



**Tennessee District Attorneys
General Conference**

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Remember Jon Holliday

Deputy Jon Holliday of the Adams County Sheriff's Department in Colorado was recently killed by a drunk driver. Jon, a devoted husband and father was off duty at the time. This crime is indiscriminate. Impaired driving kills persons of every race, religion and profession. Please remember Jon and all victims of impaired driving reverently.

DATA TRACKING AND IMPLIED CONSENT REFUSALS

Many comments were received about the statistics included in the last article. The problem with statistics is that they are dependent on the person that collects them. Clerks offices send in the data, but they apparently don't count every case in the same way. A two count DUI indictment that alleges impairment in count one and a per se violation of .08 or above in count two will result in one conviction. The driver can't be convicted twice for the same crime. One explanation I received indicates some clerks will count the two as merged and report one conviction on one count. Other clerks will count the second count as a dismissed case. This results is less than perfect data.

To resolve this problem the University of Memphis has been collecting data from District Attorneys with DUI prosecutors for several years. Between January 1, 2003 and June 1, 2005, 7892 arrests have been entered into the data bank. Of those 6222 have been resolved with 4604 (74%) found guilty as charged. These cases have been reported primarily from sixteen judicial districts. The longer a district has had a DUI prosecutor the greater the number of cases that have been reported.

The 4604 found guilty as charged refused a breath or blood test two thirds of the time. 3122 impaired drivers refused. Is it time to go back to the drawing board concerning the implied consent law? Why do we let all driver's hide the evidence in these cases.? There is no constitutional right to do so. We permit refusal by legislation.

REFUSALS IN OTHER JURISDICTIONS

In reviewing statutes from other jurisdictions several differences are noticeable. In many jurisdictions the refusal is followed by a search warrant. Like other cases in which the blood is evidence (rape, assault and murder) the State shows probable cause and a judge issues a warrant. In Tennessee the courts have ruled that the kindness of the legislature prohibits search warrants after refusal.

In some jurisdictions the penalty for refusing the blood test discourages refusals. For example in **Kansas** a refusal results in double the penalty if the driver is convicted of the DUI.

Arkansas increases the license revocation with every refusal. A fourth refusal results in a lifetime license revocation.

Louisiana limits the offender to two refusals in a lifetime. "When a law enforcement officer has probable cause to believe that a person has violated R.S. 14:98, R.S. 14:98.1, or any other law or ordinance that prohibits operating a vehicle while intoxicated, that person may not refuse to submit to a chemical test if he has refused to submit to such test on two previous and separate occasions of any previous such violation or in any case wherein a fatality has occurred or a person has sustained serious bodily injury in a crash involving a motor vehicle, aircraft, watercraft, vessel, or other means of conveyance."

In **Wyoming** the driver that refuses may not obtain a restricted license.

In **Iowa** a refusal requires the installation of an ignition interlock devise.

Finally, there is **Delaware**, which takes a completely different approach:

"If a person refuses to permit chemical testing, after being informed of the penalty of revocation for such refusal, the test shall not be given but the police officer shall report the refusal to the department. The police officer may, however, take reasonable steps to conduct such chemical testing even without the consent of the person if the officer seeks to conduct such test or tests without informing the person of the penalty of revocation for such refusal and thereby invoking the implied consent law."

Our Tennessee statute like most others begins with: "Any person who drives any motor vehicle in the state is deemed to have given consent to a test for the purpose of determining the alcoholic or drug content of that person's blood". A 70% refusal rate makes a mockery of this language.



DUI NEWS

**2005
LEGISLATION**

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Administration.*

Amidst the turmoil of the 2005 Legislative Session that began with discussions about ethics and ended with indictments, some good things and some questionable things happened. This years legislation has provided a cure to the decades old problem of prosecuting impaired drivers that leave the scene and has provided a new tool to convict the drug impaired driver. Backlogs at the T.B.I. Crime lab should be reduced significantly in the near future. However, convictions will result in less jail time for the first offender as the legislature experiments with garbage pickup and shaming.

