

MINUTES

KANSAS DUI COMMISSION

December 7, 2009
Room 143-N—Statehouse

Members Present

Senator Thomas C. (Tim) Owens, Chairperson
Representative Janice Pauls, Vice-chairperson
Senator David Haley
Greg Benefiel, Assistant District Attorney, Douglas County
Pete Bodyk, Kansas Department of Transportation
Major Mark Bruce, Kansas Highway Patrol
Honorable Judge Jennifer Jones
Wiley Kerr, Kansas Bureau of Investigation
Mary Ann Khoury, Victim advocate
Deb Stithem substituted for Don Jordan, Secretary, Kansas Department of Social and
Rehabilitation Services
Retired Police Chief Ed Klumpp
Sheriff Ken McGovern, Douglas County
Chris Mechler, Court Services Officer
Helen Pedigo, Executive Director, Kansas Sentencing Commission
Marcy Ralston, Kansas Department of Revenue
Honorable Peter V. Ruddick, 10th Judicial District
Dalyn Schmitt, Substance Abuse Professional
Les Sperling, President, KAAP
Jeremy Thomas, Parole Officer
Doug Wells, Attorney, Kansas Bar Association
Roger Werholtz, Secretary, Kansas Department of Corrections
Karen Wittman, Traffic Safety Resource Prosecutor, Attorney General's Office

Members Absent

Representative Lance Kinzer

Staff Present

Athena Andaya, Kansas Legislative Research Department
Lauren Douglass, Kansas Legislative Research Department
Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes

Sean Ostrow, Office of the Revisor of Statutes
Karen Clowers, Committee Assistant

Others Attending

See attached list.

Monday, December 7 Morning Session

The meeting was called to order by Chairperson Owens at 10:12 a.m.

The Commission reviewed the minutes of November 4-5.

Roger Werholtz moved, Ed Klumpp seconded, to approve the minutes of November 5-6, 2009. Motion carried.

Spencer Duncan appeared on behalf of the Kansas Wine and Spirits Wholesalers Association, providing a perspective on current industry efforts to reduce DUI's (Attachment 1). Mr. Duncan indicated the organization's dedication in promoting responsible alcoholic beverage consumption in Kansas and reviewed several programs designed to encourage responsible drinking. Programs include server training, which educates servers on the proper ways to serve and sell alcohol. Individuals receiving this training are less likely to serve alcohol to minors or to intoxicated persons. Mr. Duncan reviewed several "Smart Alcohol Practices" that have proven to reduce drunk driving and underage drinking. These include:

- Public education campaigns on the dangers of driving under the influence (DUI), underage access, and the penalties associated with them;
- Support laws providing the prompt administrative suspension or revocation of driver's license for refusal or failure of a blood alcohol content (BAC) test;
- Graduated penalties for repeat offenders;
- Ignition interlock devices;
- Increased sanctions for DUI offenders with blood alcohol concentration levels above .15;
- Increased penalties for driving while suspended;
- Increased penalties for those who commit bodily injury or death while driving while under the influence;
- Mandatory assessment prior to conviction or sentencing to determine the potential for alcohol dependency or abuse and make appropriated treatment referrals;
- Support programs that promote the use of sober designated drivers and safe rides;

- Increased penalties for the use and manufacture of fake IDs;
- Mandatory alcohol education for college freshmen and college offenders;
- Support bans on Alcohol Without Liquid (AWOL) machines (Kansas has banned this device); and
- Support hotline that motorists can use to report drivers suspected to be driving while under the influence.

Whitney Damron appeared on behalf of the Distilled Spirits Council of the United States (DISCUS) which has a long history of supporting efforts to prevent drunk driving and underage drinking (Attachment 2). Mr. Damron indicated in 1991 a number of spirits manufacturers created The Century Council to coordinate efforts at reducing underage drinking and drunk driving. The Century Council has hosted events in Kansas that bring together parents, youth, educators, law enforcement officials, and traffic safety professionals to reduce underage drinking and driving. The Council's efforts at educating youth begin in middle school and continue through college.

The Council supports legislation to enact comprehensive and effective solutions to the hardcore drunk driving problem. Hardcore drunk drivers are those who repeatedly drive with a high blood alcohol concentration over .15, have more than one drunk driving arrest, and are highly resistant to changing their behavior despite previous sanctions, treatment, and education efforts. These offenders account for the majority of alcohol-impaired fatalities and the Council created the National Hardcore Drunk Driver Project to serve as a comprehensive resource to assist state legislators, as well as highway safety officials, law enforcement officers, judges, prosecutors, community activists, and treatment officials in developing programs to reduce hardcore drunk driving.

A written statement on industry efforts to reduce DUIs was provided by Jeff Becker, President, Beer Institute (Attachment 3).

Linda Chezem, Purdue University, provided the Commission a review of the issues pertaining to roadside/on-site drug testing (Attachment 4). Professor Chezem indicated effective drugged driving prevention is one of the best ways to improve highway safety, reduce illegal drug use, and get abusers into addiction treatment. She reviewed the various issues that need to be addressed in forming legislation to address drugged driving. These include:

- Science of detection;
- Various types of tests;
- The need for adequate resources;
- Sound policies;
- Legal issues;
- Justice system issues; and
- Cost considerations.

Professor Chezem indicated that statutes should be realistic, clear, and with coherent use of evidence-based science, provide adequate support for the justice system.

A written statement on Roadside/On-site Drug Testing was provided by John A. Enrici, Medical Dimension Group (Attachment 5).

The Commission broke into subcommittees for a working lunch to review the interim report to the Legislature.

Afternoon Session

The Commission reconvened at 1:22 p.m.

Karen Wittman reviewed recommendations to date from the Subcommittee on Law Enforcement/Record Keeping (Attachment 6). The Subcommittee requested the inclusion of a recommendation of a study on roadside preliminary testing and the tests and devices available to be conducted by the KBI.

Les Sperling reported the Substance Abuse Subcommittee had no changes to the recommendations to date (Attachment 7). He indicated some of the recommendations may be implemented by rules and regulations, as opposed to drafting legislation. The Subcommittee also indicated that when offenders are incarcerated for multiple offenses, mandatory treatment services should be included.

Roger Werholtz indicated the Criminal Justice Subcommittee made several clarifications to their preliminary subcommittee report (Attachment 8). These include:

- Under second time DUI convictions, jail time should indicate actual jail time;
- On third time DUIs, probation supervision by community corrections should be an option of the court;
- Third time DUIs should be *initially* referred to community corrections programs for evaluation; and
- Include the intent that municipal courts wanting jurisdiction over DUI cases only include first and second offenses.

Senator Haley moved, Greg Benefiel seconded, to accept the additional recommendations described by the subcommittees to the subcommittee interim reports. Motion carried.

Ed Klumpp moved, Representative Pauls seconded, to incorporate the subcommittee reports as the Commission's Interim Report to the Legislature, including the recommendation to delay implementation of HB 2096 and the licensing of treatment counselors. The reports will be e-mailed to Commission members and considered approved after ten days if no corrections or changes are requested. Motion carried.

The meeting adjourned at 2:30 p.m.

The Commission will meet in May 2010, dates to be determined.

Prepared by Karen Clowers
Edited by Athena Andaya

Approved by Commission on:

December 21, 2009

(Date)

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

DUI COMMISSION COMMITTEE GUEST LIST

DATE: 4 Dec 2009

NAME	REPRESENTING
Whitney Jamm	DISCUS
Linda L. Chye	
Coley Kerney	City of Leavenworth
Scott Rothchild	Lawrence Journal-World
Mark Bozainysk	Capitol Strategist
Kevin Berone	KPIA
Shannon Bell	LGR
DARIAN DERNOVICH	KHP
Bob Keller	JCSO
Step Westwood	KNASW
Catie Rech	KNASW

K · A · N · S · A · S
WINE & SPIRITS
WHOLESALE ASSOCIATION

212 SW 8th Avenue, Suite 202
Topeka, Kansas 66603
www.kswa.org

December 7, 2009

TO: DUI Commission
RE: Industry perspectives

I am Spencer Duncan appearing today on behalf of the Kansas' Wine and Spirits Wholesalers Association to present our perspective on the issues you are studying. I want to first cover certain efforts currently being made to encourage individual responsibility and to prevent persons from irresponsibly driving while impaired. Also, we should not lose sight of the fact that the overwhelming majority of beverage alcohol consumers are responsible. We also have several suggestions for your consideration.

Server Training *(An overview of server training is provided in Appendix A)*

Several organizations in Kansas provide voluntary server training. Server training is a comprehensive training seminar designed to educate sellers and servers of alcohol on the proper ways to serve and sell alcohol. The program covers a variety of issues related to alcohol, including:

- Facts about alcohol
- Alcohol's effects on the body
- Preventing intoxication
- How to refuse service/Intervention techniques
- Preventing disturbances
- Protecting yourself and your establishment from liability
- State laws and regulations
- Health benefits of alcohol

National statistics bear out a simple fact: individuals who have had server training are less likely to serve or sell alcohol to minors or serve or sell alcohol to intoxicated individuals. A server training program not only ensures they understand laws and how alcohol affects an individual's physiology, but teaches techniques and methods that help individuals when they have to refuse service.

The Kansas Wine & Spirits Wholesalers Association believes all individuals who sell or serve alcohol in Kansas should have server training. There are several individuals in Kansas who offer server training, including Duncan Law Offices and Capitol Connection, LLC. Duncan Law Offices and Capitol Connection, LLC put together a program, supported by KSWA and approved by the Alcoholic Beverage Control, that incorporated the expertise of a former liquor store owner, bar manager and attorney. For example, Tuck Duncan participated in a program just last week in Osage City organized by the local alcohol prevention council. The Kansas Association of Beverage Retailers presents training on a regular basis also.

Server Training can reduce DUI's by ensuring that the individuals selling and serving alcohol know when to stop serving, how to stop individuals from overdrinking, how to recognize when an individual is intoxicated and helps them identify fake identifications and minors attempting to purchase.

Server Training is an inexpensive tool. For example, the Kansas Association of Beverage Retailers has offered it for many years for free or very minimal costs to members of its association. Duncan Law Offices and Capitol Connection charge as low as \$25 per person and offer discounted rates to groups of employees from one store or business. The Duncan Law Offices and Capital Connection program also provides a book for individuals to take home which they can use for future reference.

Century Council

The Kansas Wine & Spirits Wholesalers Association is a strong supporter of the Century Council. The Century Council is a leading national organization of alcohol producers which fights drunk driving and promotes responsible decision making regarding beverage alcohol.

It was founded in 1991 by distillers and is a not-for-profit organization located in Arlington, Virginia. The Century Council also has a National Advisory Board comprised of leaders in education, medicine, government, business and others who help lead the fight against drunk driving and underage drinking. The list of partners and official supporters of the Century Council is long. A snapshot look includes:

- AAA
- American Council on Education
- Big Brothers Big Sisters
- Kansas Wine & Spirits Wholesalers Association

- National Alcoholic Beverage Control Association
- National Collegiate Athletics Association
- National District Attorney's Association
- Nickelodeon
- Society for Women's Health Research

The Century Council works closely with law enforcement, public officials, educators, parents and students. Before the creation of the Century Council, it was these same distillers who helped the Government create the national "Friends Don't Let Friends Drive Drunk" campaign, helped create SADD (Students Against Destructive Decisions – formerly Students Against Drinking & Driving), and in the 1970's begin co-sponsoring advertisements during National Football League games discouraging drunk driving – some of the first national ads of their kind.

The Century Council regularly produces and distributes material for use in bars and liquor stores. The Kansas Wine & Spirits Wholesalers Association annually distributes posters, case cards, cold box signs and other materials produced by the Century Council to retail liquor stores, bars and restaurants.

These materials include a wide variety items such as:

- Decals for storefronts telling minors that they will be carded
- Stickers with phone numbers on them that can be handed out which have numbers for hotlines for individuals who need help with alcoholism
- Pamphlets to hand out telling consumers about the many programs Century Council offers, such as tips on how parents can help communicate with their children about alcohol.
- "We Don't Serve Teens" stickers and buttons

KWSWA also sends out periodic newsletters educating industry members about Century Council programs and how they can be involved or support these programs. An example of this newsletter is provided in Appendix B. Century Council programs include:

- "Girl Talk" – a program encouraging mothers and daughters to talk about the dangers of underage drinking.
- "Are You Doing Your Part" – a program geared at helping parents talk to kids about alcohol and discouraging adults to buy alcohol for minors.
- "Alcohol 101" – a program focused on reducing drinking on college campuses.
- "Cops in Shops" – a program deterring individuals under the age of 21 from attempting to purchase alcohol.

The Century Council also has created the *National Hardcore Drunk Driver Project*. The initiative is designed to help policymakers develop responsible and effective programs to combat drunk driving. A PDF of the handbook and more information on the program can be downloaded at www.centurycouncil.org/fight-drunk-driving/initiatives/hardcoredrunkdriving

Since the Century Council was created in 1991, KSWA has continually distributed its materials statewide and made all sellers of alcohol regularly aware of Century Council programs. KSWA will continue to do so.

Smart Alcohol Practices

The Kansas Wine & Spirits Wholesalers Association supports a long list of practices that have proven to help reduce drunk driving and underage drinking. These practices were developed by the Wine & Spirits Wholesalers Association of America, with input from state associations and a host of national experts. KSWA is a member of the WSWA Advisory Council and actively participates in developing national policies.

These smart alcohol practices are:

1. **Media Supporting Enforcement:** Support public education campaigns educating the public on the dangers of DUI, underage access and the penalties associated with them.
2. **Administrative License Revocation (ALR):** Support laws that provide for the prompt administrative suspension or revocation of a DUI offender's drivers license for either failing or refusing a BAC test.
3. **Graduated Penalties for Repeat Offenders:** Support increased penalties for offenders who violate DUI laws more than once.
4. **Ignition Interlock:** A device that integrates a breath-alcohol test into a vehicle and requires a zero BAC for engine start. For repeat offenders (2+ offenses), and for first time offenders with a BAC over .15, but allowing for judicial discretion.
5. **High BAC Penalties:** Support laws that provide for increased sanctions for DUI offenders with BAC levels above .15.
6. **Increased Penalties for Driving While Suspended (DWS):** Support increased penalties for offenders who are caught driving on a license suspended as the result of a prior DUI conviction.

7. Increased Penalties for People Who Cause Injuries: Support laws that increase penalties on those who commit bodily injury or death while under the influence.

8. Mandatory Alcohol Screening: Support mandatory assessment of DUI offenders prior to conviction or sentencing to determine the potential for alcohol dependency or abuse and to make the appropriate treatment referrals.

9. Comprehensive Drinking Age Laws: Support drinking age laws that prohibit the purchase, attempt to purchase or possession of alcohol, or the use of fraudulent identification by an individual under the age of 21; as well as the sale of alcohol or provision of alcohol to an individual under 21; Including increased penalties for parents who unlawfully provide alcohol to minors, and carriers who deliver alcohol to minors.

10. Designated Driver and Safe Ride Programs: Support programs that promote the use of sober designated drivers and sober safe rides, and make sober safe rides available as an alternative to prevent impaired driving.

11. Fake IDs: Support increased penalties for those who use or manufacture fake IDs.

12. Law Enforcement Funding: Support state programs that track underage access.

13. Alcohol Education: Support mandatory alcohol orientation for all college freshmen and mandatory alcohol education for college offenders.

14. AWOL Machines: Support bans on AWOL machines. (Kansas banned this device).

15. Drunk Driving Hotlines: Support hotlines that motorists can use to report drivers operating vehicles while under the influence of alcohol.

Interlocks

While there have been significant decreases in the number of alcohol related crashes, fatalities and injuries in the last two decades, the Kansas Wine & Spirits Wholesalers remains steadfast in its commitment to fighting drunk driving. Part of the effort to deal with this serious issue must incorporate important new technology such as ignition interlocks. While not a silver bullet that will put an end to drunk driving, interlocks can be an important tool in a comprehensive anti-DUI strategy—but only if used correctly and targeted toward the “hard core drunk driver.”

KWSWA supports state legislation that mandates interlock devices be installed on the vehicle of any person convicted of a repeat DUI offense or any first time offender whose blood alcohol content (BAC) was over .15, in other words, the "hard core drunk driver." This policy ensures interlocks are mandated for those who pose the greatest threat to public safety. KWSWA believes judges are in the best position to determine what threat other first time offenders pose and supports allowing judicial discretion in the case of first time offenders with a BAC under .15.

In 2008, The Wine & Spirits Wholesalers Association of America (WSWA) worked with other industry partners and the American Legislative Exchange Council (ALEC) to draft model legislation consistent with this position. ALEC formally adopted that legislation as a model bill. The model bill is provided to you in Appendix C.

Some organizations have been pushing to require interlock installation on the vehicles of all DUI offenders and even all vehicles. As previously mentioned interlock devices must be properly calibrated and maintained. Expanding the universe of devices by such a large degree would create serious logistical problems for state agencies trying to monitor and administer the program. Moreover, federal and state statistical information indicates the most dangerous offenders, and those that are more likely to reoffend, are those classified as "hard core drunk drivers," defined as those who have previously been convicted of drunk driving or have been apprehended with a very high BAC level. In short, precious law enforcement resources would be wasted on low risk drivers rather than being properly spent to keep our streets safe.

