



DUI NEWS

MORAL DRIVING

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Immanuel Kant was an 18th century philosopher. Kant believed that philosophy ultimately ended in paradoxes and that our heart has a certainty which our mind cannot comprehend. More significant than our theories is the way we act. More significant than analysis is our capacity for faith. More valuable than our intellect is our sense of morality. Kant wrote that we all have an innate sense of right and wrong. He believed that our moral obligation is primary.

Author Frederick Mayer condensed some Kantian beliefs. Mayer stated that civilization is determined by its moral basis. Morality, according to Kant, depends on our capacity to be aware and to identify with others. Morality is a sensitivity which radiates and makes life more sublime. Morality is a quest for compassion in a world often dominated by callousness.

Morality need not be spectacular like the examples of Mother Theresa or Albert Schweitzer. We see evidence of morality every day. A parent sacrifices for a child. A scientist seeks a cure for AIDS. A police officer helps a driver with a flat tire on the interstate. The essential self within us wears no mask, needs no pretension and imitates no one.

What happens when good and moral people turn on the ignition of a vehicle? They are aware of all the other drivers with whom they share a roadway. They are sensitive to the danger that they now represent. They seek safe travels for all. Each driver controls a machine that shows no mercy in a crash. The moral driver seeks to avoid any chance of hurting another being.

How do people get hurt or die in vehicle crashes? The answer has been the same for years. Speed, alcohol and the lack of a seat belt cause the greatest numbers of injuries and deaths. Throughout this issue will be informational boxes with charts and graphs to bring home the reality that slowing down, driving sober and wearing seat belts saves lives.

Kant taught that our capacity for faith was more significant than analysis. On our streets and in our courtrooms we must believe that our daily efforts can help save lives and reduce injuries. Data can help us come to conclusions, but it can not provide motivation. Our moral desire to help members of our society return home safely on their daily journeys inspires our commitment. In our courtrooms we set the standard for acceptable behavior in our community. Will we tolerate speeding, running red lights, impaired driving and refusal to use seat belts? Can we endorse those behaviors when we possess information that such behaviors lead to injuries and death on our roadways? In the alternative will we take on the character of societal heroes like Mother Theresa and Albert Schweitzer? Will we be motivated to save lives on Tennessee Highways? Will we be a force to encourage moral driving?

RECENT CASES



State v Wright 2005 Tenn. Crim. App. LEXIS 1098

Where officer was conducting an on-the-scene investigation of the one car accident, reasonable person in defendant's position would not have considered himself deprived of freedom of movement to a degree associated with an formal arrest. Defendant's admission that he was driving the car, before Miranda warnings were given, was admissible.

State v Varnell 2005 Tenn. Crim. App. LEXIS 1091

Officer Nick Allen of the Chattanooga Police Department stopped the defendant after he observed him driving at night without his headlights on. The defendant was agitated and demanded to know why he had been stopped. The defendant admitted that he had been drinking alcohol, and the officer noted he was unsteady on his feet, had slurred speech, and smelled strongly of alcohol. The defendant refused to attempt to perform field sobriety tests, and the defendant refused to submit to a breathalyzer test. Varnell's conviction for DUI 4th offense was affirmed.

Varnell is typical of a growing trend among multiple offenders. Many refuse to participate in field sobriety tests as well as blood alcohol tests. Multiple offenders give several clues of intoxication. It is a new challenge for law enforcement to be able to adequately describe the offender to permit a jury to convict the guilty.

State v Jackson 2005 Tenn. Crim. App. LEXIS 1118

Defendant Angie Jackson was convicted of driving a tractor-trailer with a blood alcohol content of .20 after she backed her rig into another rig at a truck stop. The Court suppressed a search of the cab, which produced open containers of alcohol. Carrying alcohol in a tractor trailer is a violation of an administrative regulation concerning commercial vehicles. The Court ruled that the State did not provide any proof, in the form of a request for the court to take judicial notice of state regulations, under Tenn. R. Evid. 202, that defendant's conduct was in violation of a motor carrier safety rule or regulation.

Before a trial court may take judicial notice of a state agency's' rules or regulations, a party must request the trial court to do so and must give adequate notice to the adverse party. The trial court may not take judicial notice of a municipal ordinance absent compliance with Tenn. R. Evid. 202.

