



DUI NEWS

GOVERNOR BREDESEN PRIORITIZES DUI LEGISLATION

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Tennessee's popular governor, Phil Bredesen, began planning for long needed changes in our DUI laws months before his re-election in November. The Task Force began it's work in March, 2006 with the following order:

"The Governor's Task Force on DUI Laws in Tennessee ("Task Force") is hereby established. The Task Force is charged with conducting a comprehensive review of the state's DUI laws, including all of Tennessee Code Annotated, Title 55, Chapter 10, Part 4, and any relevant judicial opinions interpreting such statutes. The Task Force shall recommend to the Governor any needed amendments or changes to such laws, giving due consideration to the need for a legal framework in this area that is comprehensive, clear, and easily understandable by all stakeholders and citizens."

The Task Force met on fifteen occasions. More than eighty hours were spent in discussion during the meetings. The staff for the Task Force, as well as members, spent many more hours planning, composing and attempting to give effect to the will of the members. Membership was diverse including Judges, defense and prosecution representatives, law enforcement and MADD. The Task Force listened to the testimony of representatives of the Department of Safety, Secretary of State, the Department of Health, law enforcement, Legislators, the Traffic Safety Research Institute of Canada, the policy division of the national MADD Organization, the Tennessee Bureau of Investigation, a convicted offender and others.

Laws from various states were examined. The National Highway Traffic Safety Administrations document, "Countermeasures That Work" was used for Guidance and new technologies were studied.

On November 15th, the Task Force met with the Governor with it's final recommendations. In addition to recommendations a proposed new DUI law incorporating the changes was presented as a model.

The Task Force made recommendations based on a collective recognition of areas that needed clarification and change. It was not in the business of examining what needed changes could pass in the Legislature. Recommendations were delivered to the Governor and the Governor's office has designed a legislative package. It is now up to the Legislature to make decisions concerning the package. Recommendations in the package are listed on page 4.

RECENT DECISIONS

State v Beffrey, 2006 Tenn Crim App Lexis 892

Finger count and alphabet to seated driver provides reasonable basis to continue investigation

The Defendant was convicted of a second DUI offense and sentenced to serve eleven months and twenty nine days. She was also sentenced to a consecutive five days for refusing to take a breath test. She challenged the stop and the jury's finding of guilty. Morristown Officer Nathan Wolfe stopped the defendant for not wearing a seat belt. After he smelled an odor from alcohol he conducted two tests while the defendant sat in her car. He asked her to perform a finger count and to recite the alphabet starting with E and stopping at R. She could not. The officer then asked the defendant to get out of the car and perform standardized tests.

The decision to ask a person to perform SFST's is usually based on suspect driving and indicators like an odor of alcohol, slurred speech and the appearance of an impaired person's eyes. This officer did not observe bad driving. His decision to request tests while the defendant was in the car in this situation eliminated any argument that he lacked reasonable suspicion to ask the defendant to perform SFST's. Without the tests in the car, it may not have been obvious to the Judge that reasonable suspicion requirements were met.

State v Dobbins, 2007 Tenn Crim App Lexis 9

Closed Public Park is place frequented by public

Rose Park in Nashville has a sign that prohibits entrance after 11:00 pm. At 2:00 am defendant Dobbins was in his car parked at the far end of the parking lot. The defendant argued that the public was not permitted in the lot after hours, so it was not a place frequented by the public. The Court found that there is no requirement that those who frequent public places had to be cross-representative of the public at large. The Court also noted that the phrase frequented by the public is not defined by time of day limitations.

State v Gothard, 2006 Tenn Crim App Lexis 1028

Crossing white line five times supports reasonable suspicion

Officer Mark Miller of the Hamilton County Sheriff's office was parked at an EMS station catching up on paperwork when he noticed the defendant make a wide turn crossing four lanes of traffic and the white line separating the road from it's shoulder. All but the driver's side tires crossed onto the shoulder. The officer followed and saw the defendant cross the line onto the shoulder again and he activated his video camera.. On video the defendant crossed the line a couple more times and was pulled over. The Court stated: "While we are aware that imperfect driving is not a crime, the defendant's driving here amounted to "more than mere imperfection in driving or inattention to detail."

State v Richie, 2007 Tenn Crim App Lexis 2

Deference to Trial Court Reasonable Suspicion Standard. No videotape.

Deputy Thomas Fulmer, of the Hamilton County Sheriff's Department, was driving on a treacherous two lane road. At a curve he met two vehicles. The second, a 3/4 ton Ford truck crossed over the double yellow line four to five inches. The officer pulled over to avoid contact. He turned and followed the defendant who turned on a road and pulled into a driveway. The Trial Court decided that the officer had reasonable suspicion to stop and investigate. The decision was affirmed. Deference is to be given the Trial Court decision in cases in which there is no videotape of a stop, unless the evidence preponderates against the Trial Court's decision.