Interlock devices will not singlehandedly solve the problem of drunk driving. However, when coupled with a comprehensive anti-DUI program they can play an important role. Such a program should include increased educational and rehabilitation resources for offenders, increased enforcement of DUI laws and continued education of the public on the dangers of drunk driving.

Supporters of the sample legislation provided to you in Appendix C include:

- National Beer Wholesalers Association
- Miller/Coors
- Anheuser Busch
- Bacardi
- Diageo
- DISCUS (Distilled Spirits Council United States)
- The Century Council
- Beam Global
- Wine Institute
- Wine America

- American Beverage Licensees
- Beer Institute
- American Beverage Institute

Suggestions

The Kansas Wine & Spirits Wholesalers Association wants to assist the DUI Commission in making strong, effective recommendations and we will continue our efforts in the fight to reduce drunk driving and underage drinking. This is not a new approach for the association. In addition to our educational efforts, representatives from KWSWA have participated in prior studies including membership on Attorney General Stovall's DUI task force. We are proud of our efforts and the time and resources we invest in this fight are constantly being improved.

We encourage you to:

Enact the Interlock Legislation provided to you in Appendix C. This legislation has strong support from not only numerous members in the alcohol industry, but was endorsed by the American Legislative Exchange Council. This proposed legislation was crafted by policymakers, experts in the fields of law enforcement and education and industry members. It provides an effective template for enacting strong Interlock Legislation.

Adopt legislation consistent with the Smart Alcohol Policies, to the extent they have not already been adopted, set forth above. For example: provide "good Samaritan" protection for someone who is a designated driver or prevents another from driving drunk by taking their keys (10); provide liability protection for alcohol licensees who provide voluntary BAC testing for customers; encourage institutions of higher education in anti-DUI programs (13); and include mandatory DUI education as part of driver's education.

Thank you for the opportunity to present our perspective.

-- *Spencer Duncan*

-- *R.E. "Tuck" Duncan*

The Kansas Wine & Spirits Wholesalers Association (KWSWA) is dedicated to promoting responsible beverage alcohol practices in the state of Kansas. KWSWA is the Kansas trade organization representing the wholesale tier of the wine and spirits industry. We are dedicated to advancing the interests and independence of wholesale distributors of wine and/or spirits. KWSWA provides its members with representation before the Legislature, State agencies, regulatory bodies, courts, and other alcohol beverage industry organizations. In addition, KWSWA offers a wide range of services in the areas of public affairs, education, and social responsibility issues.

www.kswa.org

This periodic newsletter comes to you from the Kansas Wine & Spirits Wholesalers Association. The Kansas Wine & Spirits Wholesalers Association (KWSWA) is dedicated to promoting responsible beverage alcohol practices in the state of Kansas. KWSWA is the Kansas trade organization representing the wholesale tier of the wine and spirits industry. We are dedicated to advancing the interests and independence of wholesale distributors of wine and/or spirits. KWSWA provides its members with representation before the Legislature, State agencies, regulatory bodies, courts, and other alcohol beverage industry organizations. In addition, KWSWA offers a wide range of services in the areas of public affairs, education, and social responsibility issues.

Fall Issue 2009

KANSAS WINE & SPIRITS WHOLESALERS ASSOCIATION

Distributor's Dispatch

WE DON'T SERVE TEENS

NATIONAL CAMPAIGN TARGETS EASY TEEN ACCESS TO ALCOHOL

The legal drinking age is 21. Thanks for not providing alcohol to teens. As teens around the country return to school, the national We Don't Serve Teens program is once again targeting easy teen access to alcohol. Over the past two decades – following adoption of the legal drinking age of 21 – drinking by high school seniors has dropped substantially.



It's a law that protects kids.

Too many teens still drink, though. Where do they get the alcohol? A U.S. government survey shows that most of them do not pay for it. Instead, they get it from

older friends, from family members, at parties, or they take it from their home, or someone else's, without per-

mission.

"Most adults support the legal drinking age. In fact, only 9% of American adults think that it is ok for adults to provide alcohol to underage youth." said R.E. "Tuck" Duncan Executive director of the Kansas wine & spirits wholesalers Association. So, if you learn that someone is thinking of providing alcohol to teens, tell them it is a bad idea." Duncan added, "Don't know how to answer questions about underage drinking? Go to www.dontserveteens.com for more information."

The We Don't Serve Teens campaign, sponsored by a coalition of public and private sector organizations, including the Federal Trade Commission (FTC), has been recognized by the U.S. House and Senate. The FTC prepared and maintains

www.dontserveteens.gov

Stopping Teens' Easy Access to Alcohol

Teen drinking is *not inevitable*. More than 56 percent of high school seniors don't drink alcohol, reducing their current risk of injury. All adults can play a role in reducing teen access to alcohol and related harm. Teens report that alcohol is easy to get. Social sources, like family and friends, are the primary sources of alcohol for kids who drink. In a 2008 government survey of underage drinkers 12 to 20, 69 percent said they got alcohol without

having to pay for it. Some were given alcohol by parents, other family, or friends; others took alcohol without permission. *But did you know?* In 2008, more than 56 percent of high school seniors reported no recent alcohol use. Parents strongly support 21 as the legal drinking age. In one recent national survey, 79 percent of parents said the drinking age should stay the same or be raised. In another recent national survey, 84 percent gave this answer. Check out: www.centurycouncil.org



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Alcohol Retailers Can Help Reduce Teen Drinking

Retailers play an essential role in reducing teen access

They can take steps to make sure that teens can't buy alcohol from their stores, and they can serve as a source of information to reduce the possibility that alcohol legally sold to an adult will end up in a teenager's hands. On these pages are tools for retailers to meet these goals. Responsible retailing practices are key to preventing illegal alcohol sales. But it takes more than just telling your staff not to sell to minors. Responsible retailers need specific policies, backed up by training and accountability, that enable staff to say, "If I sell to you, I'll lose my job."

The RRForum a national non-profit organization dedicated to responsible retailing of age-restricted products, has prepared the following list of recommended practices to reduce underage sales and service of alcohol by off-premises alcohol beverage licensees. Every retailer should adopt these practices. The list is not all-inclusive, and retailers may engage in additional practices to reduce illegal underage sales.

RRForum Recommended Practices for Off-Premises Alcohol Retailers

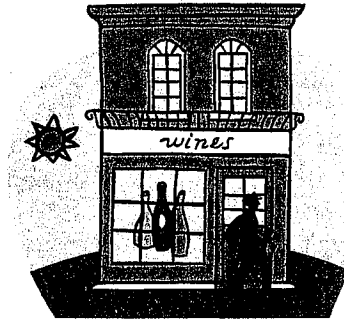
1. Create and maintain sales and service policies that every staffer should follow. Each establishment should have a written policy that identifies steps that staff must take for every transaction, including:

- What perceived age triggers an ID check?
- What are acceptable forms of ID and when is a 2nd form of ID required?
- What should be done if an ID appears to be fake or if a 3rd party sale ("shoulder-tap") is suspected?
- When and how should a sale be refused?
- What record keeping and supervisor notification are required when problems occur?

- What consequences will be imposed when staff fail to check IDs?

Important note: State and local laws should be included in the policy, for all employees to read and understand.

2.



Train staff and management on the alcohol sales policy. All staff should be fully trained before being permitted to sell alcohol. Training should include:

- Information on the risks of underage use of alcohol products;
- Pertinent local and state laws;
- Every aspect of the store policies identified in paragraph 1; and
- Roll-playing on how to request an ID and deny a sale in a non-confrontational manner.
- Local laws may set additional specific training requirements.
- Training for managers should also include supervision and training of clerks and strategies to insure adherence to these practices.

Training messages should be reviewed and reinforced periodically. Important note: If training is segmented—for instance, if a new hire receives in-person training by a manager, followed by in-depth training within 30 days of employment—that employee should be carefully monitored because research shows that newly-hired employees are more likely to sell alcohol to an underage customer.

3. Provide the right tools. Providing appropriate tools is important in assisting the seller with responsible sales. These tools should be utilized in the most appropriate combination, considering all circumstances, to provide the requisite support to the seller:

- If possible, program registers to read IDs electronically and calculate age or use a stand-alone electronic ID scanner or a "black light" wand in states in which these technologies can determine the authenticity of an ID.
- If built-in or stand-alone electronic ID verification is not possible, employ a specialty calendar showing birth dates eligible to buy.
- Provide a current ID guidebook that shows valid ID formats for all states and US territories.

Note: Prominently display signs giving notice that your establishment checks IDs to help staff assert company policy and deter underage sales attempts.

4. Monitor staff conduct. Licensees should rigorously monitor staff performance as a quality control strategy, as follows:

- Mystery shop" inspections—attempted purchases by trained contractors to trigger the establishment's ID-checking requirement—provide staff and managers with feedback on staff performance and whether store policies are being followed. RRF currently recommends 6-12 visits a year.
- Mystery shop inspections can be supplemented by review of point-of-sale video tapes and cash register data or other internal monitoring systems.
- Mystery shopper results and the results of law enforcement compliance checks should be reviewed promptly with all staff—not just with the individual clerk who waited on the mystery shopper. Feedback to staff members who fail to check IDs should include counseling and re-training. The consequences for a 2nd failure may include suspension without pay or termination. Immediate positive feedback to

Alcohol Retailers Can Help *continued*

staff members who successfully check IDs is important and can include tangible gifts and public recognition.

5. Employ security practices to reduce underage theft. Use theft deterrent equipment and/or a floor plan that keeps alcohol shelves and coolers unobstructed for store management and staff and permits staff to monitor customers and reduce alcohol theft.

6. Keep records. Document all training, mystery shops, and law enforcement compliance checks. Keep an unusual occurrence log and any related video. These records may be used for communicating front line challenges to management, for positive recognition programs for employees, and to show company responsibility. Appoint a high-level employee to oversee the store's compliance with laws concerning the sale and marketing of age-restricted products and these Recommended Practices.

7. Communicate with the public. Be a community asset. Retailers serve their communities when they post information about the legal age of purchase and express the importance of preventing teen access to alcohol. Post signs about your ID checking policies at the entrance and near registers where age-restricted products are sold. Establish

working relationships with local law enforcement. Get involved in industry associations and the community to express a commitment to prevent underage sales and use. And since responsible retailing shifts underage access from commercial sales to "social sources," the community can benefit from learning how important it is that adults not furnish alcohol to underage individuals.

8. Don't market to youth. Don't display youth-oriented advertising for alcohol products in your store. Free product sampling may be inappropriate if youth are permitted in the store. Don't advertise alcohol products in college or high school publications, or outdoors near schools or playgrounds.

9. Most importantly: Responsible Retailing is a management responsibility. Every aspect of responsible sales and service of alcohol imposes a responsibility on management to oversee and respond.

Don't serve alcohol to teens.

It's unsafe.

It's illegal.

It's irresponsible.

Beverage Alcohol Advertising Codes

Alcohol advertisers have pledged to comply with self-regulatory codes designed to limit targeting of teens. Among other provisions, these codes direct that no more than 30 percent of the audience for an ad may consist of people under 21, and that ad content should not appeal primarily to people under 21. The Federal Trade Commission, the nation's consumer protection agency, monitors compliance with the codes and has published the results of three major studies on alcohol advertising. Let industry know if you see an alcohol ad you think violates the standards. If you believe that an ad doesn't comply with the alcohol industry's self-regulatory codes, file a complaint with one of the alcohol industry's self regulatory organizations:

Distilled Spirits Council of the United States 1250 Eye Street, NW, Suite 400 Washington, DC 20005 www.discus.org

Beer Institute 122 C Street NW, Suite 350 Washington, DC 20001 www.beerinstitute.org

Wine Institute 425 Market Street Suite 1000 San Francisco, CA 94105 www.wineinstitute.org

21 Is the Legal Drinking Age

The Congress passed the National Minimum Drinking Age Act in 1984.

The law established 21 as the minimum legal drinking age. Since then:

- Teen drinking is down. Twenty-six percent fewer high school seniors drink today than did in 1983.
- Teen binge drinking is down. Seventeen percent fewer high school seniors engage in binge drinking today than did in 1983.
- Alcohol-related fatal crashes involving teen drivers have dropped by more than half, from 22 per 100,000 licensed drivers 15 to 20 years old in 1982 to fewer than 10 per 100,000 in 2003.
- The minimum drinking age has prevented an estimated 22,000 alcohol-related driving deaths—about 900 lives a year.

Kansas Wine & Spirits Wholesalers Association ~ R. E. "Tuck" Duncan, Executive Secretary & General Counsel
212 SW 8th Avenue, Suite 202, Topeka, Kansas 66603 kswswa@yahoo.com www.kswswa.org

Poster & Register Cling inside for use by Kansas' Retail Liquor Stores

The legal drinking age is 21.

The Federal Trade Commission and The Century Council, with assistance from the Wine & Spirits Wholesalers of America, and state associations including the Kansas Wine & Spirits Wholesalers Association launched *We Don't Serve Teens* as a public awareness campaign designed to prevent underage drinking by informing adults that providing underage drinkers with alcohol is unsafe, illegal, and irresponsible. The campaign encourages parents to start and continue a dialogue with their teen about the dangers of underage drinking by reminding parents that turning a blind eye is as irresponsible as putting a drink in their hands. Sixty-five percent of teens who drink obtain the alcohol they drink from family and friends and nearly one in five (17 percent) adults believe it is acceptable for parents to provide alcohol to their teenagers in their own home. Yet, 96% of adults and parents alike do not believe it is acceptable for parents or other adults to provide beverage alcohol to underage youth or for another parent or other adult to provide alcohol to their teenager without their permission. Provided herein is a poster thanking folks for NOT providing beverage alcohol to teens and a register static cling.



THE
CENTURY COUNCIL



K • A • N • S • A • S
WINE & SPIRITS
WHOLESALE ASSOCIATION

K • A • N • S • A • S
WINE & SPIRITS
WHOLESALE ASSOCIATION

212 SW 8th Avenue
Suite 202
Topeka, Kansas 66603



Ignition Interlock Device Act

Summary

This bill provides for ignition interlock penalties for repeat drunk drivers and those who are found to have driven with a .15 blood alcohol content (BAC) or higher.

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Short Title} This act may be cited as the Anti-Drunk Driving Act

Section 2. {Definitions}

(A) In this section "ignition interlock device or system" means a device that:

(1) Connects a motor vehicle ignition system to a breath analyzer that measures a driver's blood alcohol level; and

(2) Prevents a motor vehicle ignition from starting if a driver's blood alcohol level exceeds the calibrated setting on the device.

Section 3. {Main Provisions}

(A) In addition to any other penalties provided in this title for a violation of any of the provisions of (insert appropriate statute) of this article ("Driving while intoxicated"), or (insert appropriate statute) of this article ("Driving while under the influence of alcohol"), or in addition to any other condition of probation or administrative sanctions a court imposes, this act:

(1) Shall prohibit a person who is convicted of a second or subsequent violation of (insert appropriate statute) from operating a motor vehicle that is not equipped with an ignition interlock system, for a period of time to be determined by the court sentencing authority; and

(2) Shall prohibit a person who is convicted of a violation of (insert appropriate statute) with a blood alcohol content in excess of .15 from operating a motor vehicle that

is not equipped with an ignition interlock system, for a period of time to be determined by the court sentencing authority.

(3) May prohibit a person who is convicted of a first violation of (insert appropriate statute) from operating a motor vehicle that is not equipped with an ignition interlock system, for a period of time to be determined by the court sentencing authority.

(B) If the court imposes the use of an ignition interlock system as a sentence, part of a sentence, or a condition of probation, the court:

(1) Shall state on the record the requirement for, and the period of the use of the system, and so notify the Administration;

(2) Shall direct that the records of the Administration reflect:

(i) That the person may not operate a motor vehicle that is not equipped with an ignition interlock system; and

(ii) Whether the court has expressly permitted the person to operate a motor vehicle without an ignition interlock system under certain circumstances;

(3) Shall direct the Administration to note in an appropriate manner a restriction on the person's license imposed under paragraph (3)(i) or (ii) of this subsection;

(4) Shall require proof of the installation of the system and monthly reporting by the person for verification of the proper operation of the system;

(5) Shall require the person to have the system monitored for proper use and accuracy by an entity approved by the Administration at least semiannually, or more frequently as the circumstances may require; and

(6) Shall require the person to pay the cost of leasing or buying, monitoring, and maintaining the system.

Section 4.

(A) It will be considered a violation of this act if any person attempts to disable or deactivate the ignition interlock device.

Section 5. {Severability Clause}

(A) If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

(1) the validity or enforceability in that jurisdiction of any other provision of this Agreement; or

(2) the validity or enforceability in other jurisdictions of that or any other provision of this Agreement."

Section 5. {Repealer Clause}

Section 6. {Effective Date}

ALCOHOL SERVER TRAINING 101

**A COMPREHENSIVE COURSE
ON THE PROPER WAYS TO
SELL, SERVE AND HANDLE
ALCOHOL IN KANSAS**



A Copyrighted Publication and Program of Capitol Connection, LLC

A Program Overview

by

Capitol Connection, LLC

ALCOHOL SERVER TRAINING 101



It is a statistical fact that individuals who complete an alcohol server training program are less likely to violate liquor laws or serve alcohol to minors. Responsible business owners who sell alcohol routinely indicate that if a program is available, they will require employees to complete alcohol server training. Individual servers and sellers of alcohol comment on the benefits of such a program upon completion. State agencies routinely discover that establishments that are regularly in-line with liquor laws and able to identify minors are often those with employees who have completed alcohol server training programs.