LEAVING THE SCENE

Public Chapter 642

9 An ACT amend Tennessee Code Annotated, relative to the grounds under which an officer may arrest without a warrant.

SECTION 1. Tennessee Code Annotated, Section 40-7-103, is amended by adding the following new subdivision to subsection (a):

() Who is the driver of a motor vehicle involved in a traffic accident, who leaves the scene of the accident, who is apprehended within four (4) hours of the accident, and the officer has probable cause to believe such driver has violated § 55-10-401;

This act has been a long time coming. It will make obsolete cases like *Sides and Folds* in which impaired drivers got away with the crime by leaving the scene.

MULTIPLE TESTS:

Public Chapter 483

After July 1, 2005 an officer may request that a defendant submit to both a breath and blood test, if the officer has reasonable grounds to believe the defendant is under the influence of drugs, alcohol or a combination of drugs and alcohol. The bill amends and replaces T.C.A. 55-10-406 (a) completely. In addition to permitting more than one test, this bill substantially increases funding for the T.B.I. Labs. In the past T.B.I. received \$17 per conviction when a breath or blood test was conducted. This bill increases the amount to \$100, which will be earmarked for the forensic sciences labs.

ALCOHOL VAPOR DEVICES

Public Chapter 402

Alcohol vapor devices are now prohibited. No licensee shall sell, deliver, or give away, or permit to be sold, delivered, or given away, any alcoholic beverage for dispensation by means of an alcohol vaporizing device. No entity is to keep or maintain the devices.

"A fearless and earnest prosecuting attorney, within the limits of his powers and prerogatives, is a bulwark to the peace, safety and happiness of the people". 42 AmJur,"Prosecuting Attorneys", sec. 20, p. 255.

Prosecutors throughout the State are in Court trying cases to jurors every day. The following prosecutors had trial convictions affirmed between May 1 and May 31, 2005. This list does not include the numerous post conviction relief petitions in which the conviction was upheld and petition denied.

Mary Katherine White, Ellen Berez, Doug Thurman, Larry Bryant, C. Phillip Bivens, Amy Weirich, Jennifer Nichols, Jason Ponder, Marty Savage, David Patterson, J. Robert Carter, Valerie L. Smith Sarah Davis, Bernard McEvoy, James Brooks, Jody Pickens, Jeffrey Long, Weakley Barnard , Tracey Brewer, Dan Brollier, Karen Cook, Dean DeCandia, Paul Goodman, Paul Hagerman Betsy Carnasale, Brian Holmgren Dale Potter, Pamela Anderson, William Copeland, Michael Randles, Ann Filer, Lee Coffee, David Pritchard, Alanda Dwyer, Emily Campbell, Jim Todd, Brett Gunn, John Zimmerman, John Carney and Authur Bieber

IMPLIED CONSENT

In a sort of homecoming event in Nashville attorney Michael Foxx, aka DUI Mike, found his innovative argument rejected in the Court of Appeals by Judge Frank Clement. Judge Clement had previously been a trial judge in Circuit Court where Fox regularly appeared. The argument this time was that the implied consent law caused Judges to become administrative officers of the Department of Safety thus violating the Separation of Powers clause. The Court found the claim was previously settled in State v Goats, 363 SW 2d 889, a 1963 decision. Maybe it wasn't innovative after all.

RECENT DECISIONS OF THE TENNESSEE COURT OF CRIMINAL APPEALS

State v Copeland 2005 Tenn. Crim. App. LEXIS 455

The defendant smashed into a tree and was seated in the driver's seat with the engine running trying to back away from the tree when the officer arrived. At trial the defendant claimed that a prostitute had been driving at the time of the crash. Fortunately Monterey Police Lieutenant Richard Lynch had his tape recorder working when the defendant stated: "I don't know what the hell I hit." The defendant also claimed that the car was "completely inoperable" in an attempt to overcome the physical control prong of the TCA 55-10-401. The defendant's conviction was affirmed.

State v Vanblaricum 2005 Tenn. Crim. App. LEXIS 518

The defendant was stopped due to a lack of tail lights. When pulled over he took 24 seconds and crossed a lane of traffic and parked on the far side of the road. He could not wait to start walking during the 9 step walk and turn. After being instructed a second time he took a stroll and did not comply with the instructions. He initially agreed to a breath or blood test, but later changed his mind.

