



# DUI NEWS

**PUBLISHER:**

Tom Kimball, A.D.A.

**LAYOUT AND DESIGN:**

Sherri Harper

**INSIDE THIS ISSUE:**

<i>Recent decisions</i>	2-3
<i>Governor and ALR</i>	4
<i>Drugged Driving issues</i>	5
<i>MADD Court Monitor</i>	6-7
<i>Doctor Shopping</i>	8
<i>Prosecutor Training</i>	9
<i>DUI Convictions</i>	9
<i>Murderer's Row</i>	10
<i>Motorcycle Deaths</i>	11
<i>Crash Page</i>	12

TN DISTRICT ATTORNEYS  
GENERAL CONFERENCE,  
James W. Kirby, Exec. Director  
226 Capitol Blvd. Bldg, Ste 800  
Nashville, TN 37243  
DUI Training Division  
DUI Office: (615)253-6734  
DUI Fax: (615) 253-6735  
e-mail: tekimball@tndagc.org  
web: www.tndagc.org

**Governor's Highway Safety Office**

James K. Polk Office Bldg  
505 Deaderick Street, Ste 1800  
Nashville, Tn. 37243  
Office: 615-741-2589  
web-site: www.tdot.state.tn.us/

*This material was developed through a project funded by the Tennessee Department of Transportation, Governor's Highway Safety Office and the National Highway Traffic Safety Administration.*

## ADMINISTRATIVE LICENSE REVOCATION

Forty one States have a law that revokes a driver's license through an Administrative process if the driver is arrested for DUI. There is a great push coming in this year to add Tennessee as the forty second state. A tremendous amount of research and drafting work has been done by the AAA auto club, the Department of Safety, the Office of the Secretary of State, MADD, the Attorney General, the District Attorneys General Conference and the staff of Governor Bredeson.

With an Administrative License Revocation (ALR) law certain things happen:

- 1). The driver is arrested after probable cause has been established;
- 2). The driver is given the option to take or refuse a breath or blood test;
- 3). The driver's license is surrendered to the arresting officer;
- 4). The driver is given a temporary permit to drive for 90 days.
- 5). The driver is given instructions to request an administrative hearing within 10 days if he wants to challenge license revocation. If no hearing is requested the license is revoked after 30 days.
- 6). The officer submits to the Department of Safety within five days;
  - (a) a copy of the implied consent form;
  - (b) a copy of the request for hearing ;
  - (c) a copy of the completed notice of proposed revocation;
  - (d) a copy of the interim permit to drive;
  - (e) the driver's license.
- 7). A hearing before an Administrative Law Judge is scheduled.
- 8). A hearing is conducted. The burden of proof is a preponderance of evidence. It is limited in scope to two issues:
  - (a) did the driver drive or was he in physical control and
  - (b) did he refuse testing or have a BAC of .08 if over 21 years of age, .02 if under 21 or .04 if operating a commercial vehicle.
- 9). If there is an affirmative finding on each issue, the driver's license is revoked for 90 days if the driver has no prior alcohol or drug related enforcement contacts within the last 10 years. The revocation is one year if there have been one or more such contacts.
- 10). If the driver is convicted of DUI or an implied consent violation, the ALR revocation period is concurrent with the DUI license revocation.
- 11). A restricted license can be issued to first offenders after thirty days.

## DUI TASK FORCE RECOMMENDATIONS

Additional recommendations of the DUI Task Force are currently under consideration by the drafters of the ALR proposal. (cont. page 8)

## RECENT DECISIONS



### DEFENDANT CANNOT WITHDRAW CONSENT AFTER BLOOD IS DRAWN

**STATE v COCHRAN**, 2007 Tenn Crim App Lexis 785

A favorite practice of some defense lawyers has been shot down. Attorneys get hired by a DUI defendant and then send letters to the crime lab to attempt to withdraw the defendant's consent to a blood test before the lab has completed testing. In this opinion written by Judge Ogle the Court found that:

"The purpose of [§ 55-10-406](#)--under which a motorist had a right to refuse to submit to a BAC test--was to prevent violent confrontations that could result from law enforcement officers forcing tests on motorists against their will. Once a motorist allowed his or her blood to be drawn, the purpose of the implied consent statute would be satisfied, even if the motorist later revoked consent for chemical analysis."

### PRE TRIAL IN PATIENT EVALUATION TIME DOES NOT REDUCE MANDATORY DUI SENTENCE

**STATE v HERMAN**, No. M2006-01384-CCA-R3-CD -Filed November 5, 2007

The defendant challenged her competency to stand trial for DUI, possession of marijuana and possession of drug paraphernalia. She spent fourteen days at MTMHI and wanted her in-patient evaluation time to count against her mandatory sentence. The Court determined she was entitled to sentencing credit to be applied toward the satisfaction of her sentence; however, the credit should not have applied toward the mandatory service of forty eight hours in the jail or workhouse.