There is a shortage of alcohol server training programs in Kansas, and especially ones that specialize in Kansas laws and go in-depth on ways to fight the battle against underage drinking. This program was designed by professionals who understand all aspects of the liquor industry and have insight into the exact training servers and sellers need. This program was designed by an attorney who is an expert in Kansas liquor law; a former retail liquor store owner; and an individual who has managed bars and restaurants and worked as a bartender.

This overview provides a look at the specifics of *Alcohol Server Training 101*. This program contains 8 modules, and this overview provides you an understanding of what each module is designed to accomplish.

There are a few points of mention that are general to the entire program:

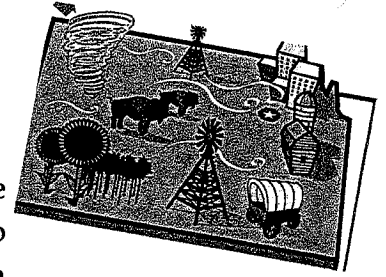
- This is a 2 hour course.
- Each individual will take with them a comprehensive manual that outlines everything they learned during the training course.
- Each module ends with a quiz, designed to aide in the review of each module and to reinforce retention of everything learned.
- All modules are accompanied with a PowerPoint presentation to aide in the verbal component of the program.
- There is a video that accompanies the program, which focuses on Kansas liquor laws.
- Some models include role playing activities to engage the attendees and help them work through real-live situations they will encounter.
- The goal of this program is to reach out to servers and sellers of alcohol across Kansas, especially in those areas where no training programs exist.



ALCOHOL SERVER TRAINING 101

Module 1: Kansas Alcohol Facts

Each state is unique when it comes to alcohol. While there are similarities, it is important to point out specific facts that relate to Kansas, the state in which these servers and sellers of alcohol work on a daily basis. **The goal of this module** is provide individuals a general overview of the atmosphere of Kansas liquor laws and the industry they work within.



This module covers issues such as: The 3-Tier system; Differences between on-premise and off-premise licenses; Ownership requirements; Cereal Malt Beverages; Tax Collection; Law Enforcement and Alcoholic Beverage Control overviews; Wine doggie bags; and direct shipment of wine.

Module 2: Alcohol's Effects on the Body

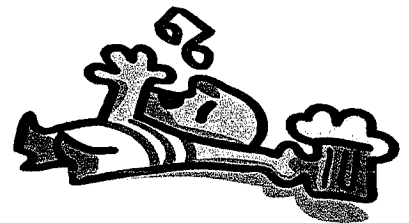


Alcohol is a regulated product, and it should be. There are reasons for this regulation, and that includes the fact that alcohol effects the human body in specific ways and can effect each individual differently. Servers and sellers of alcohol need to understand how alcohol effects chemical anatomy. **The goal of this module** is to provide individuals with basic facts about alcohol's physiological impacts.

This module covers such issues as: Absorption rates; Alcohol and the brain; Alcohol's effects on body systems; Blood Alcohol Content (BAC) and it's measurements; Alcohol distribution within the body; The elimination of alcohol from the system; and Other factors in intoxication from medication to exhaustion.

Module 3: Preventing Intoxication

One of the responsibilities servers and sellers of alcohol has is to not sell alcohol to already intoxicated individuals. There are effective ways to tell when someone is intoxicated and methods servers and sellers can use to cut off an intoxicated individual. **The goal of this module** is to teach servers and sellers what signs to look for to tell if someone is intoxicated and give them useful methods to prevent intoxication in customers.



This module covers such issues as: Various types of drinkers; How to spot intoxicated customers; Provides a list of 50 useful signs to use to spot intoxication; and Drink strengths and the true alcohol levels of individual drinks.

Module 4: How to Refuse Service/Intervention Techniques



Refusing to sell or serve alcohol to a customer is one of, if not the, toughest part of a server or sellers job. The key is to always remember they are in the right to make that decision, and that intoxicated individuals behind the wheel are dangerous. **The goal of this module** is to provide individuals with safe and proven techniques to cut someone off and refuse to sell them more alcohol.

This module covers such issues as: Prevention strategies; Proper ways to refuse service; Detailed plans of action on how to deal with individuals unhappy with being cut off; and Specific tips on how to help individuals get home safely.

Module 5: Preventing Disturbances

When dealing with someone who is overly intoxicated, a server or seller of alcohol is dealing with a potentially dangerous situation. Keeping their cool and having an understanding of what they need to do will resolve disturbances in a safe and expedient manner. **The goal of this module** is to train servers and sellers on proper and safe ways to handle these situations.



This module covers such issues as: Practical approaches to handling an intoxicated individual; Do's of dealing with intoxicated individuals; Don'ts of dealing with intoxicated individuals; Handling life threatening situations; Policies an establishment can and should have in place; and Alcohol poisoning.



Module 6: Protecting Yourself and Establishment from Liability i.e. DON'T SERVE TO MINORS!

The No. 1 issue for anyone serving alcohol is serving to minors. It is morally wrong, it's illegal and it is a constant issue facing any server or seller. Selling to a minor can have serious ramifications legally and socially for all parties involved. Spotting minors goes beyond checking an ID. **The goal of this module** is provide servers and sellers with useful tools and tips to help them spot minors and help them understand the social and legal consequences that occur when they sell alcohol to a minor.

This module covers such issues as: Verifying valid identification; Spotting fake identification; Tips for identifying minors; legal ramification of selling to a minor; and The social ramifications of selling to a minor.

ALCOHOL SERVER TRAINING 101

Module 7: State Laws and Regulations

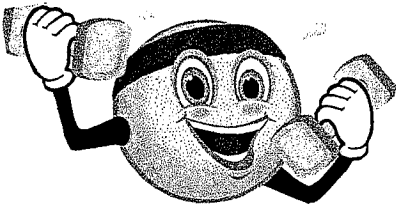
There are 50 states and 50 different liquor laws. While some state liquor laws are similar, Kansas has specific laws that each individual seller and server of alcohol needs to understand. This ranges from specific Kansas laws to a general overview of the regulating agencies and officers that are in place throughout the state. **The goal of this module** is to provide individuals with a brief history of Kansas liquor laws and give them a basic understanding of Kansas liquor laws.

This module covers such issues as: History of alcohol in Kansas; Overview of Kansas liquor sales; Open container laws; DUI laws; Overview of regulating agencies and officers; and Distribution and sales laws.



Module 8: Health Benefits of Alcohol and Alcohol and Food

Alcohol is regulated, and should be. Intoxicated individuals can create problems. Underage drinking is a serious problem. Selling to minors is a serious social and legal violation. Alcohol can have negative effects. However, alcohol is a legal product sold by thousands of licensees across Kansas. It is a part of many individuals everyday lives, and a product that is ingratiated into society. For those who drink responsibly and in moderation, alcohol can add to any event or occasion. Some alcohol has health benefits. **The goal of this module** is to review with participants some health benefits that certain alcohol products have (red wine, etc.) and remind them that the product they sell on a regular basis is socially acceptable, when treated responsibly.



This module covers such issues as: Health benefits of red wine; Health benefits of certain spirits; Pairing wine with food; Mocktail recipes—the art of the non-alcoholic and low-alcohol drinks; and Popular spirit recipes.



MEMORANDUM

TO: The Honorable Thomas C. (Tim) Owens, Chair
And Members of the Kansas DUI Commission

FROM: Whitney Damron
On Behalf of the
Distilled Spirits Council of the United States

RE: The Century Council

DATE: December 7, 2009

Good Morning Chairman Owens and Members of the Kansas DUI Commission. I am Whitney Damron and I appear before you today on behalf of the Distilled Spirits Council of the United States or DISCUS as it is known, in support of your efforts to evaluate the entire spectrum of DUI detection, enforcement, treatment and related issues in order to make recommendations to the Kansas Legislature for change.

By way of information, DISCUS is a trade association of spirits manufacturers headquartered in Washington, D.C. DISCUS and its member companies have a long history of supporting efforts to prevent drunk driving and underage drinking. In 1991, a number of spirits manufacturers created The Century Council to coordinate efforts at reducing underage drinking and drunk driving.

Attached to my cover memorandum is a three page submission from The Century Council to this Commission. I will not read the entire document, but I do want to highlight some of the Council's comments and activities:

- Since its creation in 1991, The Century Council has hosted more than 2,200 community events to launch programs across the nation that have brought together millions of parents, youth, educators, law enforcement officials and traffic safety professionals. Since 1997, The Century Council has held 18 events in Kansas.
- The Century Council is chaired by former Congresswoman Susan Molinari and its policies and programs are developed and implemented by an independent National Advisory Board of distinguished leaders in business, government, education, medicine and other relevant areas interrelated to drunk driving and underage drinking.
- The Council's efforts at educating our youth begin in middle school and continue through college.

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DUI Commission 2009

12-7-09
Attachment 2

- The Council's focus for adults emphasizes identifying and addressing hardcore drunk drivers, as research indicates that high BAC and repeat offenders are the source for a disproportionately large share of highway crashes.
- The Century Council has supported legislation in Kansas to enhance penalties for hardcore drunk drivers and social hosting.

For more information on DISCUS and The Century Council, I would refer you to their respective websites:

www.discus.org

www.centurycouncil.org

Attachment: Statement from The Century Council
December 7, 2009

THE
CENTURY COUNCIL

DISTILLERS FIGHTING DRUNK DRIVING
& UNDERAGE DRINKING

Ralph S. Blackman
President & CEO

Board of Directors

Bacardi U.S.A., Inc.

Beam Global Spirits and Wine, Inc.

Brown-Forman

Constellation Brands, Inc.

DIAGEO

Hood River Distillers, Inc.

Sidney Frank Importing Co., Inc.

December 7, 2009

The Honorable Thomas C. Owens
DUI Commission Chairman
300 Southwest 10th Street
Topeka, Kansas 66612

Dear Senator Owens:

The Century Council was founded in 1991 and is an independent, national not-for-profit organization headquartered in Arlington, Virginia. Funded by America's leading distillers (Bacardi U.S.A., Inc.; Beam Global Spirits and Wine, Inc.; Brown-Forman; Constellation Brands, Inc.; DIAGEO; Hood River Distillers, Inc.; and Sidney Frank Importing Co., Inc.), the Council is dedicated to developing and implementing programs that fight drunk driving and underage drinking. To date, we have hosted nearly 2,200 community events to launch our programs across the nation bringing them to millions of parents, youth, educators, law enforcement officials and traffic safety professionals.

Advisory Board

Patrick B. Harr, M. D.
Former Chairman of the Board of Directors, American Academy of Family Physicians

The Honorable Heidi Heitkamp
Former North Dakota Attorney General

Shauna Helfert
Chairman, National Alcohol Beverage Control Association (NABCA)

Lisa Graham Keegan
*Principal, Keegan Company
Former Superintendent of Public Instruction, State of Arizona*

Robert L. King, J.D.
*President, Kentucky Council on Postsecondary Education
Former Chancellor, State University of New York*

Colonel Lonnie J. Westphal
*Chief (Ret.) Colorado State Patrol
Former Vice President of IACP*

Anthony E. Wolf, PhD.
Clinical Psychologist and Best Selling Author

An independent Advisory Board comprised of distinguished leaders in business, government, education, medicine and other relevant disciplines assists the Council in its development of programs and policies. Additionally, the Council maintains advisory panels in the areas of education and traffic safety that provide related guidance.

Through the years, The Century Council has worked extensively throughout the nation on anti-drunk driving and underage drinking efforts. The Council's education efforts start in middle school and continue through college.

- *Ask, Listen, Learn: Kids and Alcohol Don't Mix*, a creative multimedia program developed with Nickelodeon to help middle school aged children and their parents engage in on-going conversations about the dangers of underage drinking
- *Not In Our House: A Nationwide Initiative on Underage Drinking and Social Hosting*, developed with Scholastic Inc. and sponsored by the International Institute of Alcohol Awareness (IIAA), a community-wide initiative to raise awareness about the dangers of illegal underage drinking
- *Brandon Silveria's Make the Right Choice*, a speaking tour by a young man who was involved in an alcohol-related crash in high school
- *Girl Talk: Choices and Consequences of Underage Drinking*, an initiative, in partnership with the US Women's National Soccer Team Players Association, which works to improve dialogue among mothers and daughters on the issue of underage drinking
- *Parents You're Not Done Yet*, a brochure that encourages parents to talk with their teens before they leave for college about the dangers of underage drinking
- *Cops in Shops*, a cooperative effort involving local retailers and law enforcement designed to deter minors from attempting to purchase alcohol illegally and adults who purchase alcohol for minors

- *Alcohol 101 Plus*, an innovative, interactive CD-ROM program aimed at helping students make safe and responsible decisions about alcohol on college campuses. The program is used widely across the country and The Century Council has shipped program materials to 26 colleges and universities in Kansas.

Our educational programs have been developed with the assistance of public and private organizations, such as the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the U.S. Department of Education, the National Middle School Association and the American School Counselor Association. Since 1997, The Century Council has held 18 events in Kansas.

The Century Council, along with the National Transportation Safety Board, AAA and the National District Attorneys Association, comprise the Coalition to Fight Hardcore Drunk Driving that supports state legislative proposals to enact comprehensive and effective solutions to the hardcore drunk driving problem.

Hardcore drunk drivers are those who drive with a high blood alcohol concentration (BAC) of .15 or above, who do so repeatedly, as demonstrated by having more than one drunk driving arrest, and who are highly resistant to changing their behavior despite previous sanctions, treatment or education efforts. They account for the majority of alcohol-impaired fatalities. Crash data shows that drivers with a BAC of .15 or above are 380 times more likely to be involved in a fatal crash than the average non-drinking driver. According to 2008 national data from the National Highway Traffic Safety Administration, 74 percent of repeat DWI offenders involved in a fatal crash had a BAC of .15 or higher.

Responding to a growing body of research that points to high BAC and repeat offenders as the source of a large and disproportionate share of highway crashes, in 1997 The Century Council created The National Hardcore Drunk Driver Project. The Project serves as a single, comprehensive resource to assist state legislators as well as highway safety officials, law enforcement officers, judges, prosecutors, community activists and treatment professionals in developing programs to reduce hardcore drunk driving.

In 2002, the National Association of State Judicial Educators and The Century Council's National Hardcore Drunk Driver Project convened a national panel to examine the judiciary's critical role in reducing hardcore drunk driving. Developed as a result of this initiative were the award-winning publication *Hardcore Drunk Driving Judicial Guide: A Resource Outlining Judicial Challenges, Effective Strategies and Model Programs* and its companion workshop. We have trained approximately 4,000 judges in 36 states.

Additionally, recognizing that the court community is uniquely positioned to lead the effort to reduce hardcore drunk driving, The Century Council joined the National District Attorneys Association for the development of the *Hardcore Drunk Driving Prosecutorial Guide: A Resource Outlining Prosecutorial Challenges, Effective Strategies and Model Programs*.

At the Federal level, we have teamed up with judges, prosecutors and corrections officials from across the nation to press for greater resources for DWI courts, judicial and prosecutorial training and more resources to adjudicate and monitor drunk driving offenders as the United States Congress prepares to reauthorize Federal highway legislation.

In Kansas, The Century Council supported 2007 legislation to enhance the penalties for hardcore drunk driving and social hosting, and this year we supported the creation of the Kansas DUI Commission. While Kansas has made significant progress in the fight against drunk driving, laws designed to provide a comprehensive system that facilitates the swift identification, certain punishment and effective treatment of offenders should be a legislative priority. The Century Council thanks you for your leadership in this effort and stands ready to assist you in this important endeavor which will ultimately save lives in Kansas. If we can be of assistance to you and members of your DUI Commission, please contact Katie Ballard at 202-637-0077. I also encourage you to visit our website for more information at www.centurycouncil.org.

Sincerely,



Ralph Blackman
President and CEO

WHITNEY B. DAMRON, P.A.

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December 2, 2009

Kansas DUI Commission
300 SW 10th Street
Topeka, KS 66612

SENT VIA ELECTRONIC MAIL

Dear Chairman:

I want to thank you for the opportunity to provide written testimony for the Kansas DUI Commission on behalf of Beer Institute's membership. We share a common goal of working in collaboration with many different stakeholders to reduce drunk driving deaths to the fullest extent possible.

Unfortunately, I cannot attend in person to discuss our industry's long-term commitment to reducing drunk driving and answer your questions because I am presently undergoing a brief but necessary cancer treatment. I will be available shortly after the first of the year to come and personally discuss these issues with you and other members of the Commission if that would be helpful.

Again, I appreciate the opportunity to provide this written testimony and send my apologies for not being able to attend in person. Thank you for your consideration.

Sincerely,

Jeff Becker
President

JGB/sah

122 C Street NW, Suite 350 • Washington, DC 20001
(t) 202-737-2337 • (f) 202-737-4192

DUI Commission 2009

12-7-09
Attachment 3

Current Industry Efforts to Reduce DUI's
Monday, December 7, 2009
Topeka, Kansas

Beer Institute Written Testimony

First, I'd like to thank the Kansas DUI Commission and the other panelists speaking here today for your great work and tireless efforts to address this issue. I appreciate the opportunity to speak with you on behalf of the Beer Institute and provide an update on the many activities our industry is involved in to help reduce drunk driving and illegal underage drinking in the great state of Kansas.