State v Whitman 2005 Tenn. Crim. App. LEXIS 1239

Defendant argued, inter alia, that the investigatory stop of his vehicle was unconstitutional because the stop was based entirely upon a police computer check which provided erroneous information regarding the registration of his vehicle. The court of appeals disagreed. The officer stated that he stopped the vehicle based solely upon the information he received from his computer check of the vehicle's tags. The information from the computer check, albeit erroneous, provided reasonable suspicion that the defendant was in violation of a traffic law. It was undisputed that the police officer stopped the vehicle based upon information he received as a result of a computer check, which showed that the license plate registration belonged to another vehicle. That information came from a source independent of the officer's own knowledge and perceptions. Once the officer learned of the license plate discrepancy, he had an objective basis for suspecting that defendant was violating a traffic law; and therefore, he was justified in stopping the vehicle and requesting a driver's license and vehicle registration from defendant.

State v Laney 2005 Tenn. Crim. App. LEXIS 1219

The defendant was intoxicated and was in a car parked in an area frequented by the public. He was seated behind the steering wheel of his own vehicle. The key was in the ignition switch, and the engine was running. The appellate court held that those facts clearly supported a finding that defendant physically controlled the vehicle. It was immaterial that defendant did not drive the vehicle to its parked location or that he had no intention of driving away.

RECIDIVIST WALL OF SHAME

REPEAT CUSTOMERS

In June, 2003 the Wall of Shame was introduced. It's purpose is to point out that there are some impaired driver's that just won't quit. They continue to endanger people on Tennessee roadways. This issue features two past members of the Wall. **Donna Hamby** was featured for her DUI 10th offense in Roane County in September, 2003. She is back having pled to DUI 11th in November, 2005 in Scott County. **Ricky D. Trent** was previously featured for his 8th DUI conviction back in the January, 2005 issue. A year later he is here for his DUI 9th offense for which he was convicted in November 2005. Both occurred in Macon County. Both Trent and Hamby are out of commission for a while.

Donna Hamby, 35, of Lansing, Tennessee, pled guilty to DUI 11th offense and Driving on Revoked 13th offense on November 18, 2005. She received a sentence of 2 years with nine months in custody followed by probation. Sadly, this was the first time she was identified as a felony offender.

John Raye Combs of Smith County, Tennessee pled guilty to DUI 9th offense November 14th.

James Dyke Jr, 38, of Maynardville, Tennessee, drove up to a sobriety check point while under the influence of alcohol and hydrocodone. He had previously been declared an habitual traffic offender and collected a DUI 6th offense conviction. Four months later he was stopped after a domestic assault complaint led to a BOLO call to sheriff's deputies. He scored a .10 result on the breath test and collected his 8th DUI. When he pled guilty in October, 2005 he was sentenced to four years and was given credit for 241 days he had served in the local jail. He spent the holidays at Brushy Mountain Prison.

Teddy Leroy Butler, 35 of Hamilton County, Tennessee, pled guilty to DUI 8th offense and violation of the habitual motor vehicle offender law. He received a sentence of two years to serve plus two more on probation with fifteen days of community service.

Bonnie Annette McCoin, pled to DUI 7th offense in Hamilton County and received a sentence of four years on intensive supervision after serving 360 days. She was also sentenced for violating the Habitual Traffic Offender law and the implied consent refusal was a class A misdemeanor.

David Cummins, 39, pled guilty to DUI 7th offense in Lawrence County on October 5, 2005. He is currently on probation after serving his time prior to his plea.

Larry Gene Lane, 43, Rogersville, pled guilty to DUI 7th offense, evading arrest and his 7th driving on revoked license. He is currently residing in the Green County Jail serving a 3 1/2 year sentence. He is scheduled for a February parole hearing and is eligible for parole in April, 2006. Lane was first observed driving his 1982 pick up truck at a high rate of speed through a weigh station for tractor trailers. He refused to pull over for blue lights and drove twenty five miles at speeds ranging from 55 mph to 91 mph on Interstate 40 before he was stopped with spike strips. His breath test result was .16.