### CHARACTER EVIDENCE OF SOBRIETY AND THE PRIOR DUI

**STATE v TAYLOR**, 2007 Tenn Crim App Lexis 809

The defendant called his wife as a witness. She was asked if she had ever seen her husband of thirty five years under the influence. After she answered that she had not, ADA Kirby May requested a jury out hearing to ask her about her husband's prior conviction. She denied knowing about it. The Court eventually struck her responses from the record. On appeal the Court found that the Trial Court had properly determined that it would be unfair to the State to allow the Appellant to "open the door" to the character trait of temperance and not allow the State to rebut that evidence.

### CITIZEN INFORMANT INFORMATION JUSTIFIES TRAFFIC STOP

**STATE v HALL**, 2007 Tenn Crim App Lexis 793

Officer had reasonable suspicion under the Fourth Amendment to stop defendant's vehicle because a citizen told the officer that people in a blue van were intoxicated, and the citizen's tip regarding the description of the vehicle and the direction of travel was corroborated shortly thereafter by the officer before he initiated the stop.

### PROBABLE CAUSE CHALLENGE WHEN ARREST OCCURS BEFORE SFST

**STATE v SWAFFORD**, 2007 Tenn Crim App 822

Defendant was handcuffed soon after getting out of the car, because he "bowed up" on the officer. She placed him in handcuffs for her own protection. After other officers arrived, the cuffs were removed and he tried to complete SFST's and blew a .16 BAC. Pre-trial the defendant tried to take advantage of his behavior by challenging whether the officer had probable cause to arrest him when she first placed him in handcuffs. The Appellate Court affirmed after video and testimony proved that he drove 83 mph in a 55 zone; passed two exit ramps, drove in an irregular manner, failed to roll down his window for an inordinate time, fumbled with the door, had a vacant stare, smelled of alcohol, was

## RECENT DECISIONS

### DID THE JUDGE SAY 6 MONTHS IN JAIL?

**STATE v BEAN**, No. M2006-02308-CCA-R3-CD - Filed November 14, 2007

Defendant Bean appealed whether there was sufficient evidence to convict her of DUI 3rd offense and challenged her sentence of 11 months and 29 days with six months in the county jail. Bean admitted to taking two pills for anxiety. She exhibited numerous clues during the 9 step walk and turn, one leg stand and Rhomberg tests. Her driving included crossing the centerline twice, riding the curb line and leaving a right blinker on for 1/4th of a mile with no place to turn. She was not happy to receive more than the minimum 120 day sentence as a third offender. The Court noted her 10 prior petty misdemeanors in sentencing.

### CIRCUMSTANTIAL EVIDENCE CIRCUMVENTS CLAIM

**STATE v DAVIS**, 2007 Tenn Crim App 857

Davis in a delayed appeal of a 2001 case challenged his conviction claiming he was not driving or in physical control on a public road. The indictment did not list any of the other locations designated by statute. The trial court, in its charge to the jury, charged only that the defendant could be convicted of DUI if the act occurred on a public road or highway.

Davis backed into a car in an apartment complex. He left his car and pounded on a door. The owner of the car came from her apartment and confronted him. He was drunk. He offered to pay for the damage. He tried to leave, but she stopped him. The police arrived, investigated and arrested. The conviction was affirmed. The Court found that he was in physical control and that a jury could conclude from circumstantial evidence that he had driven on a road to get to the apartment complex.

### BARS IS CIVILLY NEGLIGENT

**COLLINS v ARNOLD**, 2007 Tenn App Lexis 217

Here's a nice tidbit to share with the local bar owners. A twenty one year old patron at Denim and Diamonds Bar in Davidson County got into a scuffle on a six dollar longneck night. Patrons could drink all the longnecks they wanted from 6:00 to 11:00 pm for six dollars. Mr. Arnold, who had also consumed xanax, would later crash and die with a .11 BAC. Plaintiff Collins was severely injured and sued the estate, the bar and the security firm at the bar.

The bar manager had called Arnold a taxi. A security guard escorted him to his car, so that he could remove items he needed. Arnold shoved the guard to the ground and nearly ran over the guard as he drove away. The police were not called.

The Court of Appeals affirmed the jury finding of negligence and stated, "the jury could have found the following acts or omissions as falling below the standard of reasonable care and contributing to the accident: the failure to require that more than one security officer escort him to his car; the failure to advise the security officer of all the circumstances; and the failure to notify the police that an impaired and potentially dangerous driver had left the parking lot."

## CAN YOU BELIEVE IT?

Erowid.org and thirdplateau.com advise people how to abuse prescription drugs.

## Recidivist Wall of Shame

The Wall of Shame remains standing, but membership will be delayed as the DA's Conference completes its transition to the use of the JUSTWARE program. For the time being we are delayed in our ability to gather the necessary information.