It is encouraging to see how many people have come together today from so many different sectors to help address a common goal: keeping the roadways we all share safe and secure. Helping to fight drunk driving requires not just a commitment from state and local government, but also a commitment from all areas of our society including parents, teachers, community leaders, law enforcement, and private industry. So today I am proud to represent our members who work daily to make a difference on Kansas's roads.

We're very pleased that government-funded surveys show declines in teen drinking and drunk driving fatalities over the past twenty-five years. In fact, according to the National Highway Traffic Safety Administration, the number of fatalities in drunk-driving crashes has declined 44 percent since 1982. And for teens, the numbers are even better. Fatalities in teenage drunk-driving crashes are down 72 percent over the same period. While there is clearly more we can and will do, it is important to acknowledge the strides that have already been made.

Many factors can help explain this success. I'd like to detail for you just a small sampling of the many programs the Beer Institute and our members have supported to keep this trend going in the right direction.

We believe that cooperation among many stakeholders is responsible for this improvement and that by working together on effective solutions we can continue to make progress.

For nearly 30 years, brewers have developed and implemented programs with real results. Brewer efforts have encouraged the use of designated drivers or alternate transportation, educated teens about the consequences of drunk driving, helped support primary seatbelt laws, and promoted enforcement of existing laws. To do these things, we work alongside federal, state and local governments, public and private organizations, and many others.

For example, an extremely successful coalition we're proud to be a part of is called Techniques for Effective Alcohol Management, or TEAM Coalition. The TEAM Coalition is an alliance of professional and collegiate sports, entertainment facilities, concessionaires, stadium service providers, the beer industry, broadcasters, governmental traffic safety experts, and others working together to promote responsible drinking and positive fan behavior at sports and entertainment facilities.

TEAM's mission is to make alcohol management training a part of every stadium employee's job—including ticket takers and parking lot attendants—not just those who sell alcohol. TEAM's "Responsibility Has Its Rewards" promotion provides championship and all-star game tickets to lucky designated drivers and spreads the message that "Fans Don't Let Fans Drive Drunk." This added incentive to existing brewer designated-driver programs in major league sports venues throughout the country successfully registered over 500,000 designated drivers in 2008.

Here in Kansas, the Kansas City Wizards won TEAM's award for excellent performance, for training more than 50 percent of its operations staff at CommunityAmerica Ballpark. Also, the ballpark participates in the Good Sport Designated Driver campaign sponsored by Anheuser-Busch. This year, Wizards fans had the opportunity to serve as spokespeople for responsible behavior. The message was simple: "Be a Good Sport, Always Have a Designated Driver." Public Service Announcements produced from the taping were aired throughout the season on the CommunityAmerica Ballpark video board and on local broadcast television.

Brewers have also formed working relationships with local law enforcement to help them do their jobs. For example, Anheuser-Busch and MillerCoors have distributed thousands of driver's license identification books to law enforcement agencies and retailers.

All of this recent activity points to a very clear trend in terms of strategies to combat drunk driving. We've learned no one can employ a "go it alone" approach of tackling drunk driving head on. We all have a role to play, and it is through the formation of successful partnership programs such as TEAM and others that help bring corporations and citizens together with community leaders to help make a difference in our own communities.

The same is also true of our efforts to curb illegal underage drinking. We've learned that addressing alcohol issues with children at a young age is part of a comprehensive approach to combating alcohol abuse and drunk driving over the long term.

More than that, I'm a parent myself. I don't want my kids drinking any more than the thousands of other fathers and mothers in the brewing industry who recognize that when our children are consuming alcohol illegally, our whole society suffers. We have a responsibility as an industry to combat illegal underage drinking, but as individuals we realize that responsibility starts at home.

As parents, we can't be everywhere at once, so we must also make sure that when we're not around our kids can't get alcohol. I often say, "if they can't get it, they can't drink it." Restricting youth access to alcohol is especially key because research tells us that the majority of youth obtain alcohol from non-commercial sources such as parents, siblings, and other adults. And this is also where the role of parents comes in. Part of our job as a responsible industry is to help parents have instructive conversations with their children about the perils of illegal underage drinking and teach parents the social and legal ramifications of providing alcohol to teens in their own homes. Brewers have distributed millions of brochures, in several languages, to parents across the US and utilized national advertising to raise awareness of the important role parents play.

For example, the Beer Institute and its members are proud to support the Federal Trade Commission (FTC) in their "We Don't Serve Teens" program, which provides parents and adults with the resources needed to reduce teen drinking. The FTC and a coalition of public and private organizations distributed campaign materials in stores where alcohol is sold, offering public service announcements for TV and radio and updating the campaign Web site, www.DontServeTeens.gov. All materials are available in English and Spanish. Beer Institute members also donated ad space in national print publications and on more than 600 billboards across the country in support of the campaign

Also, earlier this year members of our industry applauded the Kansas Legislature and Governor Sebelius for enacting tougher underage-drinking legislation. The bill sponsored by State Representative Joe Patton, H.B. 2165 makes it illegal for parents to recklessly allow minors to drink alcohol in their homes and keeps them from enabling or condoning underage drinking. This bill helps reinforce the progress already made among Kansas youth. According to the federal government's most recent National Survey on Drug Use and Health, 81 percent of Kansas adolescents, ages 12 to 17, are not drinking. Additionally the U.S. Department of Transportation reports fatalities in teen drunk-driving crashes in Kansas are down 17 percent since 2000 and 62 percent since 1982.

Retailers rely on brewers, wholesalers, and state officials to arm them with the resources they need to check and verify IDs and advertise within their stores that "21 Means 21." Brewers and wholesalers provide training to teach sellers and servers of alcohol how to properly check ID's, understand the effects of alcohol, and how to effectively intervene to prevent potential alcohol abuse situations.

Let me repeat: collaboration is key. We saw the power of collaboration at the end of 2006 when alcohol industry representatives, advocacy organizations, lawmakers, and other concerned parties rallied together to pass landmark legislation to fund underage drinking prevention efforts in the final hours of the 109th Congress. The Sober Truth on Preventing Underage Drinking or STOP Act, focused on education and awareness programs at the grassroots level. Importantly, the bill highlights and enhances the traditional role of states like Kansas, which are responsible for regulating alcohol beverage distribution and administering prevention and treatment activities in its communities.

Working with the bill sponsors and legislators helped demonstrate that organizations often on different sides of the public policy debate on alcohol could reach common ground on an issue as important as underage drinking.

Similar to the progress in reducing drunk driving the effectiveness of collective efforts is clear. Most recently, the University of Michigan's federally-funded Monitoring the Future survey released 2008 data showing the number of teens who drink continued declining in all measured categories. The survey shows that 8th graders past-month drinking has declined 40 percent since their peak levels in 1996. Equally important from an alcohol access point of view, a greater number of teens in 2008 reported a decline in their reported *availability* of alcohol.

In addition to the great work brewers are doing to continue these trends, I would also like to mention our industry's long-standing commitment to marketing and selling our products to adults of legal drinking age. Our members abide by the Beer Institute's Advertising and Marketing Code which has served as the foundation for vigorous self-regulation of our advertising and marketing practices. According to the Code, ads may only be placed in programming or magazines where at least 70 percent of the audience is reasonably expected to be 21 or older.

To help advance the ongoing discussion on ways we can further prevent drunk driving offenses in the state of Kansas, we've identified several areas where we can achieve future collaborative action:

First, increase support for retail training programs to reinforce best practices and to conduct ongoing, voluntary compliance efforts. Retailers play a vital role in stopping illegal underage drinking by following their state laws, checking and verifying ID's, and preventing service to intoxicated patrons. There are over 5,221 retail establishments that sell beer in the state of Kansas, representing a network of allies to help prevent underage sales; but they need our help.

Secondly, government and private industry must work together to harness the power of innovation and use new technologies that may play an important role in this fight. Brewers have applauded Mothers Against Drunk Driving for their laudable Campaign to Eliminate Drunk Driving and bring the issue of ignition interlocks to the forefront of this debate. Experts in drunk-driving enforcement and adjudication tell us that repeat offenders and those convicted of driving with a high blood alcohol content are the most appropriate candidates for ignition interlocks as they pose the greatest risk on the road and are more likely to resist other efforts to control drinking and driving behavior.

Finally, as we saw with the federal STOP Act, industry collaboration with lawmakers can achieve very effective public policy results. We encourage state officials to look for incremental changes to existing law so that Kansas has a comprehensive legal framework to address drunk driving and illegal underage drinking. The American Legislative Exchange Council put forth a model bill on underage drinking. Among many other elements, the goal of the model bill is to strengthen existing state laws to prevent the sale, furnishing, access to, possession, and consumption of alcohol by persons under the legal drinking age. You may find ideas in the model bill to address issues that witnesses identify as critical to making further progress in reducing drunk driving in Kansas.

In closing, the Beer Institute is very supportive of the Kansas DUI Commission. Reducing incidents of drunk driving on Kansas roadways is a commitment we share very personally. To that end, we look forward to continuing the collaborative approach to reducing DUI's.

Brewers are committed to tackling this problem, and we hope to continue focusing our collective resources on proven, targeted, and effective approaches. Thank you for the opportunity to discuss these important issues. If you require any additional information or I can answer any questions, please feel free to contact me.

Prevention and Punishment of Impaired Driving

Linda L. Chezem, JD
Dept of Youth Development and Agriculture
Education
College of Agriculture
Purdue University

How might criminal and traffic laws improve the health of the public?

4-2

- Decrease mortality and morbidity due to impaired driving.
- <http://www.ibhinc.org/pdfs/CommentaryProhibitionwasaSuccess.pdf>

1. Science
2. Legal
3. Justice System
4. Cost for each component

Alcohol and Drugs and Drivers

H-H

- **Why add Drugs**
 - **Harm to non users**
 - **\$\$\$ Costs to society**
 - **Harm to user**
- **Why Not**
 - **Alcohol is still the leading drug of impairment for drivers**
 - **Difficulties in proof of impairment by drugs**
 - **Costs of adding drug detection**

Science of Detection of Illegal Drugs

- Presence of Drug(s)
 - Time of Use
 - Amount
- Specificity and reliability
- Level of Impairment related to presence of drug or metabolites
- Which testing technology is best?

4-6

Characteristics of a Method to Detect and Measure Drugs in Body Fluids ^a

Characteristic	Definition
Sensitivity	The ability of a method to detect the presence of drugs or classes of drugs.
Speed	The time from start to end of the analytical process using a method.
Simplicity	Usually related to the speed of a method, the requirement for little training for technicians and often associated with highly automated procedures.
Reliability	The dependability of a method. Its ability to reproduce accurate and precise results day-to-day.
Accuracy	The degree to which a method produces results consistent with actual values.

^aAfter Joscelyn, Donelson, Jones et al. (1980)

Continued

L-4

Characteristic	Definition
Precision	The consistency with which a method reproduces results when measuring the same sample.
Economy/Cost	Economic considerations include time of analysis, number of samples processed in a single run, degree of training required of personnel, price of obtaining (and maintaining) instrumentation, price of chemicals and other reagents used in analytical procedure, and overhead of analytical laboratory or other facility.
Safety	The degree to which personnel using a procedure are exposed to risk of injury or long-term toxicity associated with chemicals required by a method.

What do we test?

- Blood
- Urine
- Oral Fluids
- Sweat
- Hair

Considerations

Invasiveness

Ease of getting adequate
sample

Preservation for confirmation

Chain of custody

Transportation

Sorting out the Science

- Hundreds of Vendors on the Internet
- Huge amount of the myth and misinformation
- Large Advances in the Science at an ever faster pace
- Statutory and Administrative Regulations Systems for Quality Control
- Kansas Health and Environmental Laboratories (KHEL)

National Academy of Science Report

- Too many ...in the forensic science community are strapped in their work, for lack of
 - adequate **resources**,
 - sound **policies**,
 - and national **support**.
- And the forensic science community is plagued by fragmentation and inconsistent practices in federal, state, and local law enforcement jurisdictions and agencies.
- The quality of practice in forensic science disciplines varies greatly.

When- at what point in time will testing be conducted?

- Detection of Impaired Driving
- Stop and Probable Cause
- DRE
- Filing the charges
- Decision to prosecute
- Pre-trial hearings
- Trial
- Monitoring programs post finding of guilt or guilty plea

Legal Issues

- Constitutional Issues
 - Search and Seizure
 - Right to attorney
 - Other Privacy Issues
- Legal Medication
- Admission of Test Results-statute and case law analysis
- Dept of Toxicology training and certifications

Justice Systems Issues

Courts Depend on the Prosecution and Defense to make the case.

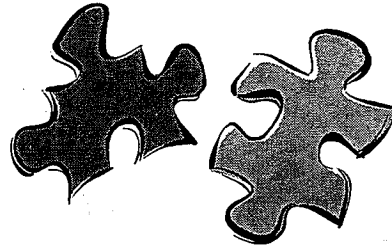
- Are Courts' Equipped?
 - Pretrial
 - Adjudication
 - Monitoring and enforcement of the sentencing orders
- Adversarial System requires adequate resources for both sides.
- Training and access to forensic science

Specific Challenges in terms of Impaired Driving

- Designer Drugs-Club Drugs
- Rare Drugs
- Inhalants- glue and other sniffers
- Prescription Drugs

Fitting the Pieces Together

- Law Enforcement
- Toxicology Science
- Prosecution
- Adjudication
- Post Judgment Monitoring
- Cost Effectiveness Analysis



Costs to Whom?

Public

- Financial costs in health and justice systems
- Quality of Life
- How much?
- Assessed To Whom?

Personal

- Financial
- Quality of Life
- How much can individual and family bear?

**A statutory scheme
that makes sense will save
dollars**

**What are minimum
requirements of NHTSA?**

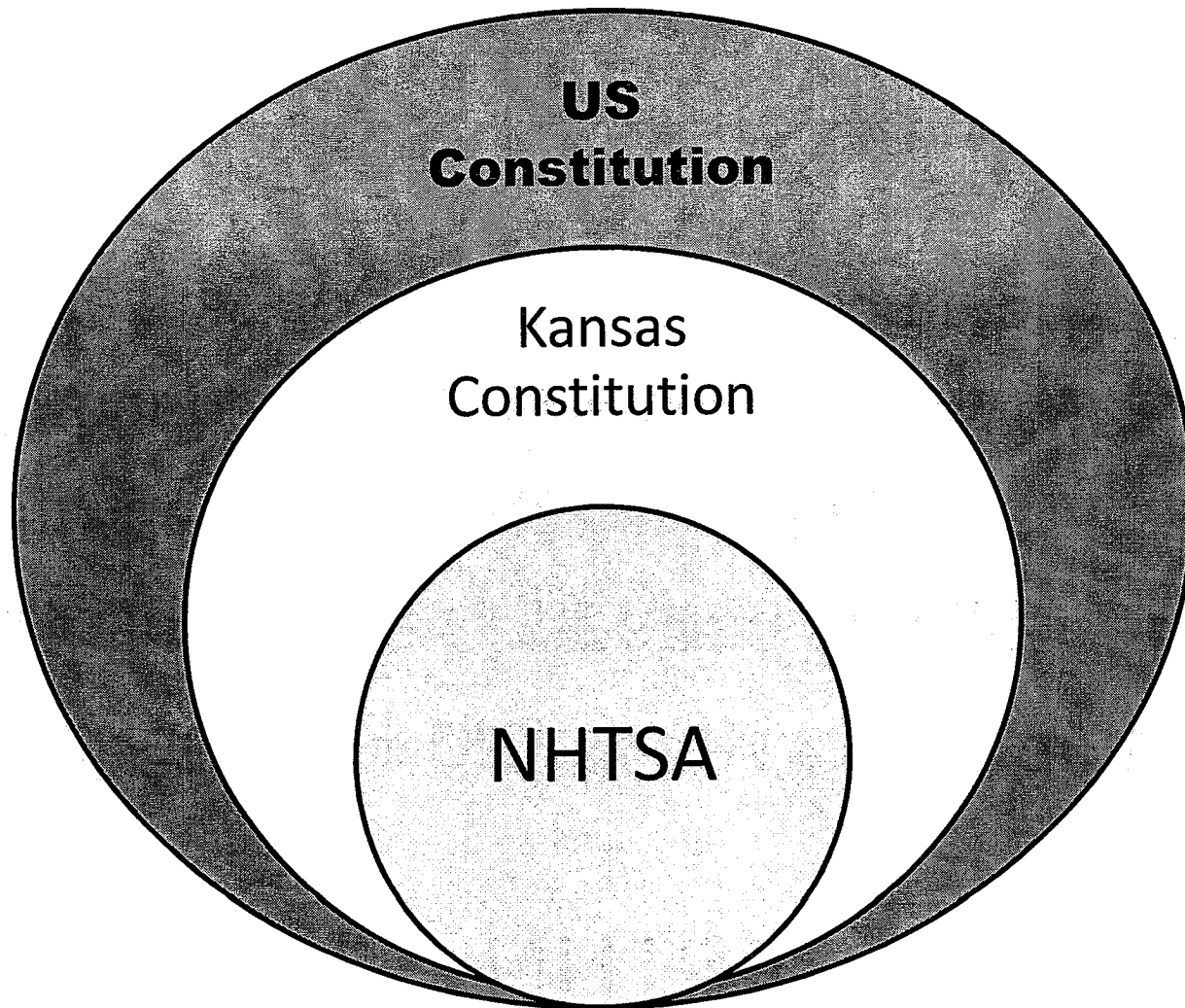
**What will be most effective
strategies for Kansas?**

**What will actually be
implemented?**

NHTSA

1. Required state provisions for funding
2. Assessments for Impaired Driving
 - Outside and experienced experts
 - Gather data and materials for a review
 - State may accept or reject recommendations

Limits in Design of a Kansas Law



Open Road to Safety

- ✓ Statutes that are realistic, clear, and coherent
- ✓ Use of evidence based science
- ✓ Support for adequate justice system

Sources for Research

4-22

CDC

- [http://cdc.gov/MotorVehicleSafety/Impaired Driving/impaired-drv factsheet.html](http://cdc.gov/MotorVehicleSafety/Impaired_Driving/impaired-drv_factsheet.html)

NHTSA

- Countermeasures That Work: A Highway Safety Countermeasure Guide For State Highway Safety Offices (4th Edition, 2009) NHTSA Report DOT HS 811 081

Traffic Safety Facts

Research Note



DOT HS 811 175

July 2009

Results of the 2007 National Roadside Survey of Alcohol and Drug Use by Drivers

Richard Compton and Amy Berning

Over the last four decades, the National Highway Traffic Safety Administration (NHTSA) and/or the Insurance Institute for Highway Safety have conducted four national surveys to estimate the prevalence of drinking and driving in the U.S. (Wolfe, 1974; Lund and Wolfe, 1991; Voas, et al, 1998). These surveys utilized a stratified random sample of weekend nighttime drivers in the contiguous 48 States. The first National Roadside Survey (NRS) was conducted in 1973, followed by national surveys of alcohol use by drivers in 1986, 1996, and 2007.

