



DUI NEWS

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*This material was developed
through a project funded by the
Tennessee Highway Safety
Office and the National
Highway Traffic Safety
Administration.*

WHAT QUALIFIES AS A DUI PRIOR?

Tennessee Code Annotated Section 55-10-405(a) (The DUI prior enhancement statute), states in pertinent part:

(a) Except as provided in subsection (c), for the sole purpose of enhancing the punishment for a violation a person who is convicted of a violation of § 55-10-401 shall not be considered a repeat or multiple offender and subject to the penalties prescribed in this part if ten (10) or more years have elapsed between the date of the present violation and the date of any immediately preceding violation of § 55-10-401 that resulted in a conviction for such offense. If, however, the date of a person's violation of § 55-10-401 is within ten (10) years of the date of the present violation, then the person shall be considered a multiple offender and is subject to the penalties imposed upon multiple offenders by this part. If a person is considered a multiple offender under this part, then every violation of § 55-10-401 that resulted in a conviction for such offense occurring within ten (10) years of the date of the immediately preceding violation shall be considered in determining the number of prior offenses. However, a violation occurring more than twenty (20) years from the date of the instant violation shall never be considered a prior offense for that purpose.

Unfortunately, this statute is often misinterpreted and misapplied by attorneys, prosecutors and courts across Tennessee. A prior amendment in 2010 only added to the confusion, especially when referring to case law prior to 2010. Before 2010, all DUI prior enhancements were determined based upon the conviction date of the prior DUI. If a prior DUI conviction was close to the ten year period, a DUI defendant would often wait for trial or to plead guilty until after the ten year period would pass and the DUI conviction would become too old to use as an enhancement. However, in 2010 the legislature amended the enhancement statute to determine eligible prior DUI violations by measuring the time from DUI **offense dates** to the current DUI **offense date**. See 2010 Tennessee Laws Pub. Ch. 1080 (H.B. 919, S.B. 844); Tennessee Bill Summary, 2010 Reg. Sess. H.B. 919, 2010 Reg. Sess. S.B. 844 (clarifying in the 2010 amendment to the statute that “[t]his bill specifies that the *arrest precipitating a DUI conviction* will toll the running of the 10- and 20-year periods described above for purposes of determining if the person is a multiple offender and, if so, the number of prior convictions for DUI that the person has.”) (emphasis added). A few unreported cases have since upheld this position and have concluded that the word “violation” in the multiple DUI offender statute refers to an offense date rather than the date of conviction. See *State v. Benjamin Tate Brown*, 2018 Tenn. Crim. App. LEXIS 119 (Tenn. Crim. App. Feb. 20, 2018), *per. app. denied* (Tenn. June 6, 2018) and *State v. Loudermilk*, 2014 Tenn. Crim. App. LEXIS 774 (Tenn. Crim. App. June 3, 2014).

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RECENT DECISIONS

State v. Gil Jackson Groseclose, 2020 Tenn. Crim. App. LEXIS 675

On June 23, 2016, Officer Keller was dispatched to a parking lot regarding a reckless driver. The suspect and the vehicle were both described, along with their location. Officer Keller arrived on scene and observed the vehicle running with its headlights on, but no one was in the vehicle. Several subjects were at a nearby RedBox. When the officer asked who was driving the said vehicle, a person matching the description given by the 911 caller admitted to being the driver. Mr. Groseclose performed poorly on all standardized field sobriety tests and he was then arrested for DUI. A blood test indicated 94 nanograms per milliliter of Alprazolam and a 0.084 % BAC. Mr. Groseclose pled guilty to DUI and DUI per se. During a bench trial, a certified copy of a 2008 DUI conviction was entered into evidence and he was convicted of DUI second offense. Mr. Groseclose was sentenced to eleven months, twenty-nine days probation, after actual service of 120 days jail. He appealed the sufficiency of his prior 2008 DUI conviction and his sentence of 120 days jail.

Mr. Groseclose argued that his 2008 DUI conviction was void because the officer's affidavit of complaint was improperly sworn in the presence of a notary and no arrest warrant was issued. The trial court ruled that Mr. Groseclose's plea of guilty to DUI in 2008 "corrects any infirmities or inconsistencies with regard to the affidavit such that the judgment would then be facially valid, ..." The state argued that the trial court was correct and that the 2008 conviction could not be collaterally attacked in the current proceeding. The Court of Criminal Appeals agreed that the 2008 conviction was facially valid and could not be collaterally attacked in the present case. The CCA also agreed that the trial court properly followed the sentencing guidelines, properly considered the advisory enhancement and mitigating factors, and selected an applicable sentence within the proper range. Therefore, the judgments of the trial court were affirmed.