### COUNTING PRIOR OFFENSES

**State v Coe**, 2007 Tenn Crim App Lexis 926

The Appellate Court has reaffirmed the Gober case and again instructed us as to how to count prior convictions. In this case the conviction occurred 11/8/2006. The priors occurred: 9/8/2000 (within 10 years); 4/4/1991 (15 years) and 10/5/1989 (17 years). The Court reaffirmed that if there is a conviction within ten, we can use any prior within 20 years unless there is a ten year gap found. Defense counsel argued that the 1989 conviction was more than 10 years from the 2000 conviction and could not be used. That is not the correct reading of the statute. The key is look for a ten year gap. If there is no 10 year gap, use the priors.

### CRAWFORD AND BLOOD TESTS

**State v Boon**, 2007 Tenn Crim App Lexis 915

The blood test was .16. The defendant touched or cross lines seventeen times and was speeding. So what's a defense attorney to do? Go after the lab. That's the ticket. In this case TBI Forensic Scientist Dawn Swiney did a fine job of testifying. She explained clearly and identified what she could and could not testify about. The conviction was affirmed. However, this case should be read carefully. Judge Woodall and the panel would not consider certain issues, because of lack of objections at trial. So, expect more objections at trial when introducing blood tests and be prepared to respond.

### GOVERNOR BREDESEN ANNOUNCES PUSH FOR ADMINISTRATIVE LICENSE REOVATION



At a press conference December 6th announcing the kick off of Drunk and Drugged Driving Prevention month Governor Phil Bredesen announced that the administration was ready to pass an ALR bill with telephonic hearings in the legislative session that begins in January, 2008. The press conference was held in conjunction with meetings of the Tennessee Police Chiefs and the Tennessee Sheriff's Association. The Governor poignantly remembered the 439 people who died in alcohol related crashes with .08 BAC involvement in 2006 and proudly announced that preliminary data indicated significant reductions in fatalities in 2007. Representing the Tennessee District Attorneys General, this writer had the chance to remind people of the dangers of drugged driving. As we see more and more drugged driving offenses, I hope we can remind traffic officers to pay particular attention to the source of the pills involved and share that information with drug investigators. In that way the traffic officers can help identify and shut down the pill mills that are despised by the medical as well as the legal community.

**"Drunk driving is a preventable crime that claims the lives of hundreds of Tennesseans each year, including 439 people who lost their lives last year alone. As people gather to celebrate the holidays, I urge every Tennessean to act responsibly and do their part to prevent this senseless loss of life due to impaired driving."**

**Governor Phil Bredesen**

## DRUGGED DRIVING ISSUES

### THE MARIJUANA QUANDRY

The lab test is back. The driver who wrecked and killed had 32 ng/ml\* marijuana metabolites in his system. Was he impaired at the time he was driving? With only a lab test the best answer from the TBI lab will be a resounding maybe. What's a prosecutor to do.

First, review your interview with the first officer on the scene, which should have been conducted within days of the crash. Was there any obvious sign of recent use of the drug? For instance, was there smoke coming out the window? Were there roaches in the ashtray? Were there leaves in the drivers lap? Were the driver's pupils dilated? Was the driver disoriented? Did the driver have bloodshot eyes with pronounced veins? Assume for this article that none of the above were observed.

Now, determine when the defendant's blood was collected. Was it during a two to four hour window from the time he was driving? If so, there is hope. The prosecutor should call the lab as soon as possible and request that the blood be preserved. If the lab still has the blood, request a Delta 9 test. The TBI lab does not perform the test, but can send the blood to a national lab that does. The cost is between \$100 and \$200 dollars. The Delta 9 test will show a zero result if the consumption of the marijuana occurred more than four hours prior to the blood draw. A result in the one to four range will indicate recent consumption. If the result is one, the marijuana was consumed sooner than if the result is four. Consumption within several hours of the crash will permit the expert witness to testify as to the quantity of marijuana metabolites in the system and a range of time during which marijuana was consumed. This information combined with indications of impaired driving resulting in a crash may provide evidence beyond a reasonable doubt even in cases in which an officer does not notice signs of marijuana impairment.

(\* nanograms per milligram )

### EVIDENCE IN DRUGGED DRIVING CASES

6.9 MILLION Americans are current non-medical drug users. That's about 2% of all Americans. Ten percent of all high school seniors have abused hydrocodone. Lab tests from TBI indicate that 78% of DUI offenders with a .08 BAC or below had drugs in their bloodstream. A University of Tennessee study indicated that 40% of all crash injured drivers had consumed drugs other than alcohol.

So what's a prosecutor to do? Officers need encouragement to look for and recover evidence of drug use. Many officers have told me that they do little or nothing to examine pill bottles found during a search subsequent to arrest. Those bottles are a mine field. Officers should be encouraged to look for:

The type of medication prescribed;

The date of the prescription;

The quantity prescribed and how the pills are supposed to be taken;

The quantity remaining in the bottle;

The name of the prescribing physician;

The name of the pharmacy.

Examining this information will in some cases lead an officer to conclude that something is not right. If for instance, the prescription was filled Tuesday for thirty pills to be taken twice a day and only two pills remain, **SOMETHING BAD HAPPENED.**

If there are three prescriptions for 20 hydrocodone tablets from three different doctors all prescribed in the last few days, **SOMETHING BAD HAPPENED.**

If something bad happened, the officer should contact the drug fraud investigator for the department. The DUI may have just turned into a felony for doctor shopping, prescription fraud, or TennCare fraud. In addition the evidence of pill popping may help prove the DUI case and lead to proper penalties and rehabilitation services for an offender, who may otherwise be a time bomb ready to explode.