The 2007 NRS included, for the first time, measures to estimate the use of other potentially impairing drugs by drivers. Prior roadside surveys had collected breath samples to determine blood alcohol concentration (BAC). Due to developments in analytic toxicology, NHTSA determined it would be feasible in the 2007 survey to collect oral fluid and/or blood samples to determine driver use of a wide variety of other potentially impairing drugs. A pilot test conducted in 2005 demonstrated the feasibility of conducting this more complex survey procedure and confirmed that motorists would voluntarily participate in the study (Lacey, et al, 2007).

The 2007 NRS was designed to produce national estimates of alcohol and drug use by drivers. Thus, the use rates shown below are national prevalence rates calculated from the percentage of subjects using alcohol or drugs and adjusted with an appropriate weighting scheme.

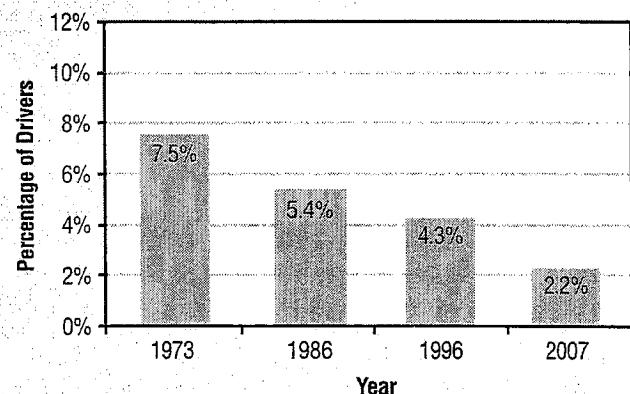
Results of the 2007 Survey: Alcohol

The 2007 NRS found a dramatic decline in the number of drinking drivers with BACs at or above the current legal limit of 0.08 g/dL* on weekend nights compared to previous surveys (Figure 1). In 1973, 7.5% of drivers

had BACs at or above 0.08 g/dL. In 2007, there were only 2.2% of drivers with a BAC at or above the current legal limit. This represents a decline of 71% in the percentage of alcohol-impaired drivers on the road on weekend nights. Similar declines were found at other BAC levels. For example, the percentage of drinking drivers (any positive BAC) declined almost as much over this time period, but one cannot infer impairment at very low BACs.

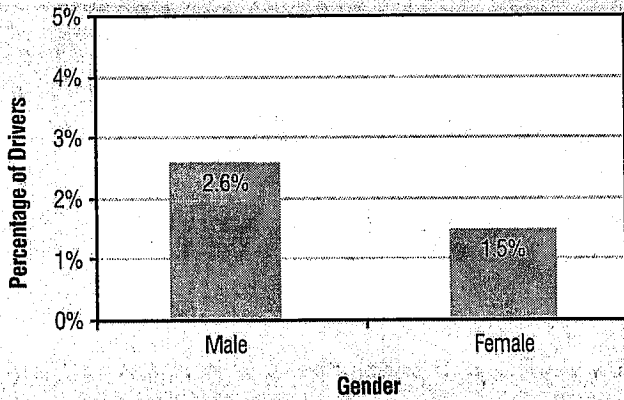
The percentage of male drivers with a BAC over the current legal limit of 0.08 g/dL was 42% higher than the percentage of female drivers with illegal BACs (Figure 2). A regression analysis showed that males were significantly more likely to have illegal BACs ($p < .01$). Over 2% of the weekend nighttime drivers had illegal BACs (≥ 0.08 g/dL) while only 0.1% of daytime drivers had illegal BACs.

Figure 1
Percentage of Weekend Nighttime Drivers with BACs \geq 0.08g/dL* in the Four National Roadside Surveys



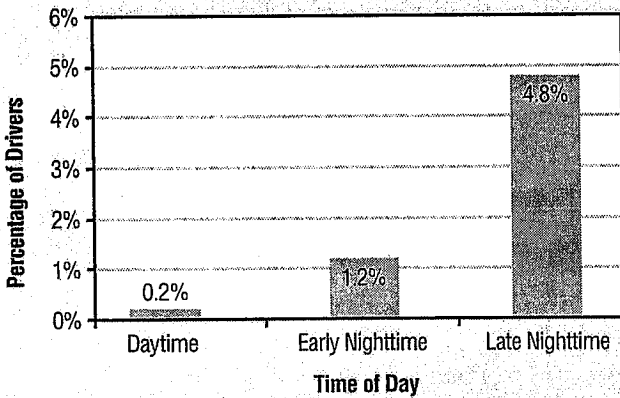
*During the period from 1973 through 1996 the States had BAC limits that ranged from 0.08 to 0.15 g/dL

Figure 2
Percentage of Weekend Nighttime Drivers with Illegal BACs By Gender



Time of day made a big difference in the likelihood of drivers having illegal BACs (Figure 3). Looking just at Friday daytime (9:30 a.m. to 11:30 a.m. and 1:30 p.m. to 3:30 p.m.), early nighttime (10:00 p.m. to midnight), and late nighttime (1 a.m. to 3 a.m. Saturday), only 0.2% of drivers had illegal BACs during the daytime, while 1.2% had illegal BACs during the early nighttime and 4.8% had illegal BACs during the late nighttime.

Figure 3
Percentage of Drivers with Illegal BACs by Time of Day (Fridays and Early Saturday Mornings)



Substantial differences were observed in the percentage of drivers with illegal BACs by vehicle type (Figure 4). Motorcycle riders were more than twice as likely as passenger car drivers to have had BACs ≥ 0.08 g/dL (5.6% compared to 2.3%). Pickup truck drivers were the next most likely vehicle type to have illegal BACs (3.3%).

Underage drivers are of special interest since they have been shown to be a high risk of crash involvement when drinking and driving. Figure 5 shows that the percent-

age of underage drivers in fatal crashes with a 0.08 g/dL or higher BAC decreased from 1973 to 1996. However, from 1996 to 2007, there has been a slight increase. The NRS data do not show this same trend; the percentage of underage drivers with 0.08 g/dL or higher BACs has been decreasing throughout this time period.

Figure 4
Percentage of Drivers with Illegal BACs by Vehicle Type

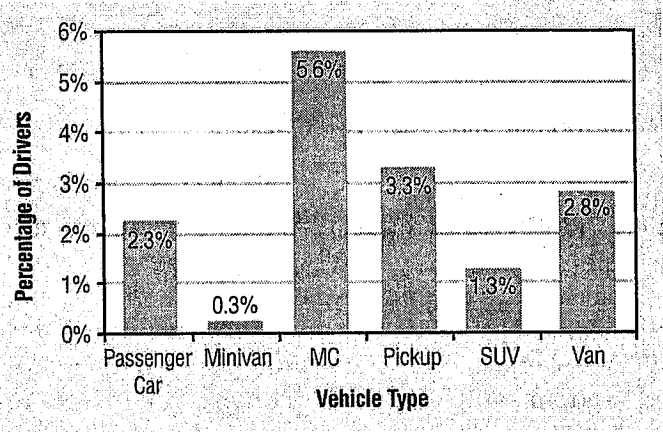
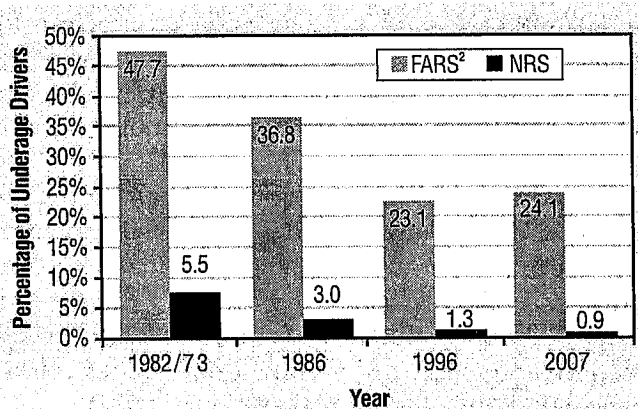


Figure 5
Comparison of FARS and National Roadside Surveys Underage (Age Under 21) Drivers with BAC ≥ 0.08 g/dL¹



¹ In this figure, percentages are weighted.

² FARS is NHTSA's Fatality Analysis Reporting System.

Results of the 2007 Survey: Drugs

The 2007 NRS provides the first nationally-representative estimate of the prevalence of potentially-impairing drug use by drivers. While these estimates are not in themselves conclusive regarding the nature and scale of the drug-impaired driving problem, they are an important part of ongoing research by NHTSA and other organizations to understand the role of drugs in traffic safety.

In addition to the prevalence of drug use by drivers, several other questions need to be answered in order to assess the drug-impaired driving problem, including:

- Which drugs impair driving ability?
- What drug dose levels are associated with impaired-driving?
- Which drugs are associated with higher crash rates?

Determining which drugs and dosage levels impair driving related skills is a large undertaking given the number of potentially-impairing drugs. NHTSA has convened an expert panel to begin identifying methods for assessing impairment and some laboratory research has been conducted on a number of high priority drugs to measure the effect of drug dosage on driving-related skills (e.g. divided attention, visual tracking, reaction time to sudden events, etc.).

Prevalence of Drug Use by Drivers

Participants in the 2007 NRS were asked to provide an oral fluid and blood sample in addition to a breath sample. The oral fluid and blood samples were tested for the presence of a large number of potentially impairing drugs. The list of impairing drugs covered illegal, prescription, and over-the-counter products, including stimulants, sedatives, antidepressants, marijuana, and narcotic analgesics.

Table 1
Drug Prevalence by Time of Day and Test

Time of Day	Oral Fluid Test % Drug Positive	Blood Test % Drug Positive	Both Oral Fluid and/or Blood Test % Drug Positive
Daytime	11.0%	NA ²	NA
Nighttime	14.4%	13.8%	16.3%

Caution should be exercised in assuming that drug presence implies driver impairment. Drug tests do not necessarily indicate current impairment. Drug presence can be measured for a period of days or weeks after ingestion in many cases. This latency of drug presence may partially explain the consistency between daytime and nighttime drug findings.

² Blood Samples were collected only at nighttime sessions

Based on the oral fluid results, more nighttime drivers (14.4%) were drug-positive than were daytime drivers (11.0%). Based on the blood test results which were administered only at nighttime, 13.8% of the drivers were drug-positive. Using the combined results of either or both oral fluid and blood tests, 16.3% of the nighttime drivers were drug-positive.

The most commonly detected drugs were Marijuana (THC) at 8.6%, Cocaine at 3.9%, and Methamphetamine at 1.3% of nighttime drivers.

The reader is cautioned that drug presence does not necessarily imply impairment. For many drug types, drug presence can be detected long after any impairment that might affect driving has passed. For example, traces of marijuana can be detected in blood samples several weeks after chronic users stop ingestion. Also, whereas the impairment effects for various concentration levels of alcohol is well understood, little evidence is available to link concentrations of other drug types to driver performance.

The full significance of these findings for highway safety will only become clear when ongoing and additional research conducted by NHTSA and others is completed. NHTSA is responding to these findings with programs to enable law enforcement officers to recognize drug impairment, and education for prosecutors and judges on factors associated with drug-impaired driving cases.

Under the Drug Evaluation and Classification program, NHTSA has prepared nearly 1,000 instructors and trained more than 6,000 officers in 46 states. Officers receive extensive training to recognize symptoms of driver impairment by drugs other than alcohol.

NHTSA has also initiated a follow-on study to the 2007 NRS to identify which drugs are associated with higher crash risk. This case-control study will include in-depth investigations of a large number of crashes of all severities. The proportion of drug use by crash-involved drivers will be compared to that of a similar sample of non-crash involved drivers to determine if drug use is associated with crash involvement. Findings from this large-scale study are expected in 2012.

Challenges in Determining How Drugs Affect Driving

Most psychoactive drugs are chemically complex molecules, whose absorption, action, and elimination from the body are difficult to predict, and considerable differences exist between individuals with regard to the rates with which these processes occur. Alcohol, in comparison, is more predictable. A strong relationship between BAC level and impairment has been established, as has the correlation between BAC level and crash risk.

Factors that make similar prediction difficult for most other psychoactive drugs include:

- The large number of different drugs that would need to be tested (extensive testing of alcohol has been undertaken over many decades; whereas relatively little similar testing has occurred for most other drugs)
- Poor correlation between the effects on psychomotor, behavioral and/or executive functions and blood or plasma levels (peak psychomotor, behavioral, and executive function effects do not necessarily correspond to peak blood levels; detectable blood levels may persist beyond the impairing effects or the impairing effects may be measurable when the drug cannot be detected in the blood)
- Sensitivity and tolerance (accentuation and diminution of the impairing effects with repeated exposure)
- Individual differences in absorption, distribution, action and metabolism (some individuals will show evidence of impairment at drug concentrations that are not associated with impairment in others; wide ranges of drug concentrations in different individuals have been associated with equivalent levels of impairment)
- Accumulation (blood levels of some drugs or their metabolites may accumulate with repeated administrations if the time-course of elimination is insufficient to reduce or remove the drug or metabolite before the next dose is administered)
- Acute versus chronic administration (it is not unusual to observe much larger impairment during initial administrations of drugs than is observed when the drug is administered over a long period of time)

The result of these factors is that, at the current time, specific drug concentration levels cannot be reliably equated with effects on driver performance.

Survey Methodology

The National Roadside Survey of Alcohol and Drug Use by Drivers is the first nationwide representative sample of drug use by drivers (three previous nationwide representative surveys of alcohol use have been conducted). The 2007 NRS involved random stops of drivers at 300 locations across the contiguous United States. Data were primarily collected on weekend nights (10:00 pm to midnight on Friday and Saturdays and 1:00 am

to 3:00 am on Saturdays and Sundays). New to the 2007 NRS was the inclusion of weekday daytime data collection (Fridays 9:30 am to 11:30 am or 1:30 pm to 3:30 pm).

Participation in the survey was voluntary and anonymous. Whereas prior surveys excluded commercial vehicles and motorcycles, the 2007 NRS included motorcycles. Almost 11,000 eligible drivers entered the survey sites. Biological measures included breath-alcohol measurements on 9,413 drivers (86%), oral fluid samples from 7,719 drivers (71%), and blood samples from 3,276 nighttime drivers (39%).

The survey used a multistage sampling procedure based on the National Automotive Sampling System (NASS) – General Estimates System (GES). This system involves sixty primary sampling units (PSUs) from which five sites were selected randomly. The PSUs are large cities, counties or groups of counties representing four regions within the U.S. and three levels of population density. Each PSU was divided into one-square-mile grids. Five one-square-mile grids were then randomly selected and appropriate survey sites were located within the square-mile grids. Drivers were then randomly selected from the traffic passing the survey site. Limited access roads, residential, and purely rural roads were not included. Commercial vehicle drivers were excluded for logistical reasons (the need for a much larger area to safely pull over tractor-trailers) and motorcycle operators were over-sampled (motorcycle deaths have more than doubled over the last decade and motorcycle crashes have the highest alcohol involvement rate of any vehicle type). The basic survey procedure involved the use of law enforcement officers to direct traffic at the survey sites, but not otherwise to interact in any way with the survey subjects. Trained data collectors solicited participation of the drivers in the survey (offering incentives for participation). Participation was voluntary and anonymous.