State v. Jose Hernandez, 2020 Tenn. Crim. App. LEXIS 699

This case involves supplemental probation terms ordered in a DUI case and whether proper notice was given regarding a subsequent probation violation hearing. On April 10, 2017, Mr. Hernandez was stopped for suspected DUI by THP Trooper Brandon Rogers. Mr. Hernandez was unable to complete parts of standardized field sobriety tests and a breath test indicated a BAC of 0.127%. On November 9, 2018, Mr. Hernandez pled guilty to DUI, a Class A misdemeanor. As part of his probation terms, he was ordered to report to immigration authorities and to update his address with such authorities.

After many subsequent court appearances and continuances allowing for Mr. Hernandez to comply with his probation terms of reporting to immigration authorities, the trial court remanded Mr. Hernandez into custody and entered a written order stating that the "Defendant is in violation of this court's order to report to ICE as part of probation. As such[,] [the] Defendant is in violation of probation[,] and probation is hereby revoked." No probation violation hearing was conducted. On January 8, 2019, Mr. Hernandez was sentenced to serve his full sentence of eleven months and twenty-nine days jail. Mr. Hernandez later appealed, arguing that the supplemental probation terms were preempted by federal law, there was insufficient notice of what was expected of him on probation, and the trial court violated his due process rights by failing to give notice of his probation violation and by failing to conduct a revocation hearing.

The Court of Criminal Appeals ruled that the supplemental probation terms, requiring Mr. Hernandez to report to immigration authorities, did not preempt federal immigration laws because they "simply echo" existing federal requirements and did not create a new law. Although there are no Tennessee cases directly related to this issue, the CCA noted People v. Laufasa, 115 Cal .Rptr.3d 318 (Sept. 9, 2010), rev. denied (Dec. 21, 2010) provided persuasive authority. Likewise, the CCA determined that the supplemental probation terms gave adequate notice of what was required of Mr. Hernandez in order to comply with them.

Although a defendant at a probation revocation proceeding is not entitled to the full (Continued on Page 3)

RECENT DECISIONS (Continued)

array of procedural protections associated with a criminal trial (See Black v. Romano, 471 U.S. 606, 613 (1985) and Gagnon v. Scarpelli, 411 U.S. 778, 786-90 (1973)), such a defendant is entitled to the “minimum requirements of due process,” including: (1) written notice of the claimed violation(s) of probation; (2) disclosure to the probationer of evidence against him or her; (3) the opportunity to be heard in person and to present witnesses and documentary evidence; (4) the right to confront and cross-examine adverse witnesses (unless good cause is shown for not allowing confrontation); (5) a neutral and detached hearing body, members of which need not be judicial officers or lawyers; and (6) a written statement by the fact-finder regarding the evidence relied upon and the reasons for revoking probation. Gagnon, 411 U.S. at 786; Morrissey v. Brewer, 408 U.S. 471, 489 (1972). Therefore, the revocation of probation was reversed and remanded for a new probation revocation hearing affording the minimum of due process rights as listed above.

State v. Marvin Glynn Allen, 2020 Tenn. Crim. App. LEXIS 717

On June 6, 2018, Mr. Allen was indicted for nine driving offenses, including DUI, DUI per se and DUI, 4th offense. After a jury trial, Mr. Allen was found guilty on seven of the indicted offenses. A separate bench trial was conducted in which Mr. Allen admitted to having prior DUI convictions with offense dates of September 28, 2016, March 14, 2009 and June 9, 1999. The trial court found Mr. Allen guilty of DUI 4th offense and sentenced him to three years incarceration. Mr. Allen appeals his sentence, arguing that according to TCA 55-10-405(a), the ten year look-back period for prior DUI convictions should only apply from the date of the first prior conviction, which would result in a DUI 3rd offense. The State argued that the defendant must have a ten-year conviction free period, or else the State “could go back as far as twenty years” to count DUI violations as part of the multiple offender enhancement. The Court of Criminal Appeals agreed with the State’s arguments.

The leading case regarding this issue is State v. Tracey Gober, No. E2001-00296-CCA-R9-CO, 2001 WL 1089508 (Tenn. Crim. App. Sept. 18, 2001). In the Gober case, the State filed an indictment alleging a DUI 9th offense, with eight prior DUI violations occurring within twenty years of the current DUI offense. The trial court ordered the indictment to be amended to reflect a DUI 3rd offense, following an argument similar to that made by Mr. Allen. The trial court only used the ten year period preceding Mr. Gober’s first prior conviction to determine other eligible priors. (At the time of the Gober case decision, eligible prior enhancements were tolled from conviction date to conviction date. However, since a 2010 amendment, eligible prior enhancements are tolled from violation date to violation date. In all other respects, the prior enhancement statute was the same.) The Gober court gave an example to follow when determining eligible priors:

Defendant X’s instant conviction occurred April 1, 2001. The defendant has four prior DUI convictions, all occurring six years apart; April 1, 1995; April 1, 1987; April 1, 1981; April 1, 1975. First question. Does the defendant have a prior DUI conviction occurring within ten years of the instant offense? The answer is yes, April 1, 1995. Second question. Does the defendant have a ten-year DUI conviction free period between any preceding prior conviction? The answer is no, all convictions are six years apart. Third question. Does the defendant have any prior convictions more than twenty years from the instant conviction? The answer is yes, April 1, 1975. Therefore, the defendant may be charged with fourth offense driving under the influence.