## **MADD Tennessee's Re-Vamped Court Monitoring Program Seeks Collaborative Approach to Reducing Drunk Driving**

By: Angela Downes, J.D

Drunk driving and the tragedies that too often result from these crashes continue to plague Tennessee as well as the entire nation. Although decreasing drunk driving is an ongoing priority for law enforcement agencies, public safety officials and anti-drunk driving advocacy groups, progress in reducing drunk driving nationally and within Tennessee has been extremely slow.

In 2006, alcohol-related crash deaths constituted 41 percent of all traffic fatalities in the United States, and 36 percent in Tennessee. At a national rate of approximately one alcohol-related crash fatality almost every half-hour, 17,602 people died in the past year alone. In Tennessee, 408 people died in drunk driving crashes in 2006, a 8.5 percent increase from the 376 deaths in 2005, according the National Highway Traffic Safety Administration (NHTSA) Fatal Accident Reporting System.

With alcohol-involved crash deaths now at a 10-year high, leaders in law enforcement, judicial, traffic safety and prevention communities across the country are calling for a major shift in the way drunk driving laws are enforced and adjudicated, with a special emphasis on working alcohol treatment into the sentencing process.

In an effort to facilitate innovative approaches to reduce drunk driving, Mothers Against Drunk Driving (MADD) introduced the Campaign to Eliminate Drunk Driving in December 2006. The core components of this effort are high-visibility enforcement, alcohol ignition interlock use for all offenders, advanced vehicle technology and grassroots public support.

Additionally, MADD has reinvigorated its long-standing Court Monitoring program, now active in more than 15 jurisdictions across the United States. The objectives of the program are to compile information on how DUI/DWI court cases are processed, share this data with those in the legal system, and work together to seek innovative and effective solutions.

Laura Dial, MADD Tennessee Affiliate Executive Director, believes that court monitoring programs provide valuable opportunities to collaborate with the state's criminal justice system. "From seeking increased funding and resources for the judiciary to promoting effective sentencing measures, we look forward to working with the legal system to help make all aspects of DUI case adjudication as effective as possible. We are committed to helping break the cycle of drunk drivers threatening innocent motorists," says Ms. Dial.

Including an ignition interlock requirement in sentencing DUI offenders is a strategy that, although not new, is greatly under-utilized across the county. It's also a key component of MADD's court monitoring efforts. Today's ignition interlock technology can help repeat offenders as well as first-time DUI offenders drive sober. Studies show a 50-90 percent decrease in DUI recidivism rates for both offender groups when using ignition interlocks.

Although license suspension is currently a common sanction for DUI offenders, research reveals that 50-75 percent of drunk drivers whose licenses are suspended continue to drive. A restricted license requiring an ignition interlock can give an offender greater mobility while preventing the driver from re-offending. MADD believes that by mandating interlocks, courts can help protect the public against drunk driving incidents, while assisting offenders modify their driving behavior.

To help the judges better understand the benefits and effectiveness of ignition interlocks, NHTSA sponsored a judicial educational forum in August 2007, hosting judges from across the U.S. Currently, 45 states and the District of Columbia have provisions allowing interlocks, and 23 states have some mandatory provision.

(Continued on Page 7)

In Tennessee, there are two major methods by which a driver can be ordered to have an ignition interlock installed. One is adjudicatory and the other is administrative. <http://tennessee.gov/safety/duioutline.htm>

- Adjudicatory: A second-time offender has his license suspended for two years. The driver can drive during the second year with a restricted license, if an ignition interlock device is installed and monitored during that year. TCS 55-10-403 (d) (3).
- Administrative: In order for a defendant with a second offense to have the license reinstated, an ignition interlock must be installed and the defendant must complete a six month period of compliance.

Additionally, courts are beginning to re-evaluate sentencing requirements for first-time DUI offenders as a strategy to decrease drunk driving overall. Research into the nature of first-time DUI offenders shows that contrary to common belief, most first-time offenders have driven drunk an average of 87 times, have blood alcohol content levels almost as high as the BAC of repeat offenders, and will continue to drive drunk without significant intervention. These are all important reasons why requiring ignition interlocks for first-time DUI offenders is critical. Tennessee statute 55 10 412 d allows, *but does not require*, courts to direct an offender of a first intoxication-related traffic offense to use an ignition interlock.

Unlike earlier interlock technology, today's state-of-the-art devices are virtually impossible to circumvent and require repeated breath tests or "rolling retests" to confirm that the driver's blood alcohol content (BAC) does not rise above the threshold value. Also gone are problems that clients in cold climates experienced when using prior generation interlocks systems.