The survey procedure involved a brief explanation of the purpose of the survey, a passive alcohol reading, a breath alcohol test, a brief set of demographic questions, drinking and driving behavior, oral fluid collection, Alcohol Use Disorder (AUD) questions, drug use questions, and blood sample collection. An impaired driver protocol was implemented whenever a suspected impaired driver was encountered to insure that potentially impaired drivers did not drive away from the survey site. In addition, an attempt was made to convert a random sample of drivers who refused to participate in

the survey into participants (by use of especially skilled interviewers and use of special incentives). This sub-study was designed to collect information on whether non-participants were more likely to be alcohol- and/or drug-positive.

While 9,413 (86%) drivers out of 10,909 eligible drivers provided a breath sample; 1,496 drivers refused or were unable to provide a breath sample. Of those drivers, BACs were imputed for 1,296 drivers (87%) for whom a passive alcohol sensor reading was available.

National prevalence rates were derived from a complex weighting scheme based on the volume of serious crashes at each site and the probability of a survey driver being randomly selected from the total driving trips at that site.

Data collection, analysis, imputation, and weighting for the 2007 NRS were conducted by the Pacific Institute for Research and Evaluation (PIRE) under the direction of the Office of Behavioral Safety Research (Amy Berning project manager) in NHTSA through Federal contract number DTNH22-06-C-0040.

For More Information

For questions regarding the information presented in this document, please contact Amy Berning at amy.berning@dot.gov.

Detailed information about the study and results will be available in upcoming publications. Three technical reports are under development; one provides a complete description of the methodology used (sampling, analysis, weighting, and imputation procedures) and subject participation rates (report entitled *2007 National*

Roadside Survey of Alcohol and Drug Use: Methodology). Detailed information on the use of alcohol by drivers and the relationship of alcohol use to various demographic factors (e.g., age, gender, race/ethnicity), region, vehicle type, alcohol abuse disorders, prior arrests involving alcohol, use of seat belts, etc. will be available shortly in a report entitled *2007 National Roadside Survey of Alcohol and Drug Use: Alcohol Prevalence Rates*. Detailed information on the use of drugs by drivers and the combined use of drugs and alcohol will be provided in a third report entitled *2007 National Roadside Survey of Alcohol and Drug Use: Drug Prevalence Rates*. These upcoming reports will be posted on NHTSA's web site at: www.nhtsa/trafficinjury/researchandevaluation later in 2009.

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U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

Commentary

August 1, 2009

***Prohibition Did Not Fail: "Actually, Prohibition Was a Success"
Why Restrictive Drug Policies and Public Support Are Needed***

In discussions of drug policy the supporters of "reform" want to accept illegal drug use, remove the criminal justice system from drug policy, and at the end of the day "legalize" drugs, arguing that "the war on drugs has failed." They follow with the knockout punch that prohibition failed with alcohol and it has failed with the currently illegal drugs.

There is a good case to be made that the current restrictive policy which balances supply reduction (law enforcement) with demand reduction (treatment) has succeeded in containing the drug epidemic. That leaves the claim that "prohibition failed." My friend and colleague, Mark H. Moore from Harvard's Kennedy School of Government, published an important article in the New York Times two decades ago, "Actually, Prohibition Was a Success" when the "legalization" argument was, like today, a major media focus.

The bottom line: prohibition of alcohol in the 18th Amendment to the Constitution failed politically -- it is the only constitutional amendment to be repealed -- but it succeeded remarkably as a public health initiative.

In terms of drug policy, there are lessons to be learned from this experience with alcohol policy but they do not include the conclusion that legalization solves the problem. The major lesson to be learned is the importance of public support for restrictive drug policies. A fall of public support is what led to the repeal of prohibition in 1933. That is why the current media battle over drug policy is so important today.

IBH's position is that restrictive drug policies can and do work. They are both humane and cost effective. Take a look at this independent scholarly review of alcohol prohibition that published in the New York Times and ask if you really think "prohibition failed."

Robert L. DuPont, M.D.
President, Institute for Behavior and Health, Inc.
First Director, National Institute on Drug Abuse (NIDA) 1973 to 1978

October 16, 1989

Actually, Prohibition Was a Success

By Mark H. Moore; Mark H. Moore is professor of criminal justice at Harvard's Kennedy School of Government.

History has valuable lessons to teach policy makers but it reveals its lessons only grudgingly.

Close analyses of the facts and their relevance is required lest policy makers fall victim to the persuasive power of false analogies and are misled into imprudent judgments. Just such a danger is posed by those who casually invoke the "lessons of Prohibition" to argue for the legalization of drugs.

What everyone "knows" about Prohibition is that it was a failure. It did not eliminate drinking; it did create a black market. That in turn spawned criminal syndicates and random violence. Corruption and widespread disrespect for law were incubated and, most tellingly, Prohibition was repealed only 14 years after it was enshrined in the Constitution.

The lesson drawn by commentators is that it is fruitless to allow moralists to use criminal law to control intoxicating substances. Many now say it is equally unwise to rely on the law to solve the nation's drug problem.

But the conventional view of Prohibition is not supported by the facts.

First, the regime created in 1919 by the 18th Amendment and the Volstead Act, which charged the Treasury Department with enforcement of the new restrictions, was far from all-embracing. The amendment prohibited the commercial manufacture and distribution of alcoholic beverages; it did not prohibit use, nor production for one's own consumption. Moreover, the provisions did not take effect until a year after passage - plenty of time for people to stockpile supplies.

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Second, alcohol consumption declined dramatically during Prohibition. Cirrhosis death rates for men were 29.5 per 100,000 in 1911 and 10.7 in 1929. Admissions to state mental hospitals for alcoholic psychosis declined from 10.1 per 100,000 in 1919 to 4.7 in 1928.

Arrests for public drunkenness and disorderly conduct declined 50 percent between 1916 and 1922. For the population as a whole, the best estimates are that consumption of alcohol declined by 30 percent to 50 percent.

Third, violent crime did not increase dramatically during Prohibition. Homicide rates rose dramatically from 1900 to 1910 but remained roughly constant during Prohibition's 14 year rule. Organized crime may have become more visible and lurid during Prohibition, but it existed before and after.

Fourth, following the repeal of Prohibition, alcohol consumption increased. Today, alcohol is estimated to be the cause of more than 23,000 motor vehicle deaths and is implicated in more than half of the nation's 20,000 homicides. In contrast, drugs have not yet been persuasively linked to highway fatalities and are believed to account for 10 percent to 20 percent of homicides.

Prohibition did not end alcohol use. What is remarkable, however, is that a relatively narrow political movement, relying on a relatively weak set of statutes, succeeded in reducing, by one-third, the consumption of a drug that had wide historical and popular sanction.

This is not to say that society was wrong to repeal Prohibition. A democratic society may decide that recreational drinking is worth the price in traffic fatalities and other consequences. But the common claim that laws backed by morally motivated political movements cannot reduce drug use is wrong.

Not only are the facts of Prohibition misunderstood, but the lessons are misapplied to the current situation.

The U.S. is in the early to middle stages of a potentially widespread cocaine epidemic. If the line is held now, we can prevent new users and increasing casualties. So this is exactly not the time to be considering a liberalization of our laws on cocaine. We need a firm stand by society against cocaine use to extend and reinforce the messages that are being learned through painful personal experience and testimony.

The real lesson of Prohibition is that the society can, indeed, make a dent in the

4-30

consumption of drugs through laws. There is a price to be paid for such restrictions, of course. But for drugs such as heroin and cocaine, which are dangerous but currently largely unpopular, that price is small relative to the benefits.

photo of Federal agents destroying beer in 1930

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Press Release

October 26, 2009

Rates of Drugged Driving are Approaching those of Drunk Driving -- Implications for Legalizing Marijuana

Washington, DC. Driving under the influence of illegal drugs is a serious problem on the nation's highways. Drugged driving, with marijuana the most prevalent of the illegal drugs, is now more common than drunk driving. Any move towards the legalization of marijuana must take into account the probable consequence of increased marijuana use for highway safety.

In the National Highway Traffic Safety Administration's recent National Roadside Survey (NRS) of alcohol and drug use by drivers, researchers found that 8.63% of weekend night time drivers tested positive for marijuana compared to 2.2% of drivers with blood alcohol concentrations (BAC) at or above the legal limit of 0.08 g/dL.ⁱ Illegal drugs were present more than 7 times as frequently as alcohol in those surveyed.

A recent study found that a total of 51% of seriously injured drivers admitted to a Maryland Level-1 shock-trauma center had positive blood toxicology results for illegal drugs.ⁱⁱ A total of 26.9% of drivers in the study tested positive for marijuana, approximating the 30.6% of drivers that tested positive for alcohol.

The Institute for Behavior and Health, Inc. (IBH) estimates that about 20% of all crashes each year are caused by drugged driving.ⁱⁱⁱ This translates into 8,600 deaths^{iv}, 580,000 injuries^v, and \$33,000,000,000 in damages every year^{vi} due to drugged driving.

Illegal drug use is not a victimless crime. The laws against drug use and sale are important public health measures that reduce the negative consequences of drug use, including drugged driving. Federal law, administered by the U.S. Department of Transportation, prohibits the use of marijuana and other illegal drugs by commercial drivers for the good reason that drugged driving is a major threat to highway safety. This prohibition extends to airline pilots and railroad train engineers

Legalizing marijuana poses substantial risks, including increasing drugged driving.

To learn more about IBH and drugged driving visit:
www.ibhinc.org and www.StopDruggedDriving.org.

Robert L. DuPont, M.D.
President, Institute for Behavior and Health, Inc.
Former White House Drug Czar
Founding Director, National Institute on Drug Abuse (NIDA).

ⁱ Richard Compton, & Amy Berning, Results of the 2007 National Survey of Alcohol and Drug Use By Drivers. National Highway Traffic Safety Facts. Washington, DC: NHTSA's National Center for Statistics and Analysis (July 2009) DOT HS 811 175.

ⁱⁱ J. Michael Walsh, Ron Flegel, Randolph Atkins, Leo A. Cangianelli, Carnell Cooper, Christopher Welsh and Timothy J. Kerns, Drug and Alcohol Use Among Drivers Admitted to a Level-1 Trauma Center, Accident Analysis and Prevention, Volume 37, Issue 5, Pages 894-901 (September 2005)

ⁱⁱⁱ 20% is a conservative estimate based on:

- J.M. Walsh's finding that 50% of seriously injured drivers tested positive for drugs OTA (Walsh JM, Flegel R, et al Acc Anal Prev 37, 2005)
- Barry Logan's study showing 35% of fatally-injured drivers test positive for drugs (Schwilke, dos Santos, Logan, J For Sci, 2006)
- Barry Logan's trucker drug-testing study which found 21% of truckers test positive for drugs (Couper, Logan. J For Sci, 2001)
- CDC estimates that 18% of traffic accidents are drug-related (<http://www.cdc.gov/ncipc/factsheets/driving.htm>)
- NIDA estimates that drugs are used by 10% to 22% of drivers in collisions (<http://www.nida.nih.gov/infofacts/driving.html>)
- NHTSA notes that, for fatally injured drivers, cannabis is detected in 7% to 37% with a mean of 14%. Each of five other drugs can be found in about 5% or less (<http://www.nhtsa.dot.gov/>)

^{iv} Figure based on IBH's conservative estimate that 20% of vehicle crashes are attributable to drugged driving, and recent data from the Fatality Analysis Reporting System

^v Figure based on IBH's conservative estimate that 20% of vehicle crashes are attributable to drugged driving, and the most recent data from the NHTSA

^{vi} Figure based on IBH's conservative estimate that 20% of vehicle crashes are attributable to drugged driving, and recent data from AAA's estimate that the cost of car accidents costs \$164.2 billion dollars annually



Oral Fluid Collection/Screening

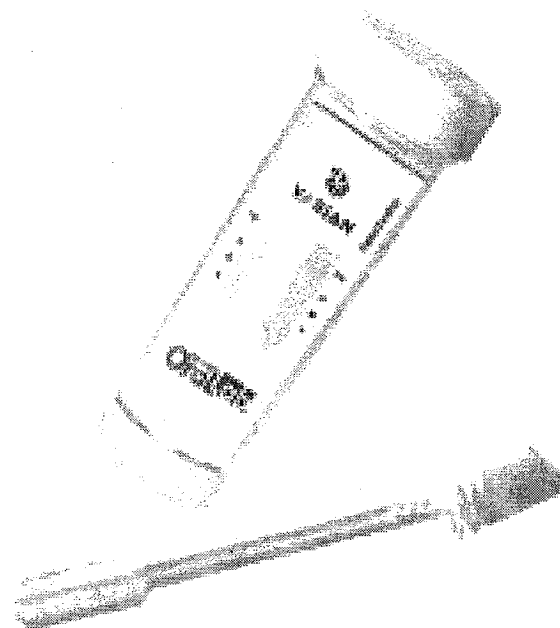
MDG -J A Enrici

Summary

- The utility of saliva as a biological specimen for the detection of recent drug use has been supported by a number of studies. Correlation of drug in **saliva and blood** has been reported.
- Unlike urine drug tests, saliva drug testing detects active drugs present at **low concentrations** (*recent drug use, typically within hours*).

Introduction

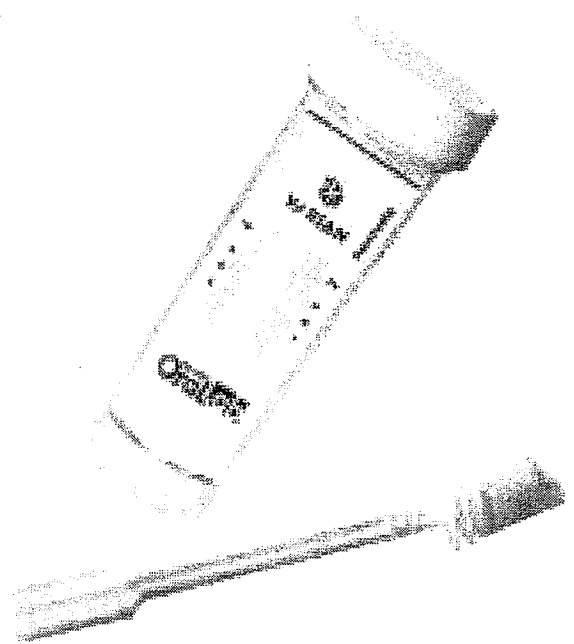
- New On•Site[®] OraLab[®] 6 detects "under the influence" drug use for six drugs – even before they're metabolized. And, its **detection level for parent THC is lower** and the **most accurate** in the industry.
- With **less than half the steps required by other oral fluid tests**, OraLab's no mess design is truly simple and easy to administer.



ONSITE[®]
OraLab 6

Introduction

- Its testing process is **100% observable** and eliminates the need for special facilities or gender-specific staffing, which makes specimen tampering less likely.
- A **unique, patent-pending expresser** and single tube design allows you to **collect and store sufficient saliva** (can be measured and observed in the tube) for both immediate and confirmation testing.



Product Features

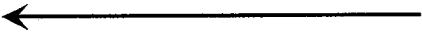
Seal and ship a presumptive positive result for confirmation, right in OraLab's tamper-evident container.



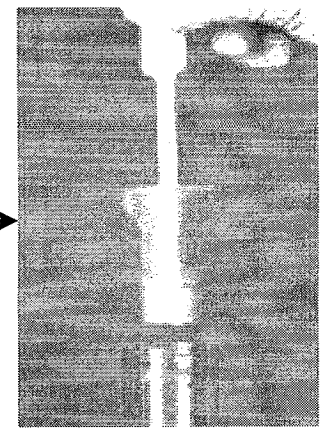
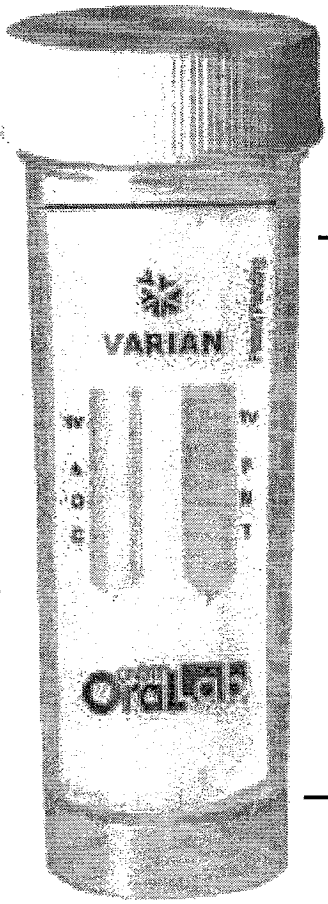
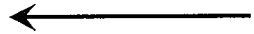
Three simple steps – Collect, Test, and Store. Can be administered in 10-15 minutes.



Patented feature on test card enhances readability.



Collector absorbs sufficient saliva for both immediate and confirmation testing.



Expresser has locking device, so when the collector is removed it is drip-free.

Simultaneously tests for amphetamine, opiate, cocaine, PCP, methamphetamine, and THC (marijuana).

Intended Use

- On-Site OraLab[®] 6 detects drugs of abuse in saliva and provides for the collection, screening, transport, and storage of saliva specimens.
- OraLab[®] 6 is intended for forensic use in simultaneous, **qualitative** detection of multiple drugs and metabolites in saliva.