(More cases on Page 6)

Recidivist Wall of Shame

Some Impaired drivers are exceptional. They continue the criminal behavior of driving under the influence until liver failure, heart disease or a fatal crash eventually stops them. They deserve special mention. The Governor's legislative package puts great emphasis on trying to change behavior before offenders reach this status. The legislation includes increased penalties for those that won't change.



Jesse Hall, Memphis, would not stop driving, would not fix his broken windshield, would not get proper tags and would not stop driving under the influence. He'll stop now for a while after receiving a four year sentence. Hall was arrested in July, 2005 and charged as a habitual motor vehicle offender. He made bond and was arrested again in December, 2005 for his 7th DUI. Each time he was stopped he was in the same car with improper tags and a cracked windshield.

Rhonda England, 42 of Birchwood pled guilty to her **8th** DUI's in Hamilton County. England was found in a ditch on December 12, 2004 with her seat belt on trying to start the car. She was so drunk that she had vomited on herself. She could not stand up. She also had marijuana in her pocket. Like most multiple offenders she refused to take a breath test. While out on bond she was arrested for her **9th** DUI on March 16, 2006. She pled to a felony DUI and received a sentence of two years to serve with a license revocation for five years.

Vince Murphy, pled guilty to DUI 8th offense and a violation of the habitual motor vehicle offender law on January, 8th in Washington County. Murphy will serve four years as a range three offender for the DUI and an additional four years for the HMVO. Murphy was initially stopped for having an inoperative headlight.

CHEESEHEAD MOVES TO TENNESSEE AND BECOMES STATES SECOND TSRP

The Tennessee District Attorneys General Conference is proud to announce the hiring of District Attorney Jim Camp of Green Lake, Wisconsin as the second traffic safety resource prosecutor in Tennessee. Jim will be joining the Education and Training Division, DUI Training Section, of the DA's Conference February 1, 2007.

Jim is a 1982 graduate of Cleveland-Marshall College of Law in Cleveland, Ohio. He was in private practice from 1982 until his election as District Attorney in 1991. Since 1996, Jim has been a frequent lecturer concerning vehicular homicide, closing argument, prosecutor motivation, cross examination, child abuse, domestic violence, courtroom testimony and the role of emergency professionals at crime scenes. For the past seven years Jim has been a member of the Lethal Weapon DUI Homicide Team at the National Advocacy Center in Columbia South Carolina.

Prior to the practice of law, Jim was an emergency medical technician. Four years ago Jim purchased land in Henry County, Tennessee, and frequently visits to hunt and fish. Jim's mother and father are former residents of Newport, TN where his father was a professional harness horse trainer and driver during the fifties.

Jim will have an office at the Tennessee Highway Patrol Training Academy in Donelson, Tennessee. One of his primary duties will be to assist in law enforcement training at the Highway Patrol and other academies in the State. Jim will frequently lecture and assist in the mentoring and development of new prosecutors concerning all traffic safety issues.

Jim is an avid Green Bay Packer fan but says the Titans are now his other favorite NFL team. He is also a private pilot, holds a Second Degree Black Belt in Tae Kwon Do and has been an active member in the Wisconsin American Legion Boy State program. He has two grown children in Wisconsin and Minnesota.

**TASK FORCE
RECOMMENDATIONS
55-10-401 ET SEQ**

Establish a TREATMENT and MONITORING sentencing option for second and third offenders that will monitor post jail and treatment behavior

Remove the option to refuse from DUI felons, those driving on a revoked license due to a DUI conviction or those driving without a valid license.

Change mechanism for calculating prior offenses to count all convictions within 10 years of the driving offense date.

Eliminate provision permitting a 20 year look back period and establish a Class D penalty with 360 consecutive day sentence for 5th offenders and above.

Permit the use of preliminary breath test devices.

Permit the use of search warrants in test refusal cases.

Require child endangerment convictions to be served consecutively to the DUI conviction and eliminate provisions that permitted a lesser sentence in cases of vehicular homicide or assault.

Require alcohol and drug assessments in all DUI and Underage Driving after Consumption cases.

Change high Blood Alcohol Content provision from .20 to .15

Increase Alcohol and Drug Treatment funding by \$25 per case and permit funding to pay for ignition interlock and transdermal monitoring devices.

Make all fines and fees equal statewide.

Increase the implementation of seizure provisions by permitting local agencies to retain 50% of profits to reimburse departments for time spent by officers in seizure situations. Include seizure in cases with injuries or death.

Restore the 48 hour minimum penalty for first offenders and eliminate trash removal.

Eliminate the use of restricted licenses for defendants who refuse testing or drove with a .15 or higher BAC.

Require the use of ignition interlock devices in lieu of restricted licenses for those who refuse testing or test at .15 or above.

Amend open container law to include passengers.

Increase minimum penalty for fourth offenders by thirty days with the possibility of in patient treatment or out patient treatment and residency at a halfway house during the last thirty days of the sentence

**TASK FORCE
RECOMMENDATIONS
OTHER AREAS**

Support legislation to require notification of law enforcement by emergency room personnel when patients are involved in crashes and are impaired.