The CCA stated “By substituting the offense dates of Defendant’s prior DUI violations into the Tracey Gober example, the number of Defendant’s prior DUI violations under the multiple DUI offender statute can be determined.” Thus the trial court properly determined the instant violation was a DUI fourth offense. See also State v. Leodish Coe, W2006-02481-CCA-R3-CD, 2007 WL4258179, at *1 (Tenn. Crim. App. Dec. 5, 2007), *perm. app. Denied* (Tenn. May5, 2008) (concluding Gober is sound logic) Judgment was affirmed.



DRUGGED DRIVING: THE NEED FOR A DRE

Drug Impaired Driving Enforcement: Addressing the Need for Additional and Specialized Training of Officers in Tennessee: Drug Recognition Experts¹

As the number of drug impaired driving cases have continued to climb, challenges to driving under the influence enforcement and prosecution across the State of Tennessee has increased substantially. DWI Detection and Standardized Field Sobriety Testing (SFST)² is taught to law enforcement recruits and cadets in training academies across the state. However, additional or specialized training in the area of drug impaired driving cases is not currently provided as part of the curricula at the academies. With the significant and wide spread increase of drug impaired driving versus alcohol impaired driving alone, the Tennessee Highway Safety Office (THSO) has made it their priority to provide additional and specialized training regarding drug impaired driving enforcement, to officers across the state.

Two classes offered by the THSO³ increase the proficiency and effectiveness of law enforcement in identifying the characteristics or clues associated with drug impaired driving. These classes are Advanced Roadside Impaired Driving Enforcement Program (ARIDE) and the Drug Recognition Expert Program (DRE). ARIDE is a 16-hour program that introduces the officers to the seven drug categories that impair the central nervous system and how to recognize the effects, clues and indicators associated with those categories.⁴ The Drug Recognition Expert (DRE) Program, substantially more in-depth than ARIDE, includes a series of three training phases that, collectively, prepare police officers and other qualified persons to determine “(1) Whether the subject is impaired; and if so, (2) Whether the impairment is drug or medically related; and if drugs, then (3) The category or combination of categories of drugs that is the cause of the observed impairment.”⁵ The DRE program is lengthy and takes a great amount of dedication and commitment. It consists of 2 days of pre-school instruction and 7 days of classroom training after which a DRE student must complete 12 hands-on evaluations on subjects impaired by drugs with a 75% toxicological confirmation rate and complete a final knowledge exam. It is only at the completion of this exam that the candidate becomes a certified DRE. Currently, there are 242 DREs across the state.⁶

While the DRE training is extensive and advanced, the THSO and other traffic safety partners realize that continued training is needed across the state to keep DREs current and informed on emerging drugs, drug trends, and associated characteristics of impairment for those drugs; and for the DREs to remain qualified as expert witnesses. In order to maintain certification, DRE's must conduct a minimum of four evaluations every

1. The author of this article is Tony Burnett, DRE Coordinator for the State of Tennessee. For more information on Tony Burnett and Tennessee's DRE program, visit <https://tntrafficsafety.org/dre-program>.

2. The DWI Detection and Standardized Field Sobriety Testing (SFST) training curriculum prepares police officers and other qualified persons to conduct the SFSTs for use in driving while impaired (DWI) investigations. This training has been developed under the guidance and direction of the National Highway Traffic Safety Administration (NHTSA) and the International Association of Chiefs of Police (IACP). In Tennessee, DWI cases are referred to as DUI or driving under the influence cases. Tennessee Code Annotated Section 55-10-401 provides the definition for driving under the influence.

3. The classes offered for driving under the influence of drugs (DUID) enforcement by the THSO are classes developed under the guidance and direction of NHTSA and IACP.

4. 2018 ARIDE Program Administrator Guide, pg. 1.

5. 2018 DRE Expert Course Administrator Guide, pg. 1.

6. Since the beginning of 2017 the THSO has trained 115 law enforcement officers to be DREs. Contrast that number with 1063 officers which have completed the ARIDE program, a pre-requisite for DRE program, to fully understand just how selective, extensive, and intense the DRE program truly is.

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DRUGGED DRIVING: THE NEED FOR A DRE (Continued)

two years, submit an updated rolling log, submit an updated curriculum vitae, and attend 8-hours of approved re-certification training.⁷ Each year the Traffic Safety Resource Prosecutors of the Tennessee District Attorneys General Conference and faculty members of the Southern College of Optometry, hosts the 20/20 Eye Movements seminar. DREs and DUI prosecutors are encouraged to attend the 20/20 Eye Movements seminar, which provides expert instruction from licensed optometrists on the physiology of eye movements and the association of those movements with impairment.⁸ Each student learns how to identify involuntary eye movement caused by drug impairment and how to distinguish from eye movement caused by medical or environmental causes. To further the opportunity for advanced training in this area, the THSO, in collaboration with the Tennessee Bureau of Investigation Toxicology Unit and the Forensic Toxicology Department of Middle Tennessee State University, has scheduled Advanced Drug Impaired Assessment through Physiology and Toxicology (ADAPT) classes, designed to provide more advanced training on the subjects of physiology and toxicology for DREs and state toxicologists. The course is designed to provide each participant with a better understanding of the roles each have in the investigation and prosecution of drugged impaired driving cases.