According to MADD National President Glynn Birch, the group's re-vamped Court Monitoring programs are working. "In New Mexico, sentences including mandatory ignition interlock use for first offenders increased dramatically after we shared our observational data with court officials. Also, in a Virginia jurisdiction, we identified specific courts that routinely reduced drunk driving cases from "DUI" to "fine only," an action that minimizes the seriousness of a drunk driving offense and could ultimately result in the person re-offending, perhaps with a tragic outcome." In several states, MADD affiliates have testified in support of additional judgeships to handle increased DUI caseloads and other needed judicial resources.

In addition to ongoing victim advocacy work throughout MADD affiliates, the following affiliate locations are part of MADD's re-vamped Court Monitoring Program: California (Orange County); Georgia (Atlanta); Hawaii (Honolulu); Hawaii's Big Island; Illinois (Springfield); Kentucky (Frankfort); Louisiana (Baton Rouge); Maryland (Baltimore, Prince George, Anne Arundel, Montgomery Counties); Missouri (Jefferson City, St. Louis); Nebraska (Lincoln); New Jersey (Sussex County); New Mexico (Albuquerque, Grants, Santa Fe); North Carolina (Raleigh-Durham); Tennessee (Rutherford, Davidson, Wilson Counties); Texas (Austin, Houston); and Virginia (Richmond, Virginia Beach).

*Note: This project was supported by Grant No. 2006-DD-BX-K277 awarded by the Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.*

**About the Author:** Angela Downes, J.D., is the MADD National Manager of Court Monitoring. She is a former prosecutor for the District Attorney's Office in Dallas, Texas. In that role, she prosecuted misdemeanor, felony criminal cases and supervised the family violence courts.

**For more information contact:**

[www.madd.org/courtmonitoring](http://www.madd.org/courtmonitoring).

[www.nhtsa.dot.gov](http://www.nhtsa.dot.gov)

[www.madd.org/campaign/docs/Interlocks for All Offenders FINAL.pdf](http://www.madd.org/campaign/docs/Interlocks_for_All_Offenders_FINAL.pdf)

[www.trafficinjuryresearch.com/dwi\\_systemimprovements/documents/A\\_Criminal\\_Justice\\_Perspective.pdf](http://www.trafficinjuryresearch.com/dwi_systemimprovements/documents/A_Criminal_Justice_Perspective.pdf)

## **TENNCARE DOCTOR SHOPPING TO OBTAIN DRUGS IS A FELONY**

DUI's are often committed by people abusing prescription medications. Some of the prescriptions have been obtained through deceit and fraud. In June, 2007 the penalty for doctor shopping by TennCare recipients was increased to a class E felony. (See TCA 71-5-2601.)

A person, including an enrollee, recipient, or applicant, commits an offense who knowingly obtains, or attempts to obtain, or aids or abets any person to obtain, by means of a willfully false statement, representation, or impersonation, or by concealment of any material fact, or by any other fraudulent means, or in any manner not authorized by any rule, regulation, or statute governing TennCare:

Controlled substance benefits by knowingly, willfully and with the intent to deceive, failing to disclose to a physician, nurse practitioner, ancillary staff, or other health care provider from whom the person obtains a controlled substance, or a prescription for a controlled substance, that the person has received either the same controlled substance or a prescription for the same controlled substance, or a controlled substance of similar therapeutic use or a prescription for a controlled substance of similar therapeutic use, from another practitioner within the previous thirty (30) days and the person used TennCare to pay for either the clinical visit or for payment of the controlled substances.

## **DUI TASK FORCE RECOMMENDATIONS**

*(continued from page 1)*

Additional recommendations of the DUI Task Force are currently under consideration by the drafters of the ALR proposal.

The Governor's DUI Task Force recommended that high BAC (.15) first offenders be excluded from receiving a restricted license, but be permitted to receive a limited license to drive if an ignition interlock is installed and used during the revocation period. The Task Force also recommended that second offenders be given the same option if they had no prior DUI conviction in the last five years. The Task Force also recommended that first offenders with a BAC below .15 be given the option of ignition interlock installation, which would permit them to drive anywhere as opposed to the limited destinations of a restricted license.

## **DISTRICT ATTORNEY RECOMMENDATIONS**

The District Attorneys General Conference has requested that either by law or rule, the local D.A. receive notice that a license revocation hearing was conducted concerning a driver in his jurisdiction. This would put the D.A. on notice that a tape recording of the hearing exists, so that he/she can comply with Discovery requests and ethical duties in the criminal case. A District Attorney is deemed to have possession of materials in the possession of the State in the Ethics rules. Exculpatory materials must be provided to the defendant. Hopefully the hearings will be conducted using digital recorders, which will permit e-mail transmissions.

## **IMPACT OF ALR LAWS**

Studies have shown that on average passage of the ALR law result in a 9% reduction in alcohol related fatalities and the reduction can be greater in nighttime alcohol related fatalities. In Tennessee, there were 509 alcohol related fatalities in 2006. If the typical reduction occurs, 46 people who would have died on our roadways will be spared in the first year of implementation.