Thomas W Cothran during trial. Photo from News Channel 5 WTVF Nashville

112 YEAR SENTENCE AFFIRMED FOR TRUCKER VEHICULAR HOMICIDES

Thomas Cothran drifted out of his lane of traffic in Hickman County while driving a 19,000 pound garbage truck. He side-swiped another truck, then over-steered, causing his truck to slide sideways, and finally careened across the median and slammed into a minivan head-on, killing four people and seriously injuring three others. He did not seem to be concerned with his actions. One witness reported that Cothran finished off a beer at the crash scene.

Witnesses who were near defendant the night of the accident stated that he smelled of alcohol and he appeared to be intoxicated. The defendant told one trooper that he had "a beer" and another that he had "a few" beers. The defendant's poor performance on the field sobriety tests was attested to by the administering officer and was also shown to the jury at trial via video tape. The defendant was viewed on video tape purchasing beer just hours before the accident. The State's evidence showed that the defendant was intoxicated at the time of the collision.

Cothran was found guilty of four aggravated vehicular homicides and three vehicular assaults and was sentenced as a dangerous offender to consecutive sentences. Cothran's blood alcohol level about two hours after the wreck was .069. TBI forensic scientist, John Harrison, was recognized as an expert and testified the blood level at the time of the crash would have been .08. Cothran had prior DUI convictions.

One out of every eight traffic fatalities in 2004 Resulted from a collision involving a large truck.

Large Trucks

In 2004, 12 percent (5,190) of all motor vehicle traffic fatalities reported involved large trucks (gross vehicle weight rating greater than 10,000 pounds).

Of the fatalities that resulted from crashes involving large trucks, 77 percent were occupants of another vehicle, 8 percent were non-occupants, and 15 percent were occupants of a large truck.



VETERAN FATHER AND DAUGHTER KILLED BY SPEEDING TRUCKER

First Sergeant Lesly Williams died in the tragic car accident on Saturday, October 1, with his two-year-old daughter, Alana Marie Williams. He had been reunited with his family in Nashville less than three weeks.

Lesly was a 21-year veteran of the U.S. Army and had completed a one-year tour of duty in Afghanistan three months prior to the accident. Lesly was scheduled to retire from the Army in December of 2005. He received the Bronze Star for the leadership he demonstrated during his deployment in Afghanistan. Lesly had a Bachelor of Science Degree in Business Administration and had just recently earned a Masters Degree with an emphasis in Human Resources Administration.

The crash occurred when trucker, Oscar Thames, driving for Taylor Produce lost control while allegedly speeding at the I-440 and I 24 ramp.



William Penn

Right is right, even if everyone is against it; and wrong is wrong, even if everyone is for it.

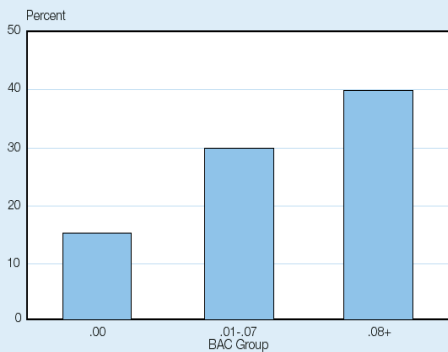
SPEED KILLS

COURSE APPLICATIONS

To apply for any of the courses send your name, office address and phone and e-mail address to the DUI Training Division in care of Sherri Harper by e-mail at sjharper@tndagc.org or call Sherri at 615-253-6733.

Also see page 10 for course offerings at the National Advocacy Center.

Percentage of All Drivers Involved in Fatal Crashes That Were Speeding, by BAC Level, 2004



Per vehicle mile traveled, motorcyclists were 32 times more likely than passenger car occupants to die in a traffic crash.

Speeding involvement for motorcyclists in fatal crashes was about twice as high as for drivers of cars and light trucks.

IMPAIRED DRIVING TRAINING FOR PROSECUTORS

The Governor's Highway Safety Office has generously funded three training courses for prosecutors in 2006. Each course will include funding for twenty prosecutors. Prosecutors will be selected for attendance upon receipt of applications. Each course will be offered at the Tennessee Bureau of Investigation in Nashville. The courses are:

VEHICULAR HOMICIDE FOR PROSECUTORS

March 21-24, 2006

Topics will include:

- Occupant Kinematics
- Reconstruction Methodologies
- Toxicology of Alcohol
- Toxicology of Drugs
- Developing and Maintaining the Theme in Trial
- Brainstorming Jury Selection
- Preparation of direct examination with the expert witness
- Preparation for cross examination of defense experts
- Preparation of Opening Statement
- Preparation for closing argument