The defense called Dr. Gursheel Dhillon who testified the defendant was a diabetic with back problems. Dr. Dhillon testified that the defendant's back problem would not interfere with his ability to understand directions or walk a straight line. The defendant testified that he pulled over to the right side of the road, drank a couple beers three to four hours earlier, took his medication 2-3 hours before the stop and ate ice cream and candy bars immediately before the stop. He claimed he refused the test because if he passed the breath test, he would be taken to the hospital for a blood test.

The Court affirmed the conviction.

This case shows that people with diabetes can use bad judgment and combine too much alcohol with the disease. Excellent testimony from Cowan City Officer Mathew Baker and trial advocacy skills used by ADA William Copeland permitted the jury to understand the difference between symptoms consistent with diabetes and impairment by alcohol.

State v. Drake, 2005 Tenn. Crim. App. LEXIS 559

The defendant was convicted of aggravated assault and DUI 3rd offense after being indicted for vehicular homicide. Causation was in dispute. The accident reconstruction of the scene was apparently insufficient to prove that the defendant's impaired driving caused the death that occurred on a blind hill.

The court denied the defense request to show a computer animation. The defense used conjecture rather than fact to compose the animation. The Supreme Court in State v Farner 66 SW 3d 188 (Tenn.2001) has set specific requirements for the use of animation. The defense wanted to show a pre-impact direction of travel despite a lack of evidence concerning the direction.

2005 LEGISLATION

(Cont'd from page 1)

Habitual Motor Offender

Public Chapter 213 amends the statute to include DUI offenders that were in physical control, but not in the act of driving.

Sentencing

P.C. 353 also includes the new sentencing law recommended by the Governor's Blakely Commission. Most troubling is a change to permit probation to offenders with a 10 year sentence. Previously offenders were not eligible if the sentence was greater than 8 years. The presumption in favor of probation has been removed although standard range offenders who commit class C, D or E felonies are to be considered favorable candidates for Alternative sentencing.

Child Endangerment

P.C. 437 deletes the child endangerment statute at TCA 55-10-414 and makes child endangerment a sentencing enhancement for the DUI violation in a new section added to 55-10-403. The age requirement is increased to eighteen. It also requires the law enforcement officer or judge to report the endangerment to Children's Services.

Meth Driving

P.C. 209 requires the revocation of a driver's license if the driver possesses 5 grams of methamphetamine, while in operation of a vehicle whether or not it is moving.

Cell phones

P.C. 236 creates a class C misdemeanor of driving while talking for teens under 18 with driver's permits or intermediate driver's licenses, unless the communication is for an emergency or with parents.

Drug Testing Probationers

P.C. 309 amends 55-10-402 to permit the use of certain funds from DUI fines to be used for drug testing those on probation.

Restricted Driver's Licenses

P.C. 155 will permit the driver that is overloaded with unpaid fines and court costs to obtain a restricted license. This effects 55-50-502 (a) (8) cancellations only.

LEGISLATION DEFERRED TO 2006

The following bills will be considered when the legislature reconvenes in January, 2006.

HB 2071 would require health care providers to notify law enforcement officer of blood or urine test results after traffic crashes if the health care provider reasonably believes the patient was the driver and was under the influence. The bill in the Senate passed 30-0, but action was delayed in the House in the Criminal Practice subcommittee of the Judiciary Committee.

HB 363 would decrease from .20 percent to .16 percent the percentage of alcohol in a first time DUI offender's blood necessary to make such offender a most aggravated drunk driver and thereby receive mandatory confinement for seven days rather than 48 hours. This bill passed the Senate 31-0, but was placed behind the budget in the House.

HB 14 would add to circumstances that constitute Class A felony of second degree murder that the defendant committed the reckless killing of another while evading arrest. This bill passed in the Senate 31-0, but was also placed behind the budget in the House.

NEW DEVELOPMENTS IN TECHNOLOGY

Patents issued by the U.S. Patent Office in the last few months show the continued interest in the scientific community concerning impaired driving.

STEERING WHEEL ALCOHOL SENSOR

United States Patent 6,886,653 Bellehumeur May 3, 2005

A system and method to prevent a human being from operating a motor vehicle if the human being is intoxicated or under the effects of particular hallucinating drugs that uses a galvanic detector that can measure epidermal (skin) elements of a human being such as alcohol content, sweat and temperature continuously in conjunction with circuitry and logic circuits that connect to the vehicle's ignition system that only allow the vehicle to be operated when certain temperature sensing conditions are met and certain conditions requiring no alcohol are met otherwise the vehicle will be turned off. In an alternate embodiment, a glove could be used for epidermal measurements that is also connected to the sensing circuits.