Increase funding for probation or community corrections supervision. These entities will be responsible for monitoring offenders who opt for treatment sentencing and monitoring. They will also need to monitor compliance with ignition interlock requirements.

Include vehicular homicide in sentencing provisions for violent crime. This increases the period of time before parole eligibility to 85% from the current 30%.

Support legislation to create an Administrative License Revocation. This will eliminate delay in the Courts created by offenders who want to keep their license pending resolution of the DUI case. The Task Force recommends the use of telephonic hearings and that hearings be conducted by Administrative Law Judges with the Secretary of State.

Support legislation permitting the videotaping of DUI investigations of minors. All parties want to observe videotapes of field sobriety test performance by offenders regardless of the age of the driver.

Support legislation to amend the law concerning the Obstruction of Traffic lanes. Officers need to respond to vehicles stopped in a lane of traffic with emergency equipment for public safety purposes. If they discover an impaired driver, the driver may escape prosecution after the decision in State v Williams.

Establish a permanent Task Force to monitor issues concerning traffic safety and the implementation of legislative changes.



Bottom Row (from left): Janice Pilot; Amy Tarkington; Governor Phil Bredeson; Chairman, Klyne Lauderback; Laura Dial; Mia Vickers

Second Row (from left): , Gary Antrican; Norman Lewis; Tom Kimball; GHSO Director, Kendall Poole; Colonel Mike Walker;

Back Row (from left): Mark Fulks; Judge Steven Dozier and Jason Ivey.

Not Pictured: District Attorney John Carney and Steve Oberman

THE CRASH PAGE

Beginning with this issue the DUI NEWS will devote a page of the publication to issues and concerns regarding vehicular homicide cases. In the past many articles have been included concerning this topic. From now on at least one page per issue will be dedicated to this important area.

CRASH SCENE INVESTIGATION CHECKLIST

By Jim Camp
Traffic Safety Resource Prosecutor

From March 31st through February 2nd, 2007 I participated in the presentation of an interdisciplinary Lethal Weapon, DUI Homicide training in Santa Fe, New Mexico. This training was attended by both prosecutors and law enforcement officers. It was a huge success, due mostly to the brilliance of Professor John Kwazoski. Professor Kwazoski is most probably the foremost expert on DUI homicides and crash reconstruction in the country. He is a skilled and engaging instructor who preaches that one of the most important elements involved in the effective presentation of a DUI homicide case involves the inoculation of the State's crash reconstruction expert against effective defense cross-examination. This inoculation is accomplished in direct examination when the prosecutor walks the witness through the procedures he or she followed while investigating the crime scene. Procedures which, among other things, build witness credibility by eliminating other causes of the crash and ensuring fair treatment of the facts and physical evidence. This fair treatment extends as far as making assumptions that give the defendant every benefit of the doubt particularly as it relates to statistical ranges. Professor Kwazoski has prepared a crash scene investigation checklist. This checklist helps ensure thoroughness on the part of the investigator. It also provides great material for use on direct when attempting to inoculate your crash reconstruction expert. That checklist is reprinted below with Professor Kwazoski's gracious approval.

Investigative Activities that Build Credibility at Trial

1. The officer walked the scene looking for road defects – potentially exculpatory evidence.
2. Witness locations were shown on the scale drawing of the scene to assist the prosecutor, the jury, and the witness.
3. The rolling wheel used to make measurements was checked by comparison with a 100 ft tape measure before and after it was used at the scene. (Other measuring devices were checked against a standard).
4. The scale used to pull the drag sled was checked for calibration accuracy by the local department of weights and measures.
5. Multiple measurements were made, and the one most favorable to the defendant was used in the calculations.
6. A scale drawing was taken back to the scene to confirm several measurements in the drawing, thus avoiding an attack by defense on the accuracy of the drawing.
7. The scene of a night crash was revisited during the day to look for additional evidence that might not have been observable at night.
8. A photograph showing the witness' perspective was taken to help everyone understand what the witness could see and where she was located.
9. The officer took an important witness back to the scene to re-interview him. The officer finds that sometimes the witness is able to give more information the next day.
10. The officer had the defendant do several other field sobriety tests in addition to the three that are standard policy; this gave the officer additional information regarding impairment.
11. The officer interviewed the witness with the witness standing where she was when she observed the crash - this improves her ability to recall.
12. The officer checked to see if there had been any recall notice(s) on the defendant's vehicle that would suggest a mechanical failure – there were none.
13. The vehicle(s) involved in the collision were photographed extensively, both outside and inside the vehicle(s).
14. Tire mark evidence was photographed close-up to show any characteristics of the tire marks in addition to their overall appearance, length, orientation on the roadway, etc.