DUI TRIAL ADVOCACY

June 12-16, 2006

Topics will include:

- DUI Detection
- Preparation and Evaluation
- Toxicology
- Professional Responsibility
- Plea Negotiations
- Principles of Adult Learning
- Opening Statement
- Direct Examination
- Cross Examination
- Closing Argument

PROSECUTING THE DRUGGED DRIVER

September 12-15, 2006

Topics will include:

- The Drug Recognition Expert Program
- Drugs in Society
- The DRE Process
- DRE Training
- Toxicology
- Trial Preparation
- The DRE as an expert witness
- Defenses in drug impaired driving cases
- Direct Examination
- Opening and Closing Argument

**FATALITIES AND ALCOHOL-RELATED FATALITIES IN MOTOR VEHICLE TRAFFIC CRASHES IN
SOUTHEAST REGION STATES, BY STATE, COUNTY AND YEAR**

County	2002			2003			2004			2002-2004		
	Total Fatalities	Alcohol-Related Fatalities*		Total	Alcohol		Total	Alcohol		Total	Alcohol	
	Number	Number	Percent	Number	Number	Percent	Number	Number	Percent	Number	Number	Percent
ANDERSON	11	4	40	13	6	43	17	5	26	41	15	35
BEDFORD	14	8	55	9	3	31	7	4	61	30	15	49
BENTON	5	2	42	10	5	51	8	4	53	23	11	50
BLED SOE	4	3	75	2	0	0	2	2	90	8	5	60
BLOUNT	17	5	32	25	6	24	37	12	34	79	24	30
BRADLEY	23	9	37	14	6	41	15	6	42	52	21	40
CAMPBELL	16	2	11	7	1	16	18	6	31	41	8	20
CANNON	4	0	8	4	0	0	5	2	40	13	2	18
CARROLL	6	4	70	7	3	44	8	1	13	21	8	40
CARTER	8	3	39	17	5	26	12	6	46	37	13	35
CHEATHAM	9	4	40	14	6	42	14	8	55	37	17	46
CHESTER	3	2	67	2	0	0	6	1	15	11	3	26
CLAIBORNE	10	6	59	11	6	53	16	7	41	37	18	49
CLAY	0	0	0	4	1	30	1	0	0	5	1	24
COCKE	7	5	73	17	6	35	6	5	75	30	16	52
COFFEE	15	8	53	21	7	35	4	2	40	40	17	42
CROCKETT	7	1	13	8	2	30	4	0	5	19	4	18
CUMBERLAND	17	3	19	19	8	41	18	5	26	54	16	29
DAVIDSON	80	36	45	91	30	33	97	45	46	268	111	42
DE KALB	2	0	0	1	0	0	10	6	60	13	6	46
DECATUR	1	0	0	9	6	64	3	2	67	13	8	60
DICKSON	8	2	29	18	9	49	7	5	77	33	17	50
DYER	7	2	29	10	3	29	10	3	27	27	8	28
FAYETTE	5	2	40	9	7	72	10	5	50	24	14	56
FENTRESS	9	5	57	7	0	0	6	3	45	22	8	35
FRANKLIN	9	6	68	6	4	73	3	1	37	18	12	64
GIBSON	16	3	18	11	3	30	8	4	49	35	10	29
GILES	12	4	35	9	2	22	7	3	47	28	10	34
GRAINGER	6	2	35	8	4	46	7	1	19	21	7	34
GREENE	16	4	23	14	9	66	16	6	36	46	19	41
GRUNDY	8	0	4	6	3	45	7	4	61	21	7	35

*Fatalities in crashes in which at least one driver or non-occupant (such as a pedestrian or pedal cyclist) involved in the crash had a Blood Alcohol Concentration (BAC) of .01 grams per deciliter (g/dl) or greater.