The continued development of drugs combined with changes in drug laws in other states has created new issues and challenges in drug impaired driving enforcement in Tennessee. With the legalization of marijuana in many other states across the United States, Tennessee is seeing a drastic increase in the number of cases, locally being identified by toxicology, containing Delta-9 THC, the psychoactive ingredient in marijuana. While this substance has impairing affects, it substantially metabolizes out of the suspect's blood at a rate of approximately 90% within two hours. The TBI Crime Lab also can measure levels of THC-OH also known as hydroxy THC. This metabolite peaks just after smoking but will be only about 10% of the amount of Delta-9 THC. Technically it is detectable for about 4-11 hours, but because it is so low to start with, it is very difficult to quantitate. THC-COOH, or carboxy, is a metabolite which is not impairing and it usually can be measured in the suspect's system up to 6-8 hours after smoking. While these substances are metabolized rapidly from the blood, they continue to stay in the lipid (fatty) system of the body. A regular user may show impairing affects for up to 24-hours after introduction of the drug into the body. Due to the time it takes to get search warrants for blood (which can sometimes take up to three hours to obtain), this effect of absorption by the suspect's body and metabolization from their blood system is a challenge in the prosecution of marijuana based impairment across the state.



7. <https://tntrafficsafety.org/dre-program>

8. The TNDAGC Traffic Safety Resource Prosecutors and DUI training unit, as well as the program, are funded by a grant from NHTSA via the THSO.

(The above photo is a DRE drug evaluation being conducted by the Hingham Police Department, MA.)

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DRUGGED DRIVING: THE NEED FOR A DRE (Continued)

Perhaps the biggest development for the DRE program happened this year in the Court of Criminal Appeals. Although most assistant district attorneys know how to qualify an expert for the admissibility of expert testimony under the rules of evidence and the five *McDaniel* factors, the existence of case law specific to the admissibility of DRE testimony was non-existence until earlier this year. In April of this year, the Court of Criminal Appeals specifically addressed the admissibility of DRE testimony in *State v. Brewer*, No. E2019-00355-CCA-R3-CD, 2020 Tenn. Crim. App. LEXIS 221 (April 6, 2020). The *Brewer* case involved six counts of vehicular homicide by intoxication and four counts of reckless aggravated assault, driving under the influence, violation of motor carrier regulations, and speeding on I-75 in Hamilton County. The crash resulted in 6 deaths and 4 critically wounded. The trial court, applying Tennessee Rules of Evidence 702 and 703 found that testimony of Chief Brian Hickman, a DRE, was admissible and helpful to the jury regarding the observation and identification of drug impairment and drugged driving. The Court of Criminal Appeals found that although the trial court did not specifically go through the *McDaniel* factors in finding the testimony admissible, the trial court considered the development of the DRE protocol, tests, and the reliability of those tests when determining that the testimony of Chief Hickman was admissible as expert testimony for identifying drug impairment after investigating Mr. Brewer.

Another drug that brings about challenges is Gabapentin, also known by the brand name Neurontin. This drug, prescribed for pain, is a central nervous system depressant. It has impairing affects that is dependent on the dosage, user, and strength of the drug. Currently, the TBI does not test for Gabapentin, but they are in the process of validating methods for testing. Until the test is validated and available, it is important that officers, with knowledge that the drug is being used or when there is evidence of the drug impairing, to identify and indicate such information on the blood toxicology request. Such a notation will permit the TBI to outsource the sample for additional testing. Another avenue that the THSO is pursuing to address the gap in drug testing and toxicology, is the use of oral fluid testing. In furtherance of this pursuit, the TBI has been awarded a grant to validate an oral fluid testing device. This oral fluid testing device will be used to test for the presence of certain drugs roadside. This test will be conducted only upon the consent of individuals and will be used for probable cause purposes, during the validation process, by specially trained DRE's across the state.



Tony Burnett, State DRE Coordinator for Tennessee

DUI Prosecutor of the Year Award

M. Jamie Pulido was awarded the DUI Prosecutor of the Year Award for 2020.

Since the 2020 District Attorneys Conference was virtual this year, the award was presented to Jamie at his office in the 21st Judicial District. Jamie is currently handling a number of DUI, vehicular assault and vehicular homicide cases, including a case involving Brentwood Police Department's first officer death, while on-duty.