FLASHLIGHT AND VIDEO RECORDER DEVICE

United States Patent 6,877,878 Raskas April 12, 2005

A flashlight and video recorder device is disclosed which comprises an illumination portion for producing a beam of light, a video recorder for recording video images, a casing for housing the illumination portion and the video recorder, and a lens guide for preventing light from the illumination portion from affecting any of the video images.

BACKGROUND OF THE INVENTION

This invention relates to a flashlight and video recorder device, and more particularly, to a flashlight and video recorder device for recording video images for storage and playback. Flashlights are useful devices employed by various professions, such as police, firemen, military, and even maintenance workers. Even though flashlights have been proven to be useful devices there are some applications where flashlights combined with a device to record an image would make the *flashlight* even more useful. For example, a police officer while investigating a location at night may need to illuminate the location and record an incident for later playback and evidence. A fireman may be investigating a fire in the dark and being able to both illuminate the area being investigated and record the area would be helpful for later playback and use in documenting a fire. Further, a maintenance worker may need to go into a dark area to attempt a repair on some equipment. It would then be useful to have a device that can both illuminate a dark area and be able to record the area and the equipment. If the maintenance worker was unable to repair the equipment, the worker could then be able to show the recording to a more qualified technician for advice on how to repair the equipment. It would also be advantageous to record certain situations, such as accidents. If an accident occurred at night, it would be beneficial to record the accident scene and other information such as license plate numbers and insurance information.

DEFENSE ATTORNEY ZEAL

CONTRIBUTED BY NORTH CAROLINA PROSECUTOR MARTY CONBY

We often let attorneys have their clients demonstrate their claim that the intoxilyzer didn't work because of their unique circumstance. We have had people with one lung, dentures, diabetes, and foreign substances drink and test at the police station to demonstrate their innocence. It has never worked. We had one guy who claims that his Ambisol drops caused residual alcohol to raise his result. We had him appear at the station and apply the drops prior to the 15 minute waiting period. We didn't realize he chugged the whole bottle, and he sat with the medication pooled in his gums for 15 minutes. When he tested, it still showed no measurable result. He was then rushed to the hospital for the severe burns in his mouth caused by letting so much Ambisol sit in his mouth for so long. Happily, he was recovered enough to appear a few weeks later to plead guilty.

Recidivist Wall of Shame

Some impaired drivers are exceptional. They just won't stop. They endanger themselves and fellow citizens every night. Statistics from the National Highway Traffic Safety Administration indicate that an impaired driver gets caught once out of every eighty times he drives impaired. Imagine how often the individuals listed below have been on our roads under the influence.

The Toledo, Ohio Blade reports that **Antonio Briseno**, 42, of Defiance has been charged with his 18th DUI. Briseno is one of thirteen Ohioans with sixteen or more convictions. If convicted he will be one of three in Ohio with 18 convictions. Fourteen of his convictions have occurred when his license to drive was suspended.

Tennessee 's latest members to the Hall:

Marilyn R. Guy, 44, of Mt. Juliet, pled guilty to DUI 8th offense in Wilson County Criminal Court.

James Esley Baker, 38, of Lavergne, pled guilty to DUI 8th offense in April in Rutherford County Circuit Court.

Ricky Lynn Morris, 45, pled guilty in Gibson County to DUI 8th offense in March.

Dennis Bunch, 38, of Knoxville, pled guilty to DUI 7th offense in Loudon County in February.

Joel Pruitt, 37, of Mount Pleasant, pled to DUI 6th in Maury County in January.

Shirley Brinkley, 46, pled to DUI 7th offense in Bedford County in January.

Gregory Branch, 39, pled guilty to DUI 7th offense in Dyer County in January.

Lanny Briley, 48, pled guilty to DUI 6th offense in Sumner County in January.