Impact from this law could also affect trial dockets and caseloads. Currently, defendants benefit from delay in judicial proceedings. They are able to keep a valid license as long as the case is delayed. Without such a benefit a defendant may be more likely to face the music earlier in the process. Defendants who recognize that they are guilty may be more likely to enter guilty pleas in the General Sessions Court. Such pleas will reduce the backlog in grand juries and the criminal courts.

The drafters of the ALR proposal anticipate legislative consideration when the Legislative session begins in January. It will be interesting to watch and see if their efforts result in a new ALR law permitting Tennessee to become the forty second state to use administrative license revocation to save lives on our roadways.



## PROSECUTOR TRAINING

### PROSECUTING THE DRUGGED DRIVER APRIL 7-9, 2008, Tennessee Bureau of Investigation, Nashville

This course is intended to assist prosecutors in cases involving drug impaired drivers and to help prosecutors improve their effectiveness in drug impaired driving prosecutions so that more violators that commit the crime of DUI by drugs will be convicted of the crime and receive appropriate sanctions and treatment.

The first twelve hours of the course will be in conjunction with the Drug Recognition Expert Pre-school. This will include law enforcement officers and prosecutors.

The agenda includes: **INTRODUCTION & OVERVIEW, OVERVIEW OF DRE PROCEDURES, PSYCHOPHYSICAL TESTS, EYE EXAMINATIONS, VITAL SIGNS, OVERVIEW SIGNS/SYMPTONS, and ALCOHOL AS A DRUG.**

The remaining twelve hours of the course will concentrate on understanding and presenting evidence concerning drug issues. The agenda will include: **PROSECUTING DRUGGED DRIVERS, PRESCRIPTION DRUG ABUSE – The Scope of the Problem, UP IN SMOKE – The “Doobie” Affect, CNS STIMULANTS, CNS DEPRESSANTS, NARCOTIC ANALGESICS, QUALIFYING DRE AS EXPERT and YOUTH OFFENDER TRENDS.**

This course will tax the brain. The prosecutor who completes the course will have greatly increased his/her knowledge concerning drug impairment. Instructors will include medical doctors, drug recognition experts, prosecutors and professors.

Space is limited to thirty (30) prosecutors so to attend contact Sherri Harper at 615-253-6733 soon.



### CROSS EXAMINATION MAY 13-15, 2008, Embassy Suites Airport, Nashville STARRING: JOHN TIERNEY, BOB DEKLE AND TOM HENDERSON

*EVERYTHING YOU EVER WANTED TO KNOW ABOUT CROSS EXAMINATION, BUT WERE AFRAID TO ASK.*

#### DUI CONVICTIONS POSTED TO DRIVING RECORDS OF TENNESSEE DRIVERS IN FY 2006-7

	Jul-06	Aug-06	Sep-06	Oct-06	Nov-06	Dec-06	Jan-07	Feb-07	Mar-07	Apr-07	May-07	Jun-07	Total 06-07	YTD 05-06
DUI 1st Offense	1,028	1,189	1,084	2,059	785	772	1,260	1,007	1,610	2,781	1,175	996	15,746	12,957
DUI 2nd Offense	203	255	206	433	172	162	259	231	312	580	233	204	3,250	2,899
DUI 3rd Offense	84	85	65	141	60	59	76	67	112	168	68	68	1,053	954
DUI 4th Offense Felony	49	64	44	97	46	44	67	53	75	121	48	49	757	740
DUI Not Stated	525	664	486	999	410	420	628	424	602	1,132	547	548	7,385	6,207
DWI Adult 2nd or subsequent offense	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Driving While Impaired (16-21)	29	32	29	53	23	24	35	23	40	63	34	34	419	356
Implied Consent	166	185	175	355	108	145	217	153	319	506	250	171	2,750	2,272
Allow Intoxicated Person to Drive	4	7	4	12	2	1	3	5	6	9	2	4	59	54
DUI-Commercial Offense	3	5	3	5	1	2	8	2	2	4	6	1	42	58
<b>Total</b>	<b>2,091</b>	<b>2,486</b>	<b>2,096</b>	<b>4,154</b>	<b>1,607</b>	<b>1,629</b>	<b>2,553</b>	<b>1,965</b>	<b>3,078</b>	<b>5,364</b>	<b>2,363</b>	<b>2,075</b>	<b>31,461</b>	<b>26,498</b>

*\*TN Dept. of Safety, Convictions Posted to Driver History, 11/8/2007.  
Based on State Fiscal Year (July 1 - June 30)*

Source: TN Dept of Safety, Driver History File

## VEHICULAR HOMICIDE MURDERERS ROW

Keaton Guy, 20, was sober and drug free when he crashed his pick up truck in Anderson County in October, 2005. He killed Anessa Hohman and Carmen McGuff. He admitted he was trying to scare Miss McGuff. He knew his truck would slide at 45-50 mph in a particular curve and such a slide would be scary. Guy's "watch this" moment resulted in a four year sentence to be served in prison for the death of Ms. Hohman and a two year concurrent sentence for the injuries suffered by Ms. McGuff. A.D.A. Sandra Doneghy represented the State in the Court of Judge Donald R Elledge.