WHAT QUALIFIES AS A DUI PRIOR? (continued)

However, the confusion does not end there. Does “immediately preceding violation” refer only to the first DUI violation found within ten years of the current DUI violation, which would limit all eligible prior DUI violations to within ten years of the first prior, or does it refer to each and every subsequent prior violation? Must the defendant have a ten-year conviction free period between prior DUI violations or the State could charge all prior DUI violations, up to twenty years? (commonly known as a rolling ten-year review period) Even though this issue continually reappears in court arguments, it was actually decided in 2001. *See State v. Tracey Gober*, No. E2001-00296-CCA-R9-CO, 2001 WL 1089508 (Tenn. Crim. App. Sept. 18, 2001). The *Gober* court looked at the legislative intent when the statute was first passed in 1998. “[T]his bill will say, it creates a rolling ten-year period, so that if you're up on charges in[19]97, and we find within ten years that you have a conviction going back to, say, 1990, we will then look ten years from 1990 back to 1980 and see how many convictions were there. If you had one in 1988, we go ten years back from 1988, and if you had one in 1985, we go ten years back from 1985, and keep going until there's a ten-year window where you've not had a DUI offense. That's what the bill says. So it's what I call 'a rolling ten-year review'” *Introduction from the bill's Senate sponsor, 1998.* (an amendment was later added to include a twenty-year limit).

The *Gober* court included an example to show how the rolling ten-year period applied. (see Recent Decisions: *State v. Allen* on page 3). The *Gober* court concluded that the State could charge all prior DUI convictions, up to twenty years from the current violation, unless the defendant had a ten-year conviction free period between the prior DUI convictions. The CCA recently reaffirmed the *Gober* decision and reasoning, with the exception of substituting the offense dates of the defendant's DUI prior violations into the *Gober* example with the conviction dates listed in the example. *See State v. Marvin Glynn Allen*, 2020 Tenn. Crim. App. LEXIS 717 (Tenn. Crim. App. Nov. 10, 2020). The CCA in *Allen* confirmed that the defendant must have a ten-year violation free period between the prior DUI violations, or the State could charge all prior DUI violations, up to twenty years. In the *Allen* case, the present DUI violation occurred on June 6, 2018 and Mr. Allen had three prior DUI violations on September 28, 2016, March 14, 2009 and June 9, 1999. The longest stretch between violations was nine years and nine months. Therefore, all the prior violations could be used as enhancements. September 28, 2016 was within ten years of June 6, 2018; March 14, 2009 was within ten years of June 6, 2018; June 9, 1999 was within ten years of March 14, 2009; and the last prior, June 9, 1999 was within twenty years of the present violation of June 6, 2018. Therefore, the ten-year rolling period applies and “the immediately preceding violation” refers to each and every next preceding violation within ten years of the last previous DUI violation.

Another point of confusion is whether are not the conviction date of a DUI prior needs to precede the date of the current violation. The answer depends upon the nature of the prior DUI related violation. TCA section 55-10-405(c) states that a prior conviction for vehicular assault under section 39-13-106, aggravated vehicular assault under section 39-13-115, vehicular homicide under section 39-13-213(a)(2), or aggravated vehicular homicide under section 39-13-218 shall be treated as the same as a prior DUI conviction, provided the person was *convicted* of the prior offense before committing the instant violation. (emphasis added) However, TCA section 55-10-405(a) states, “Except as provided in subsection (c)...”, emphasizing that the process to determine DUI priors in subsection (a) is different from that in subsection (c). Subsection (a) has no such language and since 2010, puts all emphasis on the date of the violation. Therefore, as long as the date of a prior DUI violation precedes the current violation and it occurs within ten years of the present violation; then every preceding violation within ten years of the immediately preceding violation, that results in a conviction, can be used as an enhancement. As long as the prior violation results in a conviction, the date of the conviction is immaterial. For example, a defendant commits DUIs on May 5, 2019 and July 4, 2020. The defendant has prior DUI convictions with offense dates of January 1, 2012, June 23, 2004 and December 23, 2000. The defendant pleads guilty to the May 5, 2019 DUI on November 11, 2020. What are the qualifying DUI priors for the current DUI charge? All of the above priors qualify. According the TCA 55-10-405(a), the May 5, 2019 DUI violation occurred before the July 4, 2020 violation and it resulted in a conviction. Therefore, the May 5, 2019 violation qualifies as a prior if the conviction occurs before sentencing on the instant violation.



UPCOMING TRAINING

THE UPCOMING TNDAGC DUI TRAINING SCHEDULE

Cops in Court - January 29, 2021, Pigeon Forge, TN (Rescheduled to April due to Covid-19)

This course teaches law enforcement officers the challenges and difficulties associated with impaired driving cases. It also includes a mock trial presentation in which each officer experiences a direct and cross examination. Prosecutors are encouraged to participate in the mock trial presentation.