FATALITIES AND ALCOHOL-RELATED FATALITIES IN MOTOR VEHICLE TRAFFIC CRASHES IN

Tennessee by COUNTY AND YEAR

FATALITY ANALYSIS REPORTING SYSTEM (FARS) 2002-2003 FINAL & 2004 ARF

County	2002			2003			2004			2002-2004		
	Total Fatalities	Alcohol-Related Fatalities*	Percent	Total	Alcohol	Percent	Total	Alcohol	Percent	Total	Alcohol	Percent
	Number	Number	Percent	Number	Number	Percent	Number	Number	Percent	Number	Number	Percent
This report was generated by NCSA's Information Services Branch	7	2	21	15	4	24	13	3	21	35	8	22
HAMILTON	46	15	32	38	13	35	39	21	54	123	49	40
HANCOCK	4	1	25	3	1	33	3	1	33	10	3	30
HARDEMAN	4	2	40	12	5	44	16	3	21	32	10	32
HARDIN	10	2	21	9	4	47	8	5	61	27	11	41
HAWKINS	12	6	49	9	4	40	9	5	59	30	15	49
HAYWOOD	18	8	44	8	2	28	6	1	17	32	11	35
HENDERSON	22	5	22	15	6	39	19	11	60	56	22	40
HENRY	9	3	37	9	1	9	9	3	34	27	7	27
HICKMAN	10	6	60	6	1	12	6	1	17	22	8	35
HOUSTON	4	1	25	4	1	23	3	1	37	11	3	27
HUMPHREYS	6	2	33	9	5	53	6	3	53	21	10	48
JACKSON	6	6	97	2	2	100	0	0	0	8	8	98
JEFFERSON	12	7	60	12	5	40	13	3	20	37	15	39
JOHNSON	7	3	46	3	1	37	4	0	8	14	5	33
KNOX	83	44	52	68	23	33	72	26	36	223	92	41
LAUDERDALE	5	2	34	7	4	54	7	4	50	19	9	47
LAWRENCE	10	4	40	16	5	33	15	8	51	41	17	41
LEWIS	4	2	50	2	1	50	4	1	15	10	4	36
LINCOLN	4	2	50	14	7	50	15	4	28	33	13	40
LOUDON	7	4	56	10	2	23	17	8	49	34	15	43
MACON	5	2	40	6	1	18	4	3	68	15	6	39
MADISON	16	7	45	20	12	61	29	10	35	65	30	45
MARION	21	5	21	8	4	45	23	7	30	52	15	29
MARSHALL	10	4	41	8	3	38	10	3	31	28	10	36
MAURY	13	6	46	22	8	35	18	9	51	53	23	43
MCMINN	12	5	43	14	4	30	18	6	36	44	16	36
MCNAIRY	9	2	26	11	4	40	9	7	74	29	13	46
MEIGS	4	2	38	2	0	15	6	5	80	12	7	55
MONROE	15	6	40	11	2	21	9	3	37	35	12	33
MONTGOMERY	23	5	23	21	8	37	43	22	51	87	35	40
MOORE	0	0	0	2	2	100	0	0	0	2	2	100

This report was generated by NCSA's Information Services Branch, MAD; SEREGION.SAS (SEREGION_CNTY); TTL; 10/27/2005 9:28