Kent Tischer was driving when he crashed and killed two people in Canon County in December, 2005. Lt. Brad Hall of the Cannon County Sheriff's Department got out his camera and took the picture of Tischer behind the wheel with a can of beer between his legs. Tischer was airlifted to Vanderbilt Hospital. A trooper assigned to Davidson County rushed to the hospital to have blood withdrawn for testing. Tischer was at .13 two hours and eight minutes after the crash. On October 12, 2007, a sentencing hearing was conducted after the defendant had entered a plea admitting guilt. Judge Robert Corlew sentenced Tischer to twenty five concurrent years on each count.

Tischer behind the wheel



Hugo Mendez, 22, was sentenced to eight years for vehicular homicide and one year for leaving the scene causing death in Shelby County. Mendez had a blood alcohol level of .19 three hours after the crash. Mendez had his license revoked for five years and was fined \$2,000.

Mendez killed Linda Buford. She and her husband, Austin had been married 21 years. He can barely exist without her due to heart ailments and grief. Left behind as well was daughter, Janet Emerson. Her life is in shambles as she and her children fight horrible depression and often one another as tempers are easily ignited. Visits to the grave, the psychiatrist and the doctor do not replace daily phone chats, smiles and jokes from a wonderful mother and maw-maw. The victims of this and all of these cases will never forget. Will we forget them?

Mendez will be eligible for parole in fifteen to eighteen months. He is twenty two years old.



Knoxville News Sentinel Photo

Larry Bruce Williamson, 44, left of Sevierville is escorted from the courtroom after he pled guilty to two counts of aggravated vehicular homicide and received a twenty year sentence. Williamson was driving his son's pick up truck when he slammed head on into a motorcycle and killed newlyweds Brandon, 21, and Jenilyn, 18, Franklin in September, 2006. Williamson had three prior DUI convictions. ADA Steve Hawkins represented the State. Williamson will be eligible for parole in less than six years, since aggravated vehicular homicide is treated as a non-violent 30% eligibility crime in Tennessee.

## ALTERNATIVE SENTENCING DENIED

State v Landeen, 2007 Tenn. Crim. App. LEXIS 829



Landeen

Kevin Landeen, 30, left a party at a friends house. The friend told him he was too drunk to drive. Landeen had a B.A.C. of .25 and was speeding. He barely avoided running into another car, but went into a spin and killed his passenger, Ashley Williams, when he slammed into a tree.

Landeen pled to an eight year sentence for the April, 2004 wreck in July ,2006. Alternative sentencing was denied and he appealed. In October, 2007, three and a half years after the wreck, the denial was affirmed due to prior felonies and a prior DUI.

## SAVE THE BIKERS

The 2006 Traffic fatalities and injuries assessment has been released by NHTSA and it tells us that the deaths and injuries to those who ride motorcycles are continuing to increase at ridiculous levels. Most bikers are not at fault in these crashes. However, there was a four percent (4%) increase in the number of bikers involved in fatal crashes with a blood alcohol level of .08 or above.

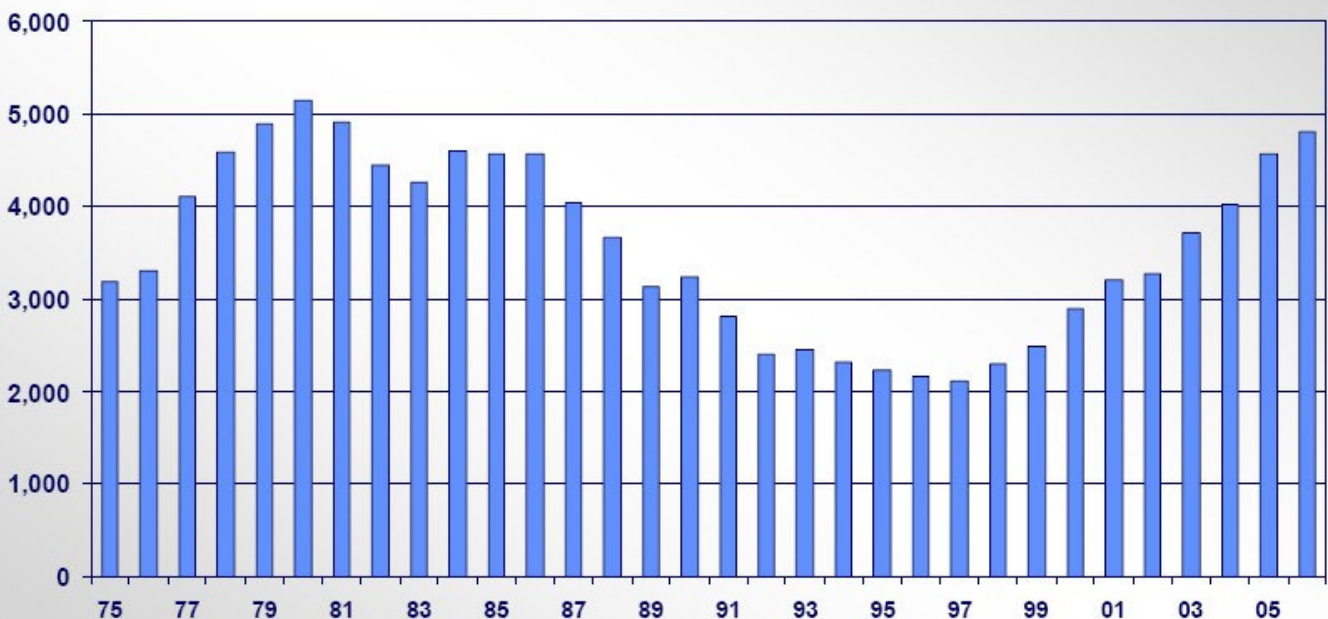
The data also indicates that mandatory helmet laws save lives. About two thirds (65%) of the fatally injured motorcycle riders were not wearing helmets in States without universal helmet laws compared to 13% in States with universal helmet laws.