Professor Kwazoski was a keynote speaker at the Tennessee Lifesaver Conference and also taught S.C.R.T. team members of the Tennessee Highway Patrol and other departments in 2006. He has participated as an expert witness in several Tennessee cases.

RECENT DECISIONS

State v Templeton, 2007 Tenn Crim App 54

No time limitations for prior DUI in Implied Consent prosecution.

The defendant refused to take a blood alcohol test after his arrest for DUI. The defendant had been convicted of DUI in Knox County in 1990. The Court ordered that his license be suspended for two years. Defendant Templeton urged the Court to limit the use of prior convictions to ten years, similar to limitations in DUI cases. The Court refused to amend the law and sustained the Court's order.

State v McNeilly, 2006 Tenn Crim App 932

Admissions during traffic stop not barred by Miranda

The Defendant was observed driving by several citizens in Winchester, Tennessee including a pastor of a church. Citizens called 9-1-1 to report the dangerous driving behavior. Winchester Officer Carrie Morris found the defendant after she ran into a pole. The officer asked for a driver's license. The defendant did not seem to understand. The officer asked if the driver had been drinking. The defendant stated she had taken three tranquilizers.

The defendant attempted to have her statements suppressed arguing that she had not been read Miranda rights. The Court held: "Defendant was seized when an officer arrived at the scene, activated her blue lights, and blocked defendant's car. However, the officer did not arrest defendant for Miranda purposes until after she realized that defendant could not perform the field sobriety tests. Thus, defendant was not in custody when she made the incriminating statement that she had taken three tranquilizers that day, and the trial court properly denied her motion to suppress."

State v Conn, 2006 Tenn Crim App Lexis 935

Impeding traffic by stopping in lane and no turn signal during turn support stop

Nashville Officer, Sharraff Mallory, observed the defendant stop his vehicle in a lane of traffic. The defendant pulled up to a red pick-up truck, stopped and had a conversation. The officer waited. The defendant pulled away and turned left onto another street without using a turn signal. The defendant was pulled over. The officer wrote traffic tickets for impeding traffic and no turn signal. The officer asked the defendant to step out of his vehicle to sign the tickets. He asked the defendant, who appeared to be extremely nervous, for permission to pat him down. The defendant gave permission. Twenty six grams of cocaine were in his shirt pocket. A subsequent search after arrest revealed marijuana and a loaded weapon in the vehicle.

The defendant motion to suppress the traffic stop was denied and the convictions upheld. This case followed the Supreme Court's decision in **State v Williams** by eight months. In Williams the Court did not make a credibility decision concerning the testimony of the defendant and officer. The officer stated the defendant was stopped in a lane of traffic. The defendant claimed he was moving and pulled over. The trial court suppressed the "stop" of the defendant indicating that there was no impediment of traffic, due to a failure to testify that there was traffic on the road. The Trial Court apparently did not consider the police car on the road as traffic.

New Hampshire v Cochrane, 897 A2d 952 New Hampshire 2006

Horizontal Gaze Nystagmus not a scientific test in New Hampshire, but it is here.

The police officer's testimony regarding the officer's training, administration, and scoring of the HGN test did not require an understanding of the underlying scientific mechanisms explaining the phenomenon of nystagmus itself. All that was required was an understanding that alcohol consumption could cause nystagmus, which could be detected by a trained police officer though observing defendant during the administration of the HGN test.

This begs the question: How can the same test be considered scientific requiring expert testimony in Tennessee?

THANK YOU GEORGIA FELNER

Williamson County is a safer place to drive due in part to the tremendous efforts of DUI prosecutor Georgia Felner. Since 2002, Georgia has served as a prosecutor funded by a grant from the Governor’s Highway Safety Office. Georgia pushed for and brought an effective alcohol education program to her county jail. Inmates in Williamson County spend eight hours of their jail sentence learning about how alcohol effects lives. Georgia helped bring victim impact panels into the program. Georgia was instrumental in beginning a program using SCRAM transdermal monitoring devices on offenders who wanted to beat alcoholism. She insisted on convictions for the guilty. Ninety-one percent of those charged with DUI in Williamson County in FY 2005-2006 were convicted. For Georgia, prosecution was not about numbers it was about stopping people from killing or hurting others. She never lost sight of the fact that many DUI offenders are citizens with an alcohol problem. She despised the crime of driving under the influence, but never the person who committed the crime. Georgia had decided to leave her post as prosecutor to develop other interests. She has given our citizens her best effort for more than four years and we will miss her. Thank you Georgia for all that you have done and good luck in your future pursuits.