County	2002			2003			2004			2002-2004		
	Total Fa- talities	Alcohol- Related Fatalities*		Total	Alcohol		Total	Alcohol		Total	Alcohol	
	Number	Number	Percent	Number	Number	Percent	Number	Number	Percent	Number	Number	Percent
MORGAN	4	1	25	3	1	30	3	1	43	10	3	32
OBION	5	2	32	6	3	57	8	3	33	19	8	40
OVERTON	6	3	50	9	6	68	2	0	5	17	9	54
PERRY	3	2	67	4	2	50	4	0	0	11	4	36
PICKETT	2	2	90	3	1	37	2	2	100	7	5	70
POLK	10	5	52	5	2	34	8	1	18	23	8	36
PUTNAM	2	1	50	11	5	45	16	2	9	29	8	26
RHEA	4	0	0	5	1	26	6	2	35	15	3	23
ROANE	11	2	19	11	1	5	12	3	24	34	6	16
ROBERTSON	16	8	53	18	7	36	11	5	46	45	20	44
RUTHERFORD	23	7	30	30	16	54	32	13	39	85	36	42
SCOTT	3	1	37	4	1	25	6	3	47	13	5	38
SEQUATCHIE	6	3	43	4	2	53	12	7	54	22	11	51
SEVIER	12	3	25	16	3	19	21	8	40	49	14	29
SHELBY	109	47	43	106	31	29	109	43	39	324	121	37
SMITH	11	2	19	12	3	22	10	6	64	33	11	34
STEWART	2	1	55	4	2	50	7	3	37	13	6	44
SULLIVAN	33	16	47	25	8	32	39	9	23	97	33	34
SUMNER	32	18	57	21	12	55	26	8	30	79	38	48
TIPTON	8	3	43	10	7	72	8	5	63	26	16	60
TROUSDALE	3	0	0	4	3	75	4	1	33	11	4	39
UNICOI	3	3	87	2	0	10	7	6	81	12	9	71
UNION	4	4	93	4	0	10	4	3	75	12	7	59
VAN BUREN	0	0	0	2	1	50	1	0	0	3	1	33
WARREN	11	4	33	7	4	56	11	4	33	29	11	38
WASHINGTON	16	9	58	13	7	51	19	8	41	48	24	49
WAYNE	8	4	50	6	0	5	9	5	50	23	9	38
WEAKLEY	9	4	46	2	1	55	4	2	48	15	7	47
WHITE	11	6	57	13	6	45	7	2	30	31	14	46
WILLIAMSON	17	7	42	14	6	41	13	7	55	44	20	45
WILSON	20	11	56	20	7	35	25	9	37	65	27	42
STATE TOTAL	1,177	485	41	1,193	443	37	1,288	519	40	3,658	1,447	40

NHTSA estimates alcohol involvement when alcohol test results are unknown. Percentages as displayed are calculated from unrounded estimates and may not equal those calculated from the rounded estimates.

DRUG RECOGNITION EVALUATION SEPERATING FACT FROM FICTION

by Dan Blake

There exists certain misconceptions concerning the DRE process that need to be addressed, so that the process can be properly evaluated. Unfortunately, many officers and prosecutors are basing critical decisions concerning their cases on faulty information.

Not long ago I was visiting with a Student Resource Officer at a local high school. As I approached his office and looked inside I noticed he had a male student standing in front of him. The officer was frantically waving an ink pen back and forth across the student's face. When I asked him what he was doing his reply was, "I think this boy has been smoking pot and I'm checking for HGN." I did not want to embarrass the SRO so I asked if he would mind having the student step outside into the hallway for a moment. Once the student was safely out of ear shot I explained to the SRO that only certain drug categories will cause HGN, those being CNS Depressants, Inhalants and Phencyclidine or PCP. These are easy to remember by using the acronym "DIP" which stands for depressants, inhalants and PCP. Efforts to detect marijuana use with the HGN will always be futile.

I had a suspicion that the SRO was accurate in his assumption the student had been smoking the dreaded weed, because when I entered the room and observed the student I noticed that he displayed a distinct reddening of the conjunctiva, which are the small blood vessels just under the surface of the white portion of the eye. His pupils were dilated to 7 or 8 mm under the bright office lights and he had the very distinctive smell about his person that only comes from being shut up in a car with all the windows up and a large blunt burning. Any of us would call that a clue. To make a long story short the student's locker and car were searched. His left over marijuana and a pack of rolling papers were located and he was promptly expelled under the school's no tolerance drug policy.

While HGN can not be used to determine the presence of all drugs it is very useful in helping to narrow the field of which drug category or categories have been ingested. One important thing to remember is that those drugs that do not cause HGN do effect pupil size. Take the time to look for other general indicators and use the totality of the circumstances to make any decisions you need to make. For more information please refer to Tennessee's Drug Matrix, which shows the general indicators for each drug category and when in doubt call your local DRE.

This article was written by Daniel Blake. Dan has recently been named Chief of Police in Englewood, McMinn County, Tennessee. He welcomes your questions, comments and suggestions. Please email them to Daniel Blake, at dblake03@bellsouth.net.

DRIVING TO DUI SCHOOL IMPAIRED

A Lunenburg, Massachusetts resident was arrested early Saturday morning after pulling over to ask a state trooper for directions, according to arresting State Police Sgt. Steven Charette. The driver, Stephen J. Brown Jr., 31, of 37 Chestnut St., was arrested for allegedly operating a vehicle under the influence, second offense, and operating a vehicle with a suspended license.