Intended Use

- OraLab[®] 6 provides only **preliminary** analytical test results. It is **NOT** an **evidentiary test**.
- An alternate, more specific chemical method must be used to obtain confirmed analytical results - **GC/MS testing via the Department's contracted outside laboratory.**

OraLab Cutoff Concentrations

<i><u>Drug</u></i>	<i><u>ng/mL</u></i>
• COC (Cocaine)	20
• OPI (Opiate)	40
• AMP (<i>d</i> -Amphetamine)	50
• MET (<i>d</i> -Methamphetamine)	50
• PCP (Phencyclidine)	10
• THC (Delta 9 - Tetrahydrocannabinol)	50

Subject Preparation

- Instruct the donor to **draw a pool of oral fluid into the mouth** with a “puckering” action for a few moments before collection.

Instructions for Use

Step 1

- Have donor keep foam collector in the mouth until thoroughly soaked (**up to 3 minutes**).

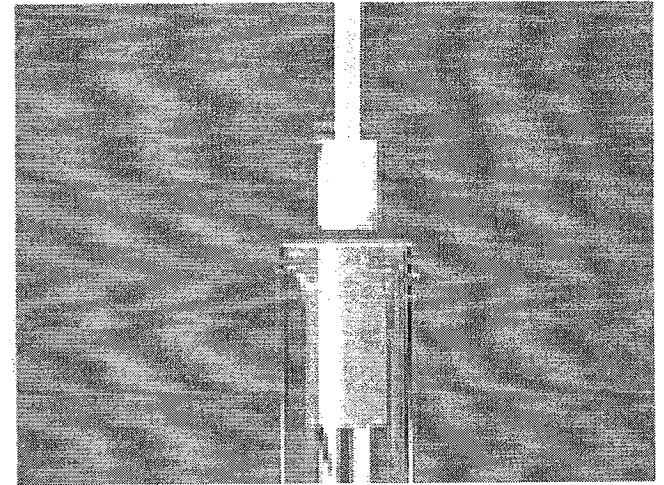
The donor should not chew or suck on foam.



Instructions for Use

Step 2

- The administrator should place the collector foam-first into the expresser in the tube.



Interpret Test Results

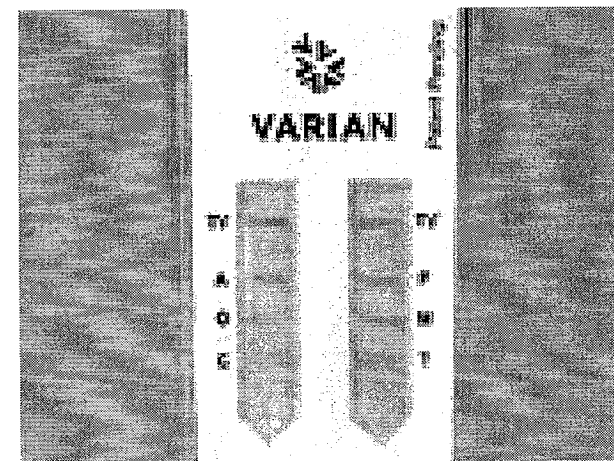
5-12

- Immediately interpret test results as either **negative** or **preliminary positive**.

Interpret Test Results

Negative Result

- A **negative result** for a given drug (*i.e.*, *drug absent or below the cutoff*) is the **PRESENCE** of a band in the area adjacent to the drug name.
- The test result pictured here is **negative** for cocaine, opiate, amphetamine, PCP, methamphetamine, and THC (marijuana).



Alcohol
ON-SITE[®]

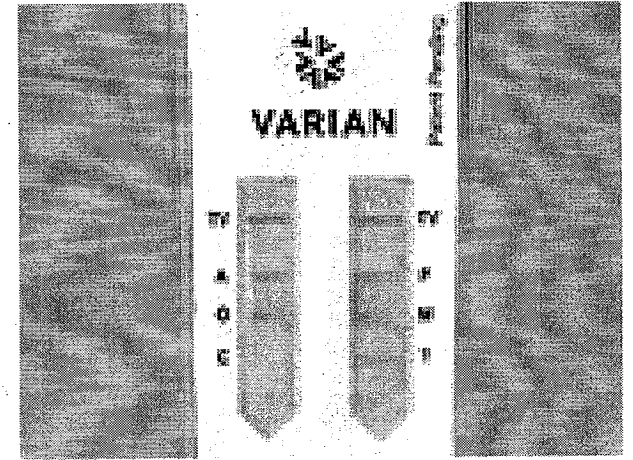
Interpret Test Results

- The **intensity** of the bands in the Results area may vary.
- A **negative** sample may give a **faint or incomplete band**.
- ANY band in the Result area indicates a **negative** result.

Interpret Test Results

Positive Result

- A preliminary positive result for a given drug (*i.e., drug present above the cutoff, suggesting current or recent drug use*) is the **ABSENCE** of a band in the test result area adjacent to the drug name. The adjacent area appears off-white.
- The result shown here is **preliminarily positive** for Cocaine.



Alcohol
ON-SITE[®]

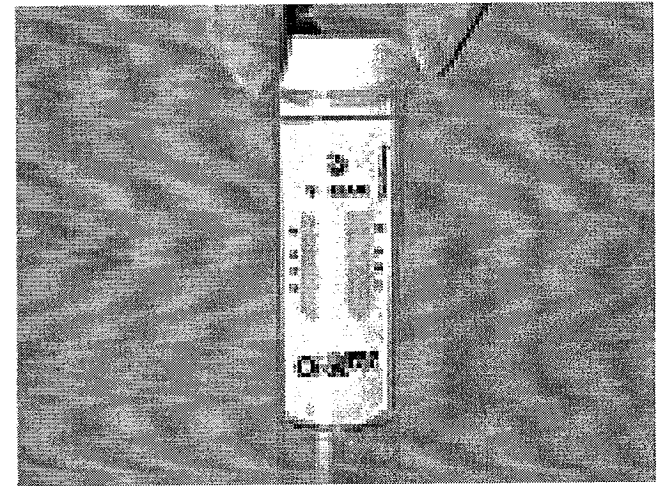
Interpret Test Results

- If all drug results are **negative**, or if **no confirmation tests are required**, properly discard the test card and tube.
- When confirmation of a preliminary positive screen result is required, follow established **chain-of-custody procedures** for shipment to a laboratory.

Confirmation Testing

Step 7

- To send for confirmation, tightly **seal** the tube with the cap.
- Complete your facility's **chain-of-custody procedures** and **pack into a box** for shipping to the lab.
- Ship box according to local, state, or federal regulations.



Technical Assistance

- Technical assistance can be obtained by contacting **Support** at MDG
847-426-9772 or mdgrp@comcast.net

SUPREME COURT: COUNTY OF NEW YORK
CRIMINAL TERM: PART N

-----X
THE PEOPLE OF THE STATE OF NEW YORK

DECISION AND ORDER
SCI# 1092/06

- against -

JOSEPH GONZALES,

Defendant.

-----X
Laura A. Ward, J.:

On April 20, 2006, the defendant pleaded guilty to criminal possession of a controlled substance in the fifth degree, in violation of Penal Law ["PL"] § 220.06, and unlawfully dealing with a child in the first degree, in violation of PL § 260.20. Pursuant to Criminal Procedure Law § 390.30(6) the defendant was placed on Interim Probation Supervision. ("IPS") The terms of IPS are that if the defendant complied with all the conditions of IPS he would be sentenced to a period of probation. If the defendant failed to comply with any of the conditions he would be in violation of the terms of IPS and would be sentenced to a period of incarceration. Among the conditions of IPS, the defendant was to remain drug free and submit to testing for drug use. On May 9, 2006, the defendant was given an oral swab test to determine if he was using drugs. The test revealed that the defendant was positive for cocaine. The defendant, facing a period of incarceration, moved to preclude the test result as proof of his violation of the terms of IPS. The defendant argued that the oral swab is not sufficiently reliable to establish the defendant's use of cocaine. Thus, there is insufficient proof to support his violation of the terms of IPS. The People opposed the defendant's motion. A hearing on the defendant's motion was ordered and held on October 17, 2006.

In deciding the defendant's motion, the court has considered the testimony taken at the hearing and the exhibits.¹

At a hearing held before me three witnesses, Elton Best, Doctor Salvatore Joseph

¹ A briefing schedule was set by the court following the hearing. At, or about, the time the defendant's brief was due, defense counsel informed the court that the defendant would not be submitting a brief. The People were informed of the defendant's decision not to submit a brief. The People also chose not to file a brief.

Salamone, and Vinnie Happ, testified for the People.

Elton Best is a Lab Helper with the New York City Department of Probation. His job at the Department of Probation involves testing probationers for drug use. (Transcript of hearing ["Transcript"] at pp. 3 to 4) Mr. Best testified that he was trained to perform drug tests on probationers. The training, which is repeated yearly, includes videos and lectures. (Transcript at p. 5) Mr. Best testified that he has performed thousands of drug tests, that he performed a test on the defendant on May 9, 2006, and that the defendant tested positive for cocaine. (Transcript at pp. 6 to 7) Mr. Best testified that when probationers are tested for drug use they are typically given a urine test. However, when a probationer is unable to urinate, an oral swab test, manufactured by Varian Incorporated, is performed. (Transcript at pp. 14 and 30 to 31) Mr. Best testified as to the procedure he uses to test every probationer. He testified that every time he performs an oral swab test, he retrieves a fresh, unexpired box containing the test kit. (Transcript at pp. 19 to 24) The probationer is given the oral swab while it remains in a cellophane wrapper. The probationer pulls out the test stick, saturates it with saliva, and then places the test stick into a plastic tube which is sitting on a desk. The probationer pushes the test stick down until there is one milliliter of saliva on the bottom of the tube. The probationer then discards the oral swab and wrapper in the test kit box. A test stick is then placed into the tube. The person performing the test and the probationer wait for the results together. (Transcript at pp. 10 to 13)

Dr. Salamone has his doctorate in chemistry and was a post-doctoral researcher at Oxford University in bio-organic chemistry. Dr. Salamone began working with on-site testing for drug abuse in 1984 at Roche Diagnostics ("Roche"). (Transcript at p. 29) He testified that he developed the first on-site test for drug abuse, as well as a "second line of drugs of abuse on-site reagent cup; the test cup in 1994," and that in 1997 he "launched the test stick line of drug abuse agents at Roche." (Transcript at p. 30) After leaving Roche, Dr. Salamone became vice-president of an oral fluids company which "launched tests for in the laboratory for oral based fluids" and developed "an opiate test for oral fluids and on-site testing." (Transcript at p. 30) Dr. Salamone testified that he received about five or six recognitions for his work, that he has about 20 patents, has taught at three universities and has approximately 60 publications. (Transcript at pp. 39 to 40) Dr. Salamone has testified in various courts. He has been deemed "an expert in testing for drugs of abuse when it was on-site or laboratory based" approximately 10 times. (Transcript at p. 32)

Thereafter, this court qualified Dr. Salamone as an expert in the field of on-site testing for drug abuse. (Transcript at p. 33)

Dr. Salamone was a consultant for Varian Incorporated and reviewed Varian's internal literature to determine the reliability of the test. (Transcript at pp. 30 to 31) Dr. Salamone testified that the reliability of the oral fluid test that was used in this case was greater than 99 percent. (Transcript at pp. 33 and 53) He testified that the test is used in both the private and public sector. (Transcript at p. 34) Dr. Salamone referred to a paper published titled "The Oral Fluid Testing for Drug Abuse: Positive Prevalence by Intercept Immunoassay Screening and GC-MS" which described a study of the use of the oral fluid test on 77,000 people. Dr. Salamone testified that all the oral fluid testing results that were positive for drugs results were confirmed positive by the more accurate GC/MS test (gas chromatography/mass spectrometry)² and are as reliable as the urine based tests³. (Transcript at pp. 36 to 38 and 42) Dr. Salamone testified that the difference between the oral swab test and the urine test is that the oral swab test used on someone who has ingested drugs would show a positive result closer to the time the drugs were ingested than would the urine test. (Transcript at p. 38)

On cross-examination, Dr. Salamone was asked whether the scientific community has found the results of these oral swabs tests "scientifically reliable?" Dr. Salamone responded that there had been one study done and that "[t]hey found [the oral swab test] to be reliable. They say one hundred percent correlation between their stick samples results." In response to Dr. Salamone's answer, the court asked if the "stick sample results" were 100 percent identical with the gas chromatography/mass spectrometry results. Dr. Salamone responded that "[t]hese are samples they spiked a pure drug into there and looked at performance with the drug, with the analytical drug." The court then asked if that was 100 percent and Dr. Salamone responded, [y]es, Wall Street published that study." (Transcript at p. 44) Dr. Salamone also testified that while an on-site test

² Gas chromatography/mass spectrometry ("GC/MS") positively identifies the actual presence of a particular substance in a sample as opposed to other methods of drug testing which identify a particular substance as included in a category of substances. For example, if a person is using heroin, the urine test would show a positive for opiates in general, while the GC/MS would indicate a positive for heroin. Therefore, gas chromatography/mass spectrometry is considered the "gold standard" of drug tests.

³ This court has previously held that properly performed urine tests are reliable. People v. Diago, 5 Misc.3d 1101 (A) (Sup. Ct. N.Y. Co. 2004)

could have a positive test result, a follow-up GS/MS test might indicate the presence of cocaine but would show the cocaine below a certain cutoff level. The result is what is referred to as an "administrative false-positive." Dr. Salamone stated that in a minority of the cases in which an on-site test results in a false-positive, it would be an "administrative false-positive" due to the fact that the level of drug that is present in the sample is below the laboratory's cutoff level for reporting a positive result. (Transcript at p. 48) The "administrative false-positive" does not indicate a person is drug free, only that the amount of drugs in the person's system is below a certain cutoff set by the agency or organization conducting the test.

Dr. Salamone also testified that an on-scene positive test that is sent to a laboratory for confirmation may result in a negative for the drug as a result of degradation of the cocaine between the time of the on-scene test and the time of the laboratory test. (Transcript at p. 48) Finally, Dr. Salamone testified that the scientific community accepts the oral swab as valid testing for cocaine use. (Transcript at p. 54)

Vinnic Happ, a Key Account Manager, Government Sector with Varian Incorporated, testified that he was not aware of anything that would cause a false-positive for cocaine when using the oral swab. (Transcript at pp. 66 to 67).

Based upon the uncontradicted evidence presented, I find that the oral swab test performed on the defendant has been accepted by the relevant scientific community and was properly performed. (People v. Wesley, 83 N.Y.2d 417 [1994]) Therefore, the oral swab test may be relied upon as proof that the defendant was using cocaine subsequent to his being placed on IPS and thus violated a condition of IPS

The defendant's motion is denied.

The foregoing is the decision and order of the court.

Dated: New York, New York
January 5, 2007

Laura A. Ward
Laura A. Ward
Acting Justice Supreme Court

The Drugged Driver:

- A. The Problem
- B. Proposed Solution
- C. Cost Comparison

History:

- History:
- A National Institute on Drug Abuse (NIDA) 2006 estimate states 13.3 percent of persons aged 12 or older drove under the influence of an illicit drug or alcohol at least once in the past year. **The 2006 estimate corresponds to an estimated 10.2 million people driving under the influence of illicit drugs.** Through a multipronged and concerted effort involving many stakeholders, including educators, media, legislators, law enforcement, and community organizations the Nation has seen a decline in the numbers of persons killed or injured as a result of drunk driving. It is now time to recognize and address the similar dangers that can occur with drugged driving. While presumptive DWI alcohol detection has evolved into a reliable process, drugged driving interdiction is expensive, time-consuming and cumbersome.

DEFINING THE PROBLEM

- **A. DEFINING THE PROBLEM:**

- Over 8 million persons aged 12 or older, or 3.6% of the US population, reported driving under the influence of illegal drugs during 2001. More than 1.5 million people were arrested in the USA last year for driving *drunk*. Police departments and public health specialists estimate that at least as many people drive under the influence of drugs each year-and rarely are prosecuted for it.**

Drugged Driving

- **Drugged Driving:**
 - While it is illegal in all states to drive a motor vehicle while under the influence of alcohol, drugs other than alcohol, or a combination of alcohol or other drugs, there is no consistent method across states for identifying drug impairment. Cases that involve alcohol consumption above 0.08% are usually open and shut but the difficulty of testing for drugged driving usually mean no prosecution will take place. .

- For now, there is no widely available roadside testing technology that can quickly detect drugs in a person's body, as the breath testing devices do for alcohol until today. Drugs and driving may be a bigger problem than generally recognized. A *New England Journal of Medicine* report on drivers without alcohol in their systems who were stopped by police for reckless driving found that 45% had marijuana and 25% had cocaine in their systems.

- A study by the Insurance Institute for Traffic Safety of interstate tractor-trailer drivers found that 15% of all drivers had marijuana, 12% had non-prescription stimulants, 5% had prescription stimulants, 2% had cocaine, and less than 1% had alcohol in their systems. A National Transportation Safety Board investigation of fatal truck accidents found that stimulants were the most frequently unidentified (15%) drug class among fatally injured truck drivers.

PROPOSED SOLUTION

- **PRESUMPTIVE ROADSIDE TESTING OF ORAL FLUIDS FOR INGESTED DRUGS (DUID) DRIVING UNDER THE INFLUENCE OF DRUGS:**

5-29

Current

- Current presumptive screening and evidentiary confirmation processes are time consuming and expensive by forcing law enforcement to rely on results from medical contractual outside testing facilities, or a state crime laboratory. Additionally, no prior onsite screening technology has met the sensitivity criteria deemed necessary for integration into the roadside law enforcement presumptive screening process.