SHAME, DUI FIRST OFFENDERS AND THE LEGISLATURE

During the waning, post indictment days of the legislature, an interesting deal was struck in a Joint Committee appointed by the House and Senate leadership. A proposal in the House by Representative Charles Curtis and Henri Brooks would have permitted DUI first offenders to serve their 48 hour sentence picking up trash. The bill was introduced in the Senate by Senator Charlotte Burks to do the same thing. Senator Curtis Person filed an amendment which passed the Senate that would have required 48 hours of trash pick up in addition to jail time. After the two houses agreed to disagree a Conference Committee was appointed and it split the difference. Offenders pursuant to P.C. 504 will be allowed to pick up trash for 24 hours and serve time in jail for 24 hours. However, offenders under 21 years of age will have to do both. While removing trash the offenders will wear a bright orange vest with the words "I AM A DRUNK DRIVER" in at least 4 inch letters. The bill is an experiment scheduled to end in three years at which time a report is due to compare how the change effected recidivism. The real benefit of this bill may be the report in 2009 from the Department of Safety comparing the numbers of first and second offenses from 2006-2009 to the number from 2002-2005.

The Legislative intent of this bill is to shame first offenders to stop them from repeating the crime of DUI. Let's hope it works. The effective date of the new law is January 1, 2006.

TWENTY EIGHT YEARS OF PROGRESS

Taken From the Commencement Address Given May 5, 2005 at Tennessee's First DRE Graduation by Philip Smith, Crime Laboratory Regional Supervisor, Tennessee Bureau of Investigation

Tonight it is my privilege to speak to Tennessee's first graduating class of DRE Officers. I join everyone here in congratulating you.

I have been involved in Forensic Toxicology with The Tennessee Bureau of Investigation for nearly 29 years. TBI's mission statement reads, "That Guilt Shall Not Escape Nor Innocence Suffer", but actually this is the mission statement of everyone in this room. We all want to see anyone guilty of a crime brought to justice, and we want to perform our duties in such a way that no one will ever be punished for a crime they did not commit. So we continuously try to improve our investigative, analytical, and judicial expertise to accomplish this mission statement. I have had many experiences dealing with DUI, vehicular homicide, and medical examiner cases. From a toxicology standpoint, there have been things, involving these types of cases and their affects on the citizens of this state, which I have always wanted to see improved.

I realized early on that some DUI offenders would never be found guilty under our present system. State law basically allowed only one toxicology test to be performed to determine DUI. I first realized this in dealing with urine and blood toxicology. For a number of years we felt that in order to perform a complete toxicology drug analysis, we should have both urine and blood samples. We could find some drugs in urine samples better than we could in blood samples. But, in some cases the urine results were considered a second test and were ruled inadmissible. Initially, two of our most popular drugs, cocaine and marihuana, fell into this category. Cocaine would actually break down in some blood samples before we could identify it, but was easier to identify in urine. And when we finally began testing for marihuana metabolite in the early 90's, our procedures could only test for marihuana in urine samples.

To address this problem we developed improved analytical methods that allowed us to identify the metabolites of these two drugs in blood samples. Metabolites are the compounds that drugs are converted to when introduced into the body. These metabolites, benzoylecgonine for cocaine, and carboxy THC for marihuana, when found in blood, would allow us to show that an individual was a user of cocaine or marihuana.

This improvement was just one example of the progress we have made in DUI drug testing. (Continued on page 9)

DUI ARRESTS IN 2004

Phil Smith and the Forensics Division of TBI kept busy in 2004 as did prosecutors, judges, clerks and public defenders. There is never a shortage of DUI arrests, despite the fact that most offenders commit the crime numerous times before apprehension. Agencies with 200 + arrests in 2004

Tennessee Hwy Patrol	Nashville Metro	Memphis City	Knoxville P.D.	Murfreesboro P.D.
3,131	2774	1767	901	536
Clarksville P.D.	Shelby Co. S.D.	Rutherford S.D.	Cleveland P.D.	Johnson City P.D.
508	394	386	325	322
Gallatin P.D.	Knox Co. S.D.	Chattanooga P.D.	Sullivan S.D.	Morristown P.D.
313	307	293	292	264
Smyrna P.D.	Hendersonville	Cookeville P.D.	Blount Co. S.D.	Columbia P.D.
236	218	205	205	203

SOURCE: Crime in Tennessee 2004. T.B.I. Crime Statistics Unit



For more information concerning the TBI's forensic services division see: <http://www.tbi.state.tn.us/divisions/lab.htm>

Tennessee Drug Recognition Evaluation Program

By: Richard M. Holt, DRE State Coordinator

Multi-Test Law Opens the Door for DRE:

Now that Tennessee is becoming a "Drug Classification and Evaluation" (DRE) state the work is just beginning. We must do it right and develop a viable program for the years ahead. Part of that task includes the first group of DRE's as they set the pace for the program. They are some of the most well trained specialist in the detection of impaired driving in the State.