Protecting Lives, Saving Futures - April 13-14, 2021, Lawrenceburg, TN

This joint prosecutor/law enforcement officer training is designed to allow the participants to learn from each other, inside of a classroom, rather than outside of a courtroom shortly before trial. Topics covered include the detection, apprehension and prosecution of impaired drivers. Each prosecutor attending is required to recruit one to three law enforcement officers to attend the training together.

Prosecuting the Drugged Driver Seminar - May 5-6, 2021, Oak Ridge, TN

This course is designed to aid prosecutors in the prosecution of drug impaired drivers. It features all aspects of the investigation and prosecution of drug impaired driving cases. Included topics are, the role of Drug Recognition Experts (DRE) and the use of SFSTs to determine drug impairment, the role of toxicology, and methods for effectively and persuasively presenting this information at trial.

Lethal Weapon/Vehicular Homicide Seminar - June 8-10, 2021, Nashville, TN

This course will be a joint effort with prosecutors and law enforcement officers from Kentucky. It features all aspects of the investigation and prosecution of vehicular homicide cases. Included topics are the role of the prosecutor at the scene of a fatality, expert cross-examination, toxicology and a group discussion of current vehicular homicide cases.

20/20 Medical Foundation of Eye Movements & Impairment - August 9-10, 2021, Memphis, TN

This seminar will be located at the Sothern College of Optometry in Memphis, TN and it will be taught by Faculty members and professors of optometry. The legal and physiological aspects of eye movement and the detection of impairment will be covered. Registration is open to prosecutors, drug recognition officers and SFST instructors. A mock trial scenario involving a DRE officer will be included.

TENNESSEE HIGHWAY SAFETY OFFICE TRAINING CLASSES

Advanced Roadside Impaired Driving Enforcement (ARIDE)

January 4-5, 2021, Clinton, TN (Cancelled due to Covid-19)

DUI Detection & Standardized Field Sobriety Testing

February 1-3, 2021, White House, TN

February 17-19, 2021, Bluff City, TN

February 22-26, 2021, Townsend, TN (ARIDE also)

March 17-19, 2021, Bluff City, TN

June 21-23, 2021, Gallatin, TN

Drug Recognition Expert School (DRE)

January 25-February 4, 2021, Brentwood, TN (Cancelled due to Covid-19)

March 1-11, 2021, Cookeville, TN

DUI TRACKER

DUI Tracker this last quarter

The results below were taken from the Tennessee Integrated Traffic Analysis Network (TITAN) from October 1, 2020, through December 30, 2020, and reflect the DUI Tracker conviction report for all judicial districts within the State of Tennessee. These numbers include the Circuit Courts, Criminal Courts, General Sessions Courts and Municipal Courts. The total number of dispositions for the period from October 1, 2020, through December 30, 2020, since the last quarter were 1,410. This number is down from the previous quarter by 146. From looking at these numbers, we can see that the trend in DUI related dispositions in Tennessee has slightly decreased, following the lower disposition trends that we have been observing throughout last year. Covid-19 has caused the closing of some courts during this time. The total number of guilty dispositions during this same period of October 1, 2020 through December 30, 2020 were 984. The total number of dismissed cases were 68 and 62 more were nolle prossed. Across the State of Tennessee, this equates to 69.79% of all arrests for DUI made were actually convicted as charged. This percentage is slightly lower than the last quarter ending on September 30, 2020. Only 4.82% of the DUI cases during this current quarter were dismissed. Also, during this same period of time, 263 of the total DUI cases disposed of were to different or lesser charges. Therefore, 18.65% of the total cases were disposed of to another charge.

Fatal Crashes this last quarter

The following information was compiled from the Tennessee Integrated Traffic Analysis Network (TITAN) using an *ad hoc* search of the number of crashes involving fatalities that occurred on Tennessee's interstates, highways and roadways, from October 1, 2020 through December 30, 2020. During this period, there were a total of 344 fatalities, involving 318 crashes, which is a decrease from the previous quarter, but an increase over this same time last year. Out of the total of 344 fatalities, 63 fatalities involved the presence of alcohol, signifying that 18.31% of all fatalities this quarter had some involvement with alcohol. This percentage is higher than the previous quarter. Further, there were a total of 48 fatalities involving the presence of drugs, signifying that 13.95% of all fatalities this quarter involved some form of drugs.

The year-to-date total number of fatalities on Tennessee roads and highways is 1,252. This is up by 77 from the 1,175 fatalities incurred last year at this same time. For most of the year, we experienced a considerable increase from last year in the number of fatalities on our roads. Unfortunately this increase has been steady throughout the year, outpacing last year's number of fatalities by an alarming amount. This year we experienced less miles traveled on average, but the average speed increased dramatically. Speed kills!

Cops in Court Seminar

On December 17, 2020, the DUI training staff, in partnership with ROCIC, held a Cops in Court Seminar at the ROCIC office in Nashville, TN. Law enforcement officers from all over middle Tennessee participated and acquired information about the importance of communication, court procedure and evidence presentation in impaired driving related cases.