Motorcycle rider deaths increased by 5.1% as compared to declining fatalities for all other vehicle types except SUV's with a 1.6% increase and heavy trucks with a 1.3% increase. Since 1997 motorcycle fatalities have increased a whopping 127%! The largest percentage increase was for the 20-29 (10%) and 50-59 (3.9%) age groups.

*About two-thirds (65%) of the fatally injured motorcycle riders were not wearing helmets in States without universal helmet laws compared to 13% in States with universal helmet laws.*



## Motorcycle Riders Killed, by Year



Source: FARS



**Tennessee District Attorneys  
General Conference**

226 Capitol Blvd. Bldg.,  
Suite 800  
Nashville, TN 37243-0890

Tom Kimball  
(615) 253-6734

Jim Camp  
(615) 945-2040

Sherri Harper  
(615) 253-6733

(615) 253-6735 Fax



# THE CRASH PAGE

By Jim Camp  
Traffic Safety Resource Prosecutor

## “I Quit!”

“I quit!” How many times during your career as a prosecutor or law enforcement officer have you thought that very thought? Sometimes the pressures of the job are just too much. The criticism we receive from all those on the outside looking in who think they know our jobs better than we know them. The criticism from those politicians responsible for our funding. The County Mayors, the City Councilmen, the State Legislators, the local media and the citizenry. The cruel and sometimes threatening comments made by friends and family members of those whom we have prosecuted. Prosecutions that we believe were fair and just. Criticism from others in law enforcement, who we believe should be on our side. It makes us feel unwanted, unskilled and ignored but most of all unappreciated. It can make us want to quit.

During this holiday season when we tend to take stock of the things we are thankful for we need to remember why we do what we do. Law enforcement is a calling. We do what we do because we are called. Not for the money. Not for the glory. Not for the accolades but because we believe in the cause.

We need to remember that we are contributing to the greater good. We are making life better for our neighbors. We are making our communities safer and we are truly making the world a better place to live.

This profession allows us to do something few other beings ever get a chance to do. We have the opportunity to serve, to help, to change, to save and to touch the lives of those with whom we share this at times not so common existence. We DO make a difference.

We make a difference every time we assist a grieving mother through the painful court process as she struggles to make sense of the loss of her only son. We make a difference every time we are the focus of an angry and irrational father who’s family has been violently removed from his life and who can’t understand why the Court system allows the idiot who killed them to be out on the street and still driving a car. We even make a difference when we stand respectful yet tall and proud while a misguided jurist takes out his or her frustrations on us for doing the right thing. We make a difference in ways we never really understand and seldom think of.

It is here that we must stop and take stock. We must look to those victims. But even more importantly we must look to those potential victims whom we have saved from that same grief. Those who would otherwise have perished on our highways if not for the work we have done and continue to do. We do what few others would or could ever hope to do. We have the opportunity to make a difference. We work to prevent tragedy. We save lives. Very few others can make that claim.

It is time to be proud and remember those whom we have helped, those whom we have touched, and those who have touched us. It is time to remember why we do what we do and what we receive in return. Time to remember and be grateful.

**KUDOS TO:**

The Memphis Police Department which has trained over 400 officers in the last two years in Standardized Field Sobriety Testing.

ADA Ken Baldwin for his efforts in State v Brumit in which the thirteen year old son in the back of a pick-up died after his mother wrecked the truck with a BAC of .19 while driving 70 mph in a 40 zone. The mother picked up another DUI a year later. She was convicted of aggravated child abuse and vehicular homicide by intoxication and received a twelve year sentence at 100%.

DA Torrey Johnson, ADA Kyle Anderson and the Circuit Court Judges in Nashville. Kyle and ADA Wesley King were buried in DUI cases when the traffic unit was one person short for the last few months. As a solution to the backlog General Johnson and Kyle sought and received help from the Circuit Court Judges, who have agreed to hear DUI cases one week a month. ADA Allegra Walker has been added to the unit.