The group of 17 officers who graduated on May 6th from the first DRE class has entered phase III of their training. This phase includes 12 field evaluations under the supervision of an instructor. To finish this phase of the training they must complete a comprehensive "Final Knowledge" exam. This exam takes approximately six hours to conclude. With successful completion they will be certified to make evaluations in of DUI and other drug impaired offenders. It is anticipated that most will be ready by August.

As we progress with this program selection of future DRE candidates will be very selective as this program is extremely important. We hope successful prosecution will result in every case. We expect that all D.R.E. officers will be qualified as experts concerning the horizontal gaze nystagmus.

TWENTY EIGHT YEARS OF PROGRESS

(cont. from page 4)

I would describe the progress we have made in the toxicology unit as steady progress. We have always been limited in the amount of time we could devote to developing new and better analytical procedures. Our first priority has and always will be performing analyses on the cases you bring to our laboratory. But, improving our testing methods will always be important, if we want to keep pace with the ever changing drug culture. We have continued to improve both our testing procedures, and our instrumentation. Improvement leads to better test results, which leads to finding more impairment producing drugs, which leads to stronger support for the investigation and prosecution of DUI and other driving related offences. We are identifying impairment producing drugs in blood samples today that would have gone undetected 25 years ago.

Of greater importance is the problem we have had for years with breath testing and blood testing. This problem also has existed because our laws only allow for one test. If a person under the influence of drugs can convince an officer to give them a breath test, they beat the system. Their breath will test negative and no other tests can be performed to charge them with DUI. Legislation has been introduced this year that will create a two test law in Tennessee. It has a very good chance of becoming law and solving our "one test" problem.

And now, tonight, we are graduating Tennessee's first class of Drug Recognition Experts.

With your training, the improvement in successfully catching and prosecuting more DUI offenders will continue. I believe you will also be involved in training more and more DRE's throughout our state which will bring about even further improvement. I have often given a scenario, when teaching DUI related classes. The scenario goes like this. A person high on drugs gets behind the wheel of an automobile and is soon stopped by an officer. The driver quickly takes a drink of some kind of liquor to get that "alcohol on the breath" smell. After agreeing to a breath test and taking that test, negative results are obtained and the driver winds up going free. Then the next week under the same conditions that driver crosses into oncoming traffic killing a mother and two small children. No doubt this scenario has happened through out this state during my time with TBI. That scenario has always bothered me. Maybe you have thought about that scenario also, and maybe that is part of why we are here tonight, and why we are committed to fighting the problem of DUI. So, tonight we all are part of a very significant change in DUI law enforcement, which along with a stronger state DUI testing law will greatly improve our ability to prosecute DUI offenders. I am thrilled about the improvements all of us in this room and others throughout this state are making to address driving under the influence. And, I am thrilled that every day we are improving on TBI's mission statement "That Guilt Shall Not Escape Nor Innocence Suffer".

(Drug Recognition cont'd)**SUSPECT'S STATEMENTS AND OTHER OBSERVATIONS**

By this time, you have probably spent at least thirty minutes with the suspect, you have completed your physical examination, and have made note of any statements made by the suspect. If you have determined that the suspect is impaired, you should by now have a clear opinion of the category or combination of categories of drugs affecting the suspect. Interview the suspect in a way that conveys the fact that you already know what he or she has been doing.

For example, don't ask a question such as "have you been using any drugs tonight?" Instead, phrase the question in an assertive, confident manner. Suppose you believe that he or she is under the influence of Cannabis. You might begin the interview by asking "when did you smoke your last joint tonight?" If the suspect responds "I never said I smoked a joint", your response might be "we both know you've been smoking Marijuana; I can see it in your eyes, in your pulse, and in everything about you. Now, how many joints did you smoke, and when did you finish your last one?" Make sure that you carefully and accurately record the suspect's statements.