NATIONAL IMPAIRED DRIVING PREVENTION MONTH

On April 14, 1982, President Ronald Reagan issued Executive Order 12358 creating the Presidential Commission on Drunk Driving (PCDD).¹ Recognizing that 25,000 of the almost 50,000 traffic fatalities occurring in 1981 were caused by drunk drivers, the President established PCDD to “address the epidemic of drunk driving on the Nation’s roads.”² Under a one-year mandate, the function of the PCDD was to “(a) heighten public awareness of the seriousness of the drunk driving problem; (b) persuade States and communities to attack the drunk driving problem in a more organized and systematic manner, including plans to eliminate bottlenecks in the arrest, trial, and sentencing process that impair the effectiveness of many drunk driving laws; (c) encourage state and local officials and organizations to accept and use the latest techniques and methods to solve the problem; and (d) generate support for increased enforcement of State and local drunk driving laws.”³ Chaired by former Secretary of Transportation John Volpe, the PCDD faithfully pursued its mandate proposing educational, legislative, and enforcement programs to decrease drunk driving deaths. Those efforts lead to the enactment of 38 new laws, including the increase of the minimum drinking age to 21 in three states within the first year.⁴

As with other issues of the time, President Reagan kept the problem of drunk and drugged driving in the news. On December 13, 1982, in Proclamation 5005, Reagan, in accordance with Senate Joint Resolution 241 (Public Law 97-343) declared the week of December 12, 1982, National Drunk and Drugged Driving Awareness Week.⁵ In his remarks to the press, Reagan recognized the efforts of the PCDD and legislation passed by Congress providing for Federal standards and funds to address the problem.⁶ Also, in his remarks, Reagan recognized that the timeliness of the message and asked for “all Americans to join in a national campaign to eliminate drunken and drugged driving and to prevent tragedy from intruding on our joyful holiday season.”⁷

In 1983, Reagan continued highlighting the issue of drunk and impaired driving in the month of December. On December 17, he gave a radio address to the nation on the topic alerting citizens of the danger of the

1. “Executive Order 12358-Presidential Commission on Drunk Driving,” *Public Papers of President Ronald W. Reagan*. Ronald Reagan Presidential Library <https://www.reaganlibrary.gov/archives/speech/executive-order-12358-presidential-commission-drunk-driving> (accessed December 17, 2020).

2. “Remarks on Signing Executive Order 12358, Establishing the Presidential Commission on Drunk Driving,” *Public Papers of Ronald W. Reagan*. Ronald Reagan Presidential Library <https://www.reaganlibrary.gov/archives/speech/remarks-signing-national-drunk-and-drugged-driving-awareness-week-proclamation> (accessed December 17, 2020).

3. “Executive Order 12358-Presidential Commission on Drunk Driving,” *Public Papers of President Ronald W. Reagan*. Ronald Reagan Presidential Library <https://www.reaganlibrary.gov/archives/speech/executive-order-12358-presidential-commission-drunk-driving> (accessed December 17, 2020).

4. Originally, the Executive Order 12358 provided for the PCDD to terminate one-year after its creation. On April 5, 1983, President Reagan extended the period for the PCDD to work with a termination date of December 31, 1983 “Executive Order 12415-Extension of Presidential Commission on Drunk Driving,” *Public Papers of Ronald W. Reagan*. <https://www.reaganlibrary.gov/archives/speech/executive-order-12415-extension-presidential-commission-drunk-driving> (accessed December 17, 2020) and “Statement on the Presidential Commission on Drunk Driving,” *Public Papers of Ronald W. Reagan*. Ronald Reagan Presidential Library <https://www.reaganlibrary.gov/archives/speech/statement-presidential-commission-drunk-driving> (accessed December 17, 2020).

5. “Proclamation 5005-National Drunk and Drugged Driving Awareness Week,” *Public Papers of Ronald W. Reagan*. Ronald Reagan Presidential Library <https://www.reaganlibrary.gov/archives/speech/proclamation-5005-national-drunk-and-drugged-driving-awareness-week>

6. “Remarks on Signing the National Drunk and Drugged Driving Awareness Week Proclamation,” *Public Papers of Ronald W. Reagan*. Ronald Reagan Presidential Library <https://www.reaganlibrary.gov/archives/speech/remarks-signing-national-drunk-and-drugged-driving-awareness-week-proclamation> (accessed on December 17, 2020).