Charette said he was driving on Route 140 and was about to take a left onto Route 2 when Brown pulled up beside him. "He pulled up beside me, rolled down his window, and asked me where Green Street was," Charette said. Brown allegedly told Charette he was trying to find his way to an 8 a.m. driver safety course at the Community College.

NATIONAL TRAINING OPPORTUNITIES FOR PROSECUTORS

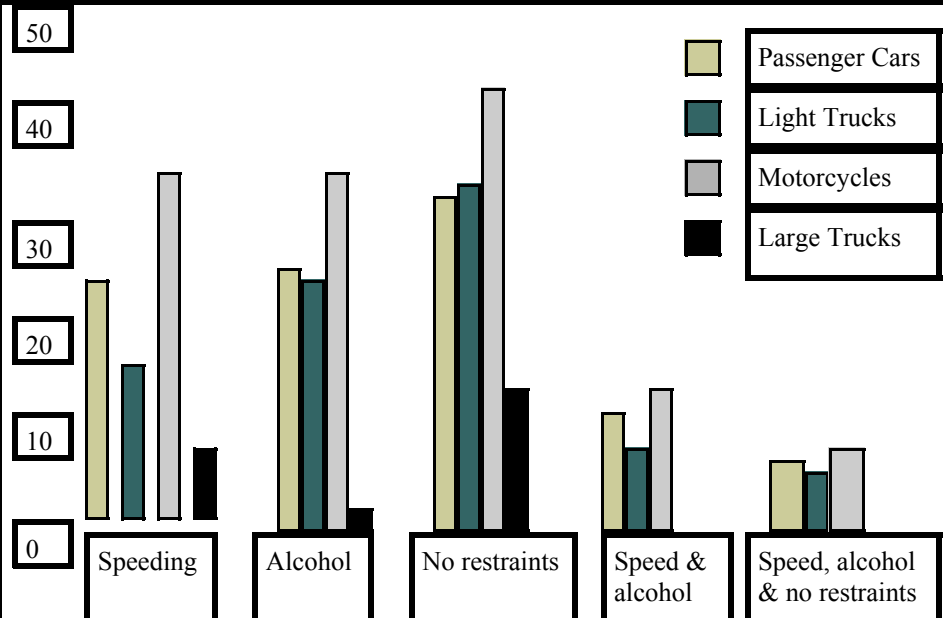
The following courses are offered by the National District Attorneys Association and the National College of District Attorneys. These are listed due to their relevance for prosecutors involved in traffic safety. To see the complete list of courses and application forms go to: <http://www.ndaa-apri.org/education/index.html>.

February 21-24	<i>Cross-Examination</i>	NDAА	Columbia, SC
March 6-9	<i>Jury Selection</i>	NDAА	Columbia, SC
April 10-13	<i>Cross-Examination</i>	NDAА	Columbia, SC
May 1-5	<i>Trial Advocacy II</i>	NDAА	Columbia, SC
June 12-16	<i>Trial Advocacy II</i>	NDAА	Columbia, SC
June 18-29	<i>Career Prosecutor Course</i>	NCDA	Charleston, SC
July 17-21	<i>Prosecutor and the Jury</i>	NDAА	Columbia, SC
July 31 – August 4	<i>Trial Advocacy II</i>	NDAА	Columbia, SC
August 28-31	<i>Cross-Examination</i>	NDAА	Columbia, SC
September 10-14	<i>Evidence for Prosecutors</i>	NCDA	Providence, RI

PRACTICE TIP HMVO PETITIONS

The court of Criminal Appeals recently set aside a habitual traffic offender default judgment and reversed a conviction for violating the order. The problem was that the hearing date for the petition was less than 30 days after the defendant was served. The defendant did not respond and a default judgment was taken. Habitual Motor Vehicle petitions are civil in nature and the Rules of Civil Procedure must be followed. See the case of *State v Hudson* at 2005 Tenn Crim App Lexis 1038.

2004 Speeding, Alcohol Involvement, and Restraints Among Drivers Involved in Fatal Crashes by Vehicle Type



Attorney General Opinion Supports Harsher Penalty for Underage Offenders

The Tennessee Legislature during the final weeks of the 2005 Session passed a law that permits adult DUI offenders to spend twenty four of their forty eight hour mandatory jail term picking up garbage. They are permitted to avoid one half of their jail time.

Underage offenders must spend the full forty eight hours in jail and pick up garbage for an additional twenty four hours.