Georgia Felner

The very essence of leadership is that you have to have a vision.
Theodore Hesburgh

THP CADET CLASS 607

A new set of troopers will be on the road this summer. They will impress. The District Attorneys General Conference DUI unit had the pleasure of helping with the training of the class February 22nd-23rd. A two day “Cops in Court” class was conducted. The focus of the course is integrity and professionalism. These concepts were easy for the members of the class to master. Most have a military background with one cadet being a marine for four years. His partner was a bomb sniffing dog. He spent over three years in Iraq and Afghanistan checking for explosive devices. Another trooper had twenty years experience with the Air Force. Yet another had served as a homicide investigator in his community. For two days the cadets were taught to think about how things will sound and look in court when they make an arrest. They had the chance to testify on direct and cross examination and to watch themselves on video and be critiqued. One cadet wrote, “Many of the cadets, including myself do not have any prior law enforcement background. The time that we were able to spend with the prosecutors testifying has been very rewarding.” Another wrote, “ I feel more confident in my ability to explain my case to a Judge and jury. Ultimately by practicing here my errors were critiqued and adjusted so that when I am a witness I have a better idea of what to do and what not to do. I can see the importance of being professional and maintaining integrity no matter what.” Thanks to the prosecutors who helped in this training. They are: Scott McMurtry, Amber Galina, Michael Clair Bayer, Matt Stevens, all of Nashville; Craig Monsue, Ashland City; Tracy Jenkins, Tazewell; Michelle McFayden, Cleveland; Chris Dotson, Clarksville and William Lamberth, Gallatin.

LAWS OF PHYSICS DEFY TENNESSEE SEAT BELT LAW

One of Isaac Newton’s laws says that an object in motion will continue in motion until it is stopped. If a car is traveling 70 miles per hour, so is everything in the car. A can of beans sitting on the ledge behind the back seat will travel at 70 miles an hour until it hits something that will stop it. If a car suddenly stops due to an impact, the beans will continue forward until they hit a seat, a windshield or a person. The same is true of an unrestrained passenger in the back seat. The passenger will travel at 70 mph until he hits the front seat. If the passenger weighs 200 lbs, that’s 14,000 pounds of matter slamming into the front seat. In Tennessee our seat belt law does not include back seat passengers!



GHSO Director of Training, Jerry Tucker served as lead faculty of the class dedicated to the memory of Trooper Calvin Jenks.

PROSECUTORS AND LAW ENFORCEMENT SHARE COMMON GOALS: SAFER ROADS

During the last four years, prosecutors have been extremely involved in teaching at courses for law enforcement sponsored by the Governor’s Highway Safety office. There are many defenses prosecutors observe after an officer has testified and left the building. Here are some of the practical tips offered law enforcement to negate creative defenses:

Ask the driver about: His driving behavior when you approach the vehicle, diabetes, eye surgery, leg problems, medications, employment and fatigue during the SFST’s. Don’t overlook the obvious. If a driver has a wet spot on his pants, ask about it. Assume nothing. It may look and smell like urine, but if you can’t prove it is urine, there will be an excuse for the wet spot at trial. Ever hear of the “my dog peed on me defense?”

After arrest, think about what the defense attorney will attack. Complete the investigation. If permitted by your department, read the defendant his Miranda Rights and talk to him on the way to the jail. Ask about his night. Find out who he had been with and where he had been. Ask at different times how much he drank. He will probably give a different answer each time. Ask who his bartender was. If he knows the name of the bartender, he is a regular. If the defendant refuses to take a breath or blood test, ask him why. More often than not, he’ll be honest and admit that he is drunk. Don’t allow good evidence to disappear. Ask questions and listen well.



National District Attorney Association Trainings at the NAC May– Sept. 07:

Appellate Advocacy
June 25-29

Prosecutor Boot Camp
June 4-8
August 6-10

Cross Examination
May 21-24
July 23-26

Courtroom Technology
August 27-30

Prosecutor and Jury
August 13-17

Trial Advocacy I
June 18-22
July 9-13
July 16-20
July 30-Aug 3
Sept 10-14
Sept 24-28

To apply to attend any of the courses offered at the National Advocacy Center go to:
<http://www.ndaa.org/>

THE TROOPER CALVIN JENKS CLASS

During the third week of January, the Governor’s Highway Safety Office sponsored a Standardized Field Sobriety Test class at the Memphis Police Department. Thirty five officers from various departments in West Tennessee attended and completed the training. The class was dedicated to the memory of Trooper Calvin Jenks, 24, who was registered to attend, but was shot and killed in the line of duty during a traffic stop only weeks before. May he rest in peace.



TROOPER JENKS

SCRAM THE KUHNEN EXPERIMENT

During the New Prosecutor’s Training Academy, Assistant District Attorney Todd Kuhnén of the 2nd Judicial District agreed to be a guinea pig to test the transdermal monitoring device called SCRAM. The device was installed on his leg as an ankle bracelet on the afternoon of Feb. 26th by the Community Corrections Department of Davidson County. Todd’s friends agreed to monitor the number of drinks he consumed. Todd is 6’ and 195 lbs. He is 38 years old.

On day one he drank two glasses of wine and five kamikazes from the free Embassy Suites lounge between 5:30 and 7:30 pm. On day two he drank 8 drinks from the same lounge. Day 3 included two beers as did day four. Here are the conclusions we were able to draw.