7. *Id.*

(Continued on Page 11)

IMPAIRED DRIVING PREVENTION MONTH (Continued)



December is National Impaired
Driving Prevention Month

drunk driver, and asking citizens to unite to “stop it, not in the spirit of vengeance, but in the spirit of love.”⁸ In his address, Reagan referenced his meeting with a Tennessee family, Mr. and Mrs. Gerald Price of Johnson City, who lost their son 2 ½ years before and their daughter 1 year before, in crashes involving drunk drivers.⁹ Recognizing that the automobile has brought mobility that is valued as a “precious freedom”, Reagan reminded the nation that “with freedom must come responsibility.”¹⁰ In a memorandum for all federal employees, on December 28, Reagan again addressed the fight to prevent drunk driving deaths, asking federal employees to not mix alcohol or drugs with driving, to drive defensively, and to wear seat belts.¹¹

Several world events including the suicide bombing of the U.S. Embassy in Beirut, Lebanon, as well as the national election, took center stage in the United States

at the close of 1984. However, in the years that followed from 1985-1988, Reagan again in accordance with joint resolutions of the Senate designated one week within the month of December as National Drunk and Drugged Driving Awareness Week.¹²

Designation of a week or even the month of December as a time to recognize the drunk and drugged driving issues was not consistent after the Reagan presidency. In 1989, President George H.W. Bush in accordance with House Joint Resolution 429 continued to designate one week in December as Nation Drunk and Drugged Driving Awareness Week.¹³ In 1990, a proclamation was not issued, but on December 11, President Bush did make remarks regarding the progress made in reducing drunk driving fatalities in the United States.¹⁴

8. “Radio Address to the Nation on Drunk Driving,” *Public Papers of Ronald W. Reagan*. Ronald Reagan Presidential Library <https://www.reaganlibrary.gov/archives/speech/radio-address-nation-drunk-driving> (accessed on December 17, 2020).

9. *Id.*

10. *Id.*

11. “Memorandum on Drunk and Drugged Driving,” *Public Papers of Ronald W. Reagan*. Ronald Reagan Presidential Library <https://www.reaganlibrary.gov/archives/speech/memorandum-drunk-and-drugged-driving> (accessed on December 17, 2020).

12. See “Proclamation 5419-National Drunk and Drugged Driving Awareness Week, 1985,” *Public Papers of Ronald W. Reagan*. Ronald Reagan Presidential Library <https://www.reaganlibrary.gov/archives/speech/proclamation-5419-national-drunk-and-drugged-driving-awareness-week-1985> (accessed on December 17, 2020), “Proclamation 5591-National Drunk and Drugged Driving Awareness Week, 1986,” *Public Papers of Ronald W. Reagan*. Ronald Reagan Presidential Library <https://www.reaganlibrary.gov/archives/speech/proclamation-5591-national-drunk-and-drugged-driving-awareness-week-1986> (accessed on December 17, 2020), “Proclamation 5753-National Drunk and Drugged Driving Awareness Week, 1987,” *Public Papers of Ronald W. Reagan*. Ronald Reagan Presidential Library <https://www.reaganlibrary.gov/archives/speech/proclamation-5753-national-drunk-and-drugged-driving-awareness-week-1987> (accessed on December 17, 2020), “Proclamation 5918-National Drunk and Drugged Driving Awareness Week, 1988,” *Public Papers of Ronald W. Reagan*. Ronald Reagan Presidential Library <https://www.reaganlibrary.gov/archives/speech/proclamation-5918-national-drunk-and-drugged-driving-awareness-week-1988> (accessed December 17, 2020).

13. *Public Papers of George H.W. Bush*. George H.W. Bush Library and Museum.

14. “Remarks at a White House Conference on Drunk and Drugged Driving Awareness,” *Public Papers of George H.W. Bush*. George H.W. Bush Library and Museum <https://bush41library.tamu.edu/archives/public-papers/2545> (accessed December 17, 2020).

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IMPAIRED DRIVING PREVENTION MONTH (Continued)



Rather than December, “[t]o help heighten public awareness of the dangers of drinking and driving, the Congress, by Senate Joint Resolution 188,” . . . designated the month of November 1991 as “National Red Ribbon Month” and President Bush issued a proclamation as authorized.¹⁵ No designation by Congress or holiday message on the issue was given in 1992. Then in 1993, during the administration of President Bill Clinton, Congress issued joint resolutions to designate the month of December as “National Drunk and Drugged Driving Prevention Month” to “promote citizen involvement in prevention efforts and increase awareness of the seriousness of the threat to our lives and safety,” drunk and drugged driving.¹⁶

Although now known as National Impaired Driving Prevention Month, it has been the month of December that Congress and the President has designated for reminding Americans that impaired driving injuries and fatalities can be prevented by the exercise of sound judgment and personal responsibility.¹⁷ So, this year, remind friends, love ones, and even strangers of the danger of impaired driving, after all someone’s life may depend on it.

15. “Proclamation 6374-National Red Ribbon Month, 1991,” *Public Papers of George H.W. Bush*. George H.W. Bush Library and Museum <https://bush41library.tamu.edu/archives/public-papers/3620> (accessed December 17, 2020).

16. 58 CFR 64363 (1993).

17. On November 30, 2020, President Donald Trump issued his “Proclamation on National Impaired Driving Prevention Month” as December 2020. <https://www.whitehouse.gov/presidential-actions/proclamation-national-impaired-driving-prevention-month-2020/> (accessed December 17, 2020).



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