An opinion was requested from the Attorney General to determine if different treatment based on age was constitutional. The questions of the A.G. were:

1. Whether a harsher penalty for underage defendants convicted of driving under the influence (“DUI”), as set forth in the Conference Committee Report adopted by the General Assembly for Senate Bill 79, is constitutional.
2. Whether precedent exists for age-based punishment.

A classification based upon age satisfies equal protection requirements so long as it is rationally related to any legitimate government interest; strict judicial scrutiny is inapplicable. The Conference Committee Report on Senate Bill 79 aims to discourage drivers from underage drinking, which is a crime in and of itself. It serves the legitimate penal interests of the State of Tennessee by authorizing more severe punishment for people under twenty-one years old who drink and drive. It is rationally based upon the premise that people under twenty-one years old should not be drinking alcohol at all, much less driving under the influence.

Tennessee Supreme Court Limits Judicial Diversion

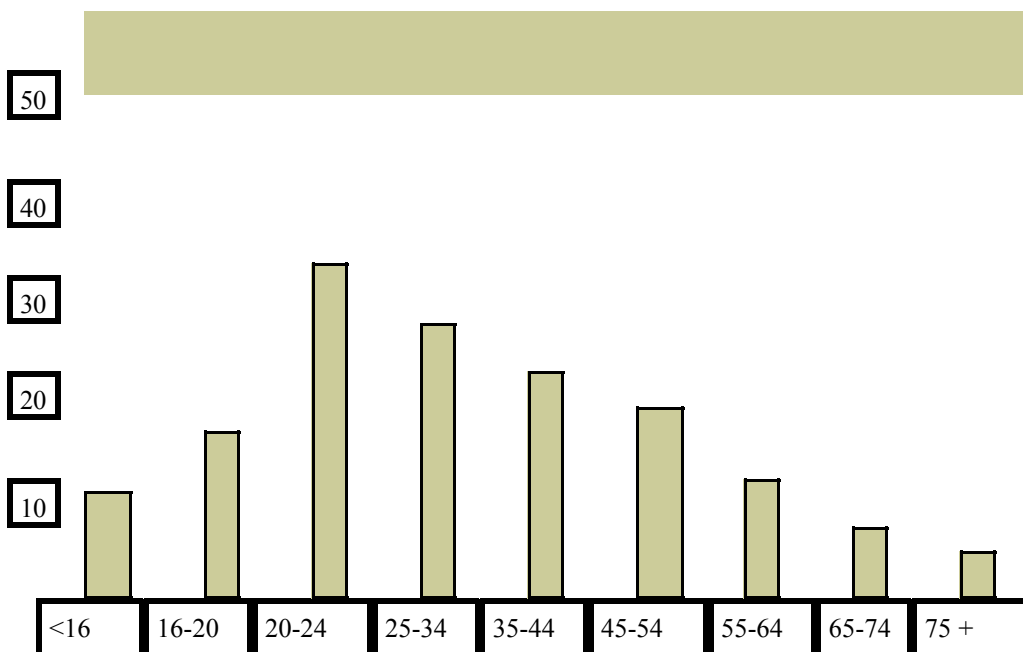
State v Soller

2005 Tenn. LEXIS 1045

The defendant requested judicial diversion after entering a plea agreement. The Supreme Court has ruled that such a request must fail. Only if an application for Judicial Diversion was part of the agreement may it be considered. The Trial Court does not have the authority to alter the agreement by granting diversion.

In addition once a judgment is entered the Trial Court is precluded from granting diversion.

Drivers with BAC Levels .08 or Higher Involved in Fatal Crashes by age group 2004



An average of 117 people died each day in motor vehicle crashes in 2004.

One person died every 12 minutes.

Checklist & Tips for Safe Winter Driving

Get your car serviced now.

Check your battery.

Check your cooling system.

Fill the washer reservoir.

Check your windshield wipers & defrosters.

Inspect your tires.

Know your car.

Plan your travel and route.

Stock your vehicle.

Learn what to do in a winter emergency.

safercar.gov



nhtsa



NHTSA estimates that 15,434 lives were saved in 2004 by the use of seat belts.

Ejection from a vehicle accounted for 27 per cent of all passenger vehicle occupant fatalities in 2004.



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