1) Transdermal (sweat) testing does detect alcohol. The alcohol curve is present as is seen in blood and breath testing. On the chart below there is a dramatic drop between 9:30 and 10:00 pm on the first evening. That’s when there was alcohol interference with the bracelet. It is also when Todd voluntarily evacuated (upchucked) the contents of his stomach, because he was feeling bad. At 9:32 pm he was .087. Most likely some of the spray made contact with the device. Once the device was dry it read .046 at 11:32 pm. The SCRAM indicates Todd has an elimination rate of .016. The time passed would account for .032. That would indicate that his voluntary evacuation reduced his BAC by .009. However, his BAC was probably still rising at 9:32, so that can not be an exact conclusion.

TRAINING NOTICES

VEHICULAR HOMICIDE FOR PROSECUTORS AND VICTIM WITNESS COORDINATORS

May 22-24, 2007
Holiday Inn Select
2200 Elm Hill Pike, Nashville, TN

The Vehicular Homicide course is focused on

- assisting prosecutors to develop their knowledge and skills for trial
- understanding crash reconstruction
- the role of the victim witness coordinator in the D.A.'s office.
- maintaining prosecutorial immunity at crash scenes.
- the first and early meeting with the family of the deceased,
- stages of grief,
- victim's rights,
- criminal injury compensation
- preparation of family witness for sentencing hearings

A Victim Witness Coordinator and a Prosecutor from each judicial district are encouraged to attend.

Contact Sherri Harper at 615-253-6733 to register.

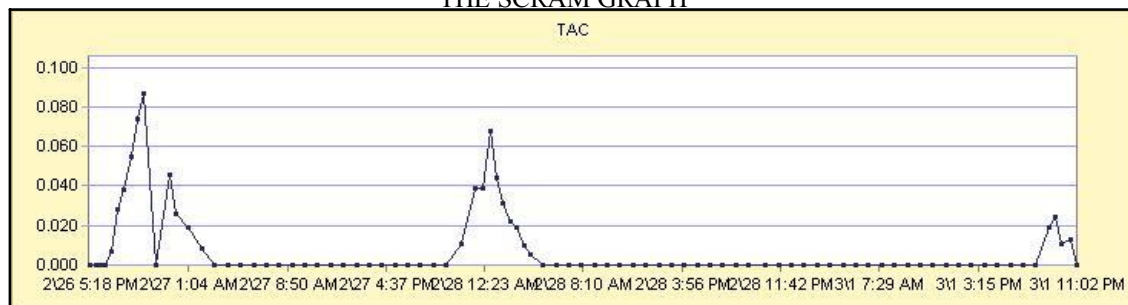
THE KUHNEN EXPERIMENT

2) Transdermal testing is detected later than breath testing. At 8:30 pm on day two, Todd took a breath test and registered a .03 BAC. At that time the SCRAM did not detect alcohol. Deep lung air alcohol content can be detected sooner than alcohol that has to be fully through the system before it begins to be eliminated through sweat. Todd did not show a .03 BAC on the SCRAM until the 11:41 pm reading that indicated .039.

3) People the size of Todd who say they had 2 beers and have a BAC of .08 or above are badly mistaken or absolute liars, who assume we are too stupid to know better. Todd had two twelve ounce beers and five kamikazes on day one between 5:30 and 7:00 pm. He then had lasagna for dinner. His highest BAC was .087. On the second day he had eight drinks between 5:30 and 7:00 pm. At 8:30 pm he had a .03 BAC on the ECIR 2 breath testing instrument and his highest transdermal alcohol content was .068. When Todd drank two beers on the fourth night, he registered a .024 at the height of the alcohol curve.

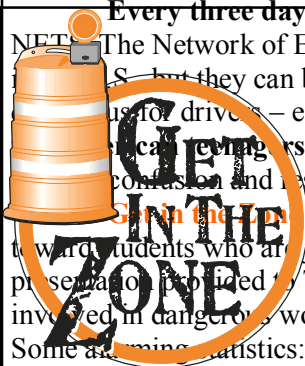
4) Weather matters. On night number three there was a three hour power failure at the hotel. The SCRAM did not pick up a reading that night. Apparently the two beers Todd drank were out of his system by the time the power was working again. The next night it took one hour and forty minutes for all of the .024 amount to be out of Todd's system.

THE SCRAM GRAPH



TDOT RESPONDS TO WORKZONE CRASHES WITH NEW PROGRAM FOR YOUNG DRIVERS

DISTRICT ATTORNEYS TO HELP



Every three days a teen is killed and seven are injured in a work zone crash in this country according to NETS, The Network of Employers for Traffic Safety. Work zones are considered the most hazardous place for workers, but they can be even more hazardous for drivers – especially young, inexperienced ones. **Motor vehicle crashes are the leading cause of death** for teenagers. Work zones can contribute to this by causing confusion and resulting in hazardous driving that puts the driver, passengers, and work zone personnel at risk. **Get in the Zone** is a safety education program offered by the Tennessee Department of Transportation geared toward students who are just learning or thinking about learning to drive. The program includes a high-tech, interactive presentation provided to Tennessee high schools at **no cost** in order to reduce the chances of young drivers being involved in dangerous work zone accidents.

