revocation appeals are heard by State Office of Administrative Hearings, Administrative Law Judges. Separating processes allows for uniform administrative sanctions apart from any criminal proceedings. In Texas, intoxication is statutorily defined as: 1) not having the normal use of mental or 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 or 2) having an alcohol concentration of 0.08 or more. Persons under age 21 are deemed intoxicated with any detectable presence of alcohol.

Listed below are the categories of DWI offenses and their related penalties.

#### Offense Under age 21

- Class "C" Misdemeanor
- License suspension not to exceed 1 year
- Up to a \$500 fine
- Completion of an Alcohol Education Program at least 12 hours long
- An additional 180 days of license suspension if no Alcohol Education program is completed

#### Offense age 21 or older

##### 1st Offense

- Class "B" Misdemeanor
- Up to a \$2,000 fine
- Jail time between 3 days and 180 days
- License suspension for up to 2 years
- DWI intervention or education program
- Possible ignition interlock device

##### 2nd Offense

- Class "A" Misdemeanor
- Up to a \$4,000 fine
- Jail time between 1 month and 1 year
- License suspension up to 2 years
- DWI intervention or education program
- Possible ignition interlock device

#### Felony DWI

##### Offense age 21 or older

##### 3rd Offense or more

- State Jail Felony

- Up to a \$10,000 fine
- State prison time between 2 years and 10 years
- License suspension up to 2 years
- DWI intervention or education program
- Possible ignition interlock device

#### Intoxication Assault

- While drunk driving causes serious bodily injury to another person
- 3rd degree felony

#### Intoxication Manslaughter

- Killing another human being while operating a motor vehicle under the influence
- 2nd degree felony

Commercial Driver License (CDL) holders are subject to the same sanctions listed above with two exceptions: there is no time limit for determining repeat offenses and DWI is defined by statute as a BAC 0.04 or greater in a commercial motor vehicle and 0.08 or higher in any vehicle.

Upon a first or second DWI conviction or refusal of implied consent, the operator faces administrative license revocation. The following sanctions will be imposed for persons who refuse an alcohol test or who fail an alcohol test.

#### Chemical test refusals

##### Adults

- 1st offense: 180 day suspension
- 2nd offense (Refuse or fail test): 2 years

##### Minors (Under 21 years old)

- 1st offense: 180 day suspension
- 2nd offense (Refuse or fail test): 2 years

#### Chemical test failures

##### Adults

- 1st offense: 90 day suspension
- 2nd offense (Refuse or fail test): 1 year

##### Minors (Under 21 years old)

- 1st offense: 60 day suspension
- 2nd offense (Refuse or fail test): 2 years

For ALR penalties, a 2nd offense can be a previous refusal or failure of a chemical test or a previous license suspension for DWI, DWI Assault, or Intoxication Manslaughter within the past 10 years.

## **Recommendations**

No recommendations for this section.

## **F. 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;*
- Learners 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 6 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 6 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 a Graduated Driver License (GDL) program consisting of two stages of licensure and a minor restricted driver license (MRDL). An initial instruction permit can be obtained as early as 15 years of age. An MRDL can be obtained as early as age 15 and a provisional license at age 16. At age 18, a full license under age 21 can be obtained. The requirements and restrictions associated with each stage are:

**Instruction Permit**

- Must be accompanied by a licensed driver age 21 or over riding in front passenger seat.
- Must pass written and visual examination; at least 15 years of age.
- If less than 18 years of age, must have parent/guardian sponsorship.
- Minimum holding period is six months.

#### Provisional License

- At least 16 years of age held an Instruction Permit or MRDL for at least six months
- Restricted from driving alone between 12 a.m. and 5 a.m. unless the operation of the vehicle is necessary for the driver to work, to attend or participate in a school-related activity, or due to a medical emergency
- Complete driver's education course
- No cell phone/messaging use
- Passengers restricted to no more than one under the age of 21 unless immediate family member

There are several programs and technologies to prevent or deter the issuance of fraudulent driver licenses or identification cards. Driver license issuance personnel are provided Fraudulent Document Recognition training and are issued the ID Guide document authenticating book. The driver system runs a one-to-many facial image verification to ensure the applicant is not currently licensed in Texas and to prevent an individual from obtaining multiple licenses using different identities.

#### **Recommendations**

No recommendations for this section.