DEFINING THE SOLUTION

5-31

- Traditionally no technology other than blood has been accepted by the courts. This has changed recently with the acceptance of the OraLab+ on-site oral fluids screen by the NY State Supreme Court: SCI # 1092/06. The Court ruled "this technology as been accepted by the relevant scientific community" (FRYE).

PARTNERS:

- Our bioresearch partners, Varian Inc (VARI-NASDAQ) and Western Slopes Laboratory/Troy, MI (AAB/CLIA/Heavy Metals Institute/DEA) have developed a new methodology that can accurately and *immediately* presumptively roadside test for six drugs in the oral fluid of a suspect. **This test technology has been proven to equate with the ingested drug levels in blood.**

Comparison of current and proposed testing costs

- Average **cost factors**:
- **Direct** = hospital-clinic / \$30-\$50 for draw + \$80 for confirmation
- **Indirect** (Midwest) = officer time / average: \$23/hr for officer + \$32/hr for supervisor
- **Crime Laboratory fees** if applicable
- Current Process:
- Based on officer observations suspect is detained at roadside
- 2. Officer must wait for back-up/Supervisor and/or tow vehicle: 10-30 minutes
- 3. Officer transports suspect to blood draw: 30-60 minutes
- 4. Officer waits for blood-draw test results: 60-90 minutes
- 5. If negative, suspect is transported to personal vehicle: 30-60 minutes
- 6. If positive, officer processes suspect.
Same cost for either system
- 7. Specimen processing by crime laboratory -
Results received in days or weeks

Proposed Process

- Based on officer observations suspect is tested at roadside.
- a. Negative test: suspect is released. 30 minutes
- b. Positive test: Arrest is initiated. 30 minutes
- c. Officer processes suspect: Processing cost is same for either system
- (Optional bundled approach) Screening device is shipped 2nd day air to laboratory – Evidentiary test results are encrypted on-line within 48 hours after receipt of specimen eliminating in-house laboratory participation. Expert witness testimony available and included.

Ref:

- ***"Get the facts about Drugged Driving"**
DEA publication
- ****"Growing danger: Drugged Driving"**
Article - USA Today
- *** **"Quick Facts about Drunk and
Drugged Driving":** CDC

LAW ENFORCEMENT/RECORDKEEPING REPORT

SUBCOMMITTEE MEMBERS

Wiley Kerr, Associate Director of KBI, appointed by Robert Blecha Director, KBI
Pete Bodyk, Manager of Traffic Safety, Appointed by the Secretary of Transportation
Major Mark Bruce, KHP, Appointed by the Superintendent of KHP
Sheriff Ken McGovern, Appointed by the Attorney General
Marcy Ralston, Chief of Driver Control, Appointed by the Secretary of Revenue
Police Chief Ed Klumpp, Retired, Appointed by the Attorney General
Karen Wittman, KS Traffic Safety Resource Prosecutor, Appt. by the Attorney General

RECOMMENDATIONS

RECORDS

1. KCJIS is the appropriate entity to collect and furnish data to agencies in need of information concerning DUI criminal history. This information provided would allow one inquiry that would check all records on an individual such as: Department of Motor Vehicle (DMV) records, arrest history, conviction data.
2. Inquiry to KCJIS could produce a "certified" record of information held by the State of Kansas concerning an individual identified.
 - a. A report could be generated that would provide an "evidentiary" report which would be offered in court as the "official record".
 - b. A possible legislative change would be required to include this in K.S.A. 60-465 (Authentication of Copies of Records)
3. A "subscription and notify" program could be created to generate information to alert prosecutors, court officials, and probation officers of any activity of an individual pertaining to any current law enforcement contact on a daily basis.

DRIVER'S LICENSE HEARINGS (DL hearings)

1. DL hearings should remain with the KS DMV.
2. A fee should be assessed for a request for hearing. The fee assessed would be different depending on whether a "face to face" hearing is requested or a "phone" hearing.
3. Establish a protocol for the hearing.
 - a. Require hearing officers to receive special training.
 - b. Look to a statutory change to identify specifically the scope of the hearing.
4. Review to determine if an officer should have legal representation at this hearing.

IGNITION INTERLOCK

1. Require ignition interlock to use photo technology to insure the person producing the sample is the person required to produce the sample.
2. Have a report generated of the persons required by DMV to have interlock in their vehicle and compare that to the reports generated and submitted to DMV from interlock providers.
 - a. Identify individuals failing to comply with the ignition interlock requirement.
 - b. Sanction(s) to those individuals not having interlock in their vehicle. Impoundment, SCRAM devices or extension of interlock requirement or a combination of these.
3. Stiffer sanctions of those individuals who have violated their interlock obligations ie. Received violations during its' operation.
 - a. This may require a legislative change to K.S.A. 8-1017.
 - b. This may also require changes to the Kansas Regulations concerning ignition interlock.

IMPLIED CONSENT LAW-K.S.A. 8-1001

1. Review the language of the Implied Consent form to perhaps simplify it.
 - a. Any change would have to comply with Standish v. KDOR 235 Kan. 900, 683 P.2d 1276 (1984)
 - b. Possible review by persons at DMV to report to the subcommittee concerning implied consent law specifically in light of current changes around the country with regard to implied consent ie. State v. Machuca --- P.3d ----, 2009 WL 3106114 Or.App.,09/30/09 and South Dakota statutes: SDCL 32-23-10
2. Continuing the procedure of not allowing a driver to consult with an attorney prior to taking the requested test.
3. Any wording change would require a legislative change to K.S.A. 8-1001

TIME FRAME FOR TESTING

1. At the current time a test within 2 hours of operating or attempting to operate an automobile can be used to prove a per se violation under K.S.A.2007 Supp. 8-1567(a)(2).
2. In some rural areas this is somewhat problematic especially dealing with fatal or near fatal crashes. Time clearly is of the essence for law enforcement. The appellate courts indicate tests should be administered as near in time to the arrest as

practicable however due to manpower limitations or severity of the crash sometimes performing testing within two hours is not possible.

3. After review of case law there really is no indication where this 2 hour limit came from except from what seemed "reasonable".
4. This subcommittee has review other states 'per se' time limits. They range from 4 hours to "a reasonable time" without a numerical limit. We have concluded what would be more practicable for everyone is a 3 hour time limit to prove a 'per se' violation.

PRIOR DUI'S

1. A joint meeting of the Records subcommittee and the Criminal Justice Subcommittee met to discuss this issue.
2. It was decided July 1, 1996 is when the records in the State of Kansas became uniform, and electronically reported.
3. The joint committees voted to determine if this is a persons 1st, 2nd, 3rd etc. offense, the July 1, 1996 date will be used. In essence, for charging purposes, all person were reborn on July 1, 1996.
4. The joint committee suggested however for sentencing purpose the judge could take into account ALL DUI's in a person's lifetime, that could be proven, to determine the appropriate sentence.

REFUSALS

1. At the present time the fact someone refuses to take the test can be used against them in court on a charge of DUI.
2. Statistically, the refusal rate is about one-third of the population requested to take a breath test.
3. It is well known, repeat offenders are more apt to refuse making it harder to prosecute.
4. In an attempt to dissuade a person from refusing there has been a number of attempts to toughen penalties for refusing ie. License suspensions. There is a need to find sanctions for test refusal more compelling to the suspect to complete the test. The primary penalty at this time is license suspension which is not a strong motivating factor for persons who already have their license suspended.
5. There has been a suggestion to either make it a criminal offense to refuse, make it a per se violation of DUI if they refuse, or attempt to craft a rebuttable presumption the person is in fact DUI.
6. At the present time, we have not come up with a recommendation for the committee as a whole but we will continue this discussion in the new year.

Kansas DUI Commission
Evaluation and Treatment Subcommittee
Interim Recommendations
November 30, 2009

Committee Members: Secretary Don Jordan, Deborah Stidham, Chris Mechler, Dalyn Schmitt, Les Sperling, and Jeremy Thomas

The effective evaluation, education, and treatment of substance use plays a vital role in the continuum of interventions targeted to reduce the incidence of DUI in the State of Kansas. The following recommendations are respectfully submitted in an effort to enhance the quality and scope of treatment services in Kansas and to reduce the impact that DUI has on the citizens of the state of Kansas.

Require all Alcohol and Drug Safety Action Programs to be licensed by Social and Rehabilitation Services-Addiction and Prevention Services

The Kansas Department of Social and Rehabilitation Services (SRS) currently has licensing standards for Alcohol and Drug Safety Action Programs (ADSAP) that include standards for both evaluation and Alcohol and Drug Information School curriculum. However, under current legislation, ADSAP providers are not required to obtain this important license and are not subject to annual licensing visits that ensure compliance with the minimum standards of competency, as defined in the state standards. This has resulted in a disparity of the quality and consistency of ADSAP evaluations across the State of Kansas.

Licensed ADSAP providers comprise the ADSAP network available to all Judicial Districts and Municipal Courts

Each Judicial District currently selects ADSAP providers. While Judicial Districts strive to select providers in a manner consistent with current statutes, testimony provided to the Kansas Substance Abuse Policy Board and Kansas DUI Commission reveals that selection criteria currently utilized are not consistent. Municipal Courts may also select ADSAP providers. While most Municipal Courts utilize the provider list generated by their District Court, they are not required to do so and there are instances where District and Municipal Court provider lists differ. This can be confusing to all stakeholders and in some cases limit access to services. If ADSAP providers were licensed by SRS, SRS could provide all stakeholders with a complete listing of eligible providers.

It is anticipated that the number of providers available to complete ADSAP work will increase if licensing is required.

Require all DUI substance use evaluations to be completed in a standardized electronic format.

Testimony submitted to the Kansas Substance Abuse Policy Board indicates that DUI substance use evaluations prepared for the court for pre-sentencing purposes vary widely in quality and scope. It is recommended that the American Society of Addiction Medicine Patient Placement Criteria 2 (ASAMPPC2) be utilized as the foundation of the standardized evaluation. The ASAMPPC2 has been widely accepted as the most comprehensive information and decision making tool used to assess the severity of alcohol/drug problems and recommend the appropriate intensity and level of treatment intervention. Collecting this information in an electronic format is crucial because it will provide an efficient method for treatment histories and outcome measures, to be included in the larger DUI data system. Adequate resources for the implementation of the standardized evaluation should be made available to SRS.

SRS ADSAP licensing standards should be revised to reflect best practices.

While SRS currently has ADSAP standards, revisions are necessary to ensure that identified best practices are included in the minimum standards.

Educational and Treatment Interventions for each DUI conviction should match the individual offender's clinical profile.

DUI interventions should be based upon the severity of the alcohol/drug problem, not the number of convictions. Too often, it is assumed that a first DUI conviction only requires a brief educational intervention and that treatment intensity and duration should increase with each offense. Efforts to decrease DUI recidivism will be aided by matching the offender with appropriate treatment at the appropriate time. This can be accomplished by evaluating severity of the Offender's substance use upon each DUI conviction, following the licensing and evaluation standards set out above.

Review references to "Supervision and Monitoring" in existing statutes

ADSAP providers supply Court Services with attendance, completion, and progress in treatment reports on a regular basis. KSA 8-1008 describes an expanded role of the ADSAP provider that includes "supervision and monitoring" of the Offender. In current practice this role of monitoring is being completed by Court Services personnel. Clarification of these two roles in this statute is recommended.

Implement evidenced based practice approaches to all DUI treatment.

The State of Kansas developed an effective strategy to address 4th time DUI offenders. This program utilized best practices that included utilization of wrap around team planning meetings, care coordination, proven DUI clinical practices,

data collection, and outcome measurement. Due to state budget cuts, this program is no longer being funded at the level necessary to generate the same results. While financial resources do not exist today to implement this program at the first, second, and third DUI convictions, development of future services given by ADSAP providers should value the core principles of this successful strategy.

ADSAP fees should be paid directly to ADSAP providers at time of service.

Collection and disbursement of ADSAP evaluation fees are not completed consistently across the state. Some Judicial Districts and Municipal Courts require offenders to pay the provider and some require payment to the court, with the court retaining up to 10% of the fee. Payment of ADSAP fees to the provider at time of service would simplify this process and save administrative costs throughout the system. A change in current statutes would be required to implement this change

Items requiring further investigation:

DUI Specialty Courts

Outcome data suggest that DUI courts are an effective tool to reduce DUI recidivism. It is recommended that additional research and investigation into these courts be completed. The DUI court approach appears to have many components that are similar to the Kansas 4th DUI program, specifically the "team approach" to supervision and treatment, which has proven to be successful in reducing recidivism among DUI Offenders. It is also recommended that a compilation of successful programs in other states be completed and utilized to guide future planning activities.

Do we need ADSAP at all?

Current SRS substance use program licensing standards address evaluation and treatment components. Programs may seek to be licensed as a "Diagnostic and Referral" center. The standards for ADSAP providers and a "Diagnostic and Referral" center can be viewed as nearly the same. Through appropriate standard revision, the designation of ADSAP could become unnecessary. If this is deemed appropriate, it is anticipated that additional providers would be available to complete DUI work and the access to quality services for the Courts, attorneys, and DUI offenders would improve. It is recommended that further study be completed on this issue.

SPECIAL NOTE

A significant number of the recommendations included in this report will require additional effort and resources from the Kansas Department of Social and Rehabilitation Services. As the licensing authority for substance abuse programs

in the State of Kansas, their responsibility for monitoring the quality and scope of DUI treatment services is critical to success. It is recommended that sufficient resources be provided to SRS in order to complete these tasks.

- 1) No changes recommended for **penalties** for first time DUI's.
- 2) No changes recommended for **penalties** for second time DUI's.
- 3) Third time DUI will be a misdemeanor but will be handled in district court
 - a. Penalties will be a minimum of 10 days in jail (no house arrest or work release to satisfy the 10 days; jail means jail)
 - b. 90 days personal alcohol monitoring be technological means
 - c. Option of up to 18 months probation supervised by community corrections
 - d. Treatment as ordered by the court based on a standardized substance abuse evaluation
- 4) The subcommittee supports criminalizing refusal to take a breath alcohol test but reserves the option to make additional clarifications of this position.
- 5) The effective date of HB 2096 should be delayed an additional year.
- 6) Each judicial district should be encouraged, but not mandated, to establish at least one DUI court within the district.
 - a. The Sentencing Commission, the Joint Committee on Corrections and Juvenile Justice Oversight, and the Supreme Court appear to be taking similar positions regarding encouraging but not mandating.
 - b. Any DUI court so established should be required to follow the ten evidenced based principles of effective problem solving courts and conform to evidence based practices. Fidelity to the model is important to achieve successful outcomes.
- 7) Third time DUI's will be referred to Community Corrections programs for substance abuse evaluation and standardized risk assessment. The results of the evaluation and assessment will be considered by the district court in determining whether the offender will be supervised by community corrections or court services and what treatment requirements will be imposed upon the offender.
 - a. It is not the intent of this recommendation to imply that Community Corrections programs will perform the substance abuse evaluation. Because of their responsibility for supervising SB 123 offenders, Community Corrections programs are familiar with the process of obtaining substance abuse treatment evaluations. We are simply wanting to take advantage of that existing knowledge.
- 8) Municipal Courts wanting jurisdiction over DUI cases must be approved by the Supreme Court in accordance with rules promulgated by the Court. Those rules should include requirements that a standardized risk assessment approved by the Kansas Sentencing Commission be used, that offenders receive a substance abuse evaluation meeting standards established by the Department of Social and Rehabilitation Services, that the court utilize the results of the risk assessment and substance abuse evaluation in determining dispositions, and that the court have the capacity to supervise the offenders accordingly.
 - a. Not part of the recommendation but part of the discussion was a recognition that some municipal courts have resources and the capacity to comply with these recommendations. For those who do not, consideration may be given to utilizing community corrections programs to carry out these tasks if properly resourced to do so.

- 9) Any court hearing first and second time DUI cases that result in a conviction shall order a standardized risk assessment approved by the Kansas Sentencing Commission and a substance abuse evaluation conforming to standards established by the Department of Social and Rehabilitation Services.
- 10) Any court hearing DUI cases shall have the ability to report those transactions electronically to the KCJIS system.
- 11) Basic Principles on which our recommendations are based:
 - a. Supervision should be based on risk
 - b. Treatment should be based on a meaningful evaluation
 - c. It is desirable to reduce the number of courts handling DUI cases

Items still requiring attention (Gaps)

- 1) How are decisions made regarding which courts may have jurisdiction over DUI cases?
 - a. Which municipal courts are big enough and have sufficient capacity? Who decides? How is quality control maintained?
 - b. What role should magistrate courts play?
- 2) What are the counting standards/rules for determining what is a third or fourth DUI?
- 3) Where will fourth and subsequent DUI's sit on the sentencing grid?
 - a. Do we want to insure prison time?
 - b. How do we balance the need for incapacitation with the need for treatment?
 - c. Should there be some consideration for sentence modification if treatment is successfully completed or does that become secondary to incapacitation?
- 4) What about related laws or other crimes ancillary to the DUI?
- 5) Implied consent issues
- 6) Plea bargaining