Some alarming statistics:

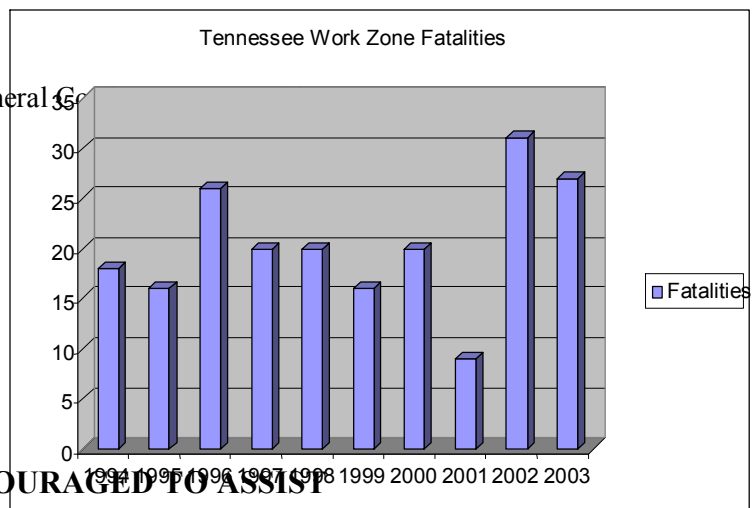
- 71 teenagers were killed in traffic crashes in 2005 in Tennessee; more than half of those killed were those driving.
- Tennessee ranks 7th in the nation for the most deaths in crashes caused by a 15 to 17-year-old driver over the past ten years, according to the American Automobile Association.
- Approximately 48,000 people are injured nationwide per year as a result of motor vehicle crashes in work zones. (National Center for Statistics and Analysis)

To find out more about **Get in the Zone**, or to request a presentation for a Tennessee high school in your area, please go to the **Get in the Zone** website at: <http://www.tdot.state.tn.us/wzsafety/> or contact Christin Hayes, Program Administrator, at Christin.Hayes@state.tn.us or 615.741.7929.

Help us spread our message that when it comes to driving, there is no such thing as beginners' luck. Don't zone out. **Get in the Zone!**

DISTRICT ATTORNEYS PLEDGE ASSISTANCE

The Executive Committee of the District Attorneys General can be seen in the high schools of Tennessee. Participating District Attorneys will contact local school boards and principals to urge participation. The District Attorneys may wish to attend and introduce the program and the TDOT instructors when they present to the schools.



JUDGES ENCOURAGED TO ASSIST

This program offers a wonderful opportunity for Juvenile and Traffic Court Judges to be proactive to save lives and reduce court dockets. Judges are encouraged to contact program administrator, Christen Hayes, to help get this message into schools and to use the powerful messages in the program to deter offenders. The videos in the program could help an offender who speeds through a work zone to recognize the dangers that speed and distractions in work zones create.

VEHICULAR HOMICIDE MURDERERS ROW

Sherry Tribble was driving on November 4, 2005 in Memphis. She was weaving in and out of traffic, drifted out of her lane and smashed into a motorcycle killing the biker. Tribble had a .26 BAC three and a half hours after the crash.

Tribble is a single mother of a ten year old. At the sentencing hearing she was given leniency and received an eight year sentence with one year to serve in jail. She was also ordered to spend five hundred hours educating the public about the dangers of impaired driving.

Tragically a fine citizen, Terry Albinger was killed. Terry was a former marine, an employee of Fed Ex and a former member of the West Bend Patriots Drum and Bugle Corps, the University of Memphis Marching Band, The United States Marine Corps Band, and at the time of his death was the leader and trumpet player for the Mercedes Knights Swing Band in Memphis. No one will receive the thrill of hearing Terry on the trumpet again. He is badly missed by all who knew him. Many of his family and friends attended and spoke at the sentencing hearing.



Kelly Dinelle
Payne

In 2001, Kelly Payne struck and killed 13 year old Elizabeth Melton in Jackson, Tennessee. In May 2002, Payne pleaded guilty and was given sentences of five years for vehicular homicide and a concurrent two-year term for leaving the scene of an accident. She was denied parole, but was released after 3 1/2 years in October, 2005. Five months later she killed again in Virginia.

Payne was drunk and driving her boyfriend's truck home from work when she lurched off the pavement and struck Ashokkumar M. Patel as he walked alongside the westbound lanes of Midlothian Turnpike at the entrance ramp to north-bound Chippenham Parkway. At the time, she was fleeing from a rear-end accident she had caused. She kept on going after hitting Patel, speeding up the northbound ramp and onto the parkway on her way to a bar. Afterward, she said she did not remember what had happened.

Virginia law is much more serious about this crime. Payne was found guilty of felony murder, aggravated involuntary manslaughter and two counts of felony hit-and-run in connection with Patel's death. She was sentenced to 46 years in prison.

Tennessee continues to punish vehicular homicide as a non-violent crime. Offenders are eligible for release after serving 30% of the sentence. Payne was denied parole, but released after accumulating good time credits.

BLOOD ALCOHOL LEVELS AND CRASHES

Basically, the more you drink the more likely you are to have an accident, and a fatal one. The same applies for the likelihood of having any vehicle accident, fatal or otherwise. Here's the cold hard facts:

A 160-pound person drinking two beers within an hour would probably have a BAC of 0.04, well below the legal limits of driving under the influence, but **1.4 times more likely to have an accident** than someone who is sober.

Two more beers? The likelihood of an accident goes up almost tenfold to 11 times more likely than the non-drinking driver. As the amount of alcohol in the driver's system rises mathematically on the BAC scale, the likelihood of a traffic accident *multiplies!*

Two more beers? Up to a six-pack now? The likelihood of having an accident is now **48 times higher** than the abstainer and the driver has just now reached the 0.10 BAC level.

Two more? Hey, you've already had a six pack, two more couldn't hurt, right? Except two more beers could put your BAC close to 0.15 at which point you are **380 times** more likely to have an accident.



MY DAY IN COURT

2002. My last trial in September, 2002 in the Criminal Court for Hamilton County, TN was State v Bernard Brooks. It was a vehicular homicide in which the offender was a wrong way driver without headlights while drunk on a divided highway. In September, 2001 he slammed into a lovely woman returning from early Christmas shopping outing. Brooks was convicted and went to prison for twelve years.

Recently, I went to Court to help one of our offices that had a conflict of interest. The case is typical of cases hundreds of prosecutors handle every day around the State, but it contained a lesson that I want to share. The offender was charged with a DUI 5th offense and numerous other misdemeanor charges including drug possession and possession of a loaded weapon. He was driving on a suspended license and refused a blood test. There was no doubt from his driving behavior, field sobriety tests, obnoxious and obscene comments and an admission that he was more than little bit drunk. He was way beyond impaired.

A fifth offense in Tennessee is a felony that carries a minimum penalty of 150 days in jail. Due to confusion in the law, our appellate courts decided several years ago that we count prior convictions from conviction to conviction. That means when this offender is finally convicted we look back ten years for any prior conviction. The date of the offense in our state is meaningless. Hopefully, this problem will be fixed by legislation that is being promoted by our Governor this year.

In my case the offender's last DUI occurred in August, 1997. That means if this case was not resolved before the tenth anniversary of the August 1997 offense, he would become a first offender. The current case was pending in our Sessions (misdemeanor) Court. A felony may not be resolved in Sessions Court.

We resolved the case. The offender pled to a second offense. He had three 11 month 29 day consecutive sentences or three years probation. He went to jail for 55 days, treatment for 28 days, if recommended by his alcohol assessment, and is to wear a SCRAM, a transdermal alcohol detector on his ankle for 282 days. His driver's license was suspended two years, but he will then have an ignition interlock device installed and will be permitted to drive a vehicle with the device after the first year of his license suspension.

Prosecutors and Judges who read this will probably believe justice was served in this case. They will recognize that this offender will be punished by jail time, begin healing with treatment and with intensive technological monitoring be stopped from driving under the influence for at least two years. He may modify his behavior and quit putting us all at risk on the roadways.

There is, however, a growing trend in this county to judge the performance of prosecutors and judges based on statistical data. This case to statisticians would be graded as a loss. The charge of fifth offense was reduced to a second offense. For statisticians that is the end of the story. This prosecutor must be a lazy bum giving cases away. They would not be able to see that in a couple months this case would by law become a first offense. They would not be able to see whether good was accomplished to make the streets safer. They would not be able to see the changes in the offender if he complies with the order of the court.

I hope the lesson of my day in Court, is that justice is something unique. It is delivered based on a lot of factors. The best thing that can happen in a case is not always consistent with statistical measurement. I know I did the best that I could do with the facts in my case. I know also that in the world of statisticians I was a loser.

**Tennessee District Attorneys
General Conference**

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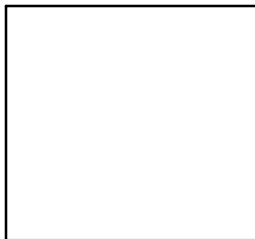
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The SCRAM Bracelet

Weighing only 8 ounces, the patented SCRAM Bracelet combines innovative technology with the scientific foundation of the system Transdermal Alcohol Testing. The offender will wear it on his ankle 282 days. Hopefully, he will learn his lesson and never end up like Mr. Brooks.

This is the device worn by ADA Todd Kuhnen at the New Attorney Training. His volunteer spirit helped prosecutors gain a better understanding of the device.