OPINIONS OF THE EVALUATOR

In the next to the last step of the evaluation process, you will document your conclusions. Remember: your job is to render an expert opinion about the condition of the suspect right now; it is not your function to speculate about their condition at the time of arrest, unless of course, you witnessed the arrest. **IF YOU CONCLUDE THAT THE SUSPECT IS NOT NOW IMPAIRED, SAY SO.** But if you conclude that the suspect is impaired, your opinion should be written in the following form:

"In my opinion, (suspect's name) is under the influence of (category or combination), and is unable to operate a vehicle safely."

It is important to include the phrase "unable to operate a vehicle safely." That is a key element of the offense with which the suspect will be charged. **IT IS ALSO VERY IMPORTANT THAT YOUR OPINIONS REFER TO DRUG CATEGORIES, AND NOT TO SPECIFIC DRUGS.** The sole exception is alcohol. Because you have administered a breath test to the suspect, you know whether or not alcohol is present. If the suspect has a positive Blood Alcohol Concentration (BAC), your opinion should always state that the suspect is under the influence of a combination of alcohol and some other category or categories. You know how much alcohol the suspect has in their system, but as far as other drugs are concerned, you do not have access to a chemical test when you form your opinion. Suppose you examine a suspect, and find that everything about them is consistent with impairment by a CNS Stimulant. And suppose the suspect admits to having shot up Cocaine, and suppose further that you find in their possession, a packet of white powder that resembles Cocaine. Despite all of this, your opinion will not mention Cocaine. Instead, you will write that the suspect "...is under the influence of a CNS Stimulant..." For all you know, the suspect may have thought it was Cocaine that they had injected, but in reality it was Methamphetamine. Do not go beyond the bounds of your expertise. Of course, in your narrative report you would document the suspect's admission of Cocaine use, and your recovery of a substance that appeared to be Cocaine.

THE TOXICOLOGIC EXAMINATION

Your final responsibility will be to obtain the specimen that will be sent to the laboratory for chemical analysis. Follow the proper procedures of your lab and your department to determine the type of specimen to be obtained, and to ensure proper control over the collection process, as well as to ensure proper handling, packaging and deliver of the specimen. Remember that some laboratories participating in this program want to receive a copy of the Drug Influence Evaluation face sheet along with the specimen. Others may require a statement of the DRE's opinion.

DRUG RECOGNITION AND CLASSIFICATION

Drug Recognition Expert police officers have been active in thirty eight states since the 1970's. With the passage of the multiple test bill in the 2005 Legislature Tennessee can now use specially trained officers to help determine whether a person is under the influence of drugs. How do the officers do it? There are no magic wands involved. The process takes time and is conducted after the arresting officer has determined there is probable cause that the driver is impaired. Here's how the drug recognition officers evaluate the offender.

THE BREATH ALCOHOL TEST

When you are summoned to examine a suspect, the first question you will ask is "What was the results of the suspect's breath alcohol test?" You need to know the results of the breath alcohol test because you must determine whether alcohol alone accounts for the impairment you observe. If the arresting officer has not already administered a breath test to the suspect, you will request that the test be given. Remember, many of the suspects you examine will turn out to be under the influence of a combination of alcohol and other drugs.

THE INTERVIEW OF THE ARRESTING OFFICER

If you did not personally arrest the suspect, you will need to spend a few minutes with the arresting officer before you begin the physical examination. The arresting officer witnessed the driving, saw how the suspect related to the command to stop, interacted with the suspect at roadside, administered some Standardized Field Sobriety Tests, and in general was exposed to a great deal of information bearing on the suspect's mental and physical condition. Very likely, the arresting officer won't be as knowledgeable about drugs as you are. It is possible that the arresting officer saw or heard something that could be a clue of drug use, but didn't recognize its significance. So you will draw the officer aside for a brief conversation. Ask about the suspect's driving: was it fast or slow? Was the car drifting or swerving? Was a collision involved, and if so, did the suspect suffer any apparent injuries? Ask about the suspect's behavior: what kind of attitude have they exhibited? How has the suspect responded to the officer's questions? Has the officer observed any unusual behaviors from the suspect and if so, what? Did the officer observe the suspect smoking or eating anything? Has the suspect used any unusual or unfamiliar words or expressions? Has the suspect admitted drinking or using drugs? Ask about any unusual or unfamiliar objects that might have been found in the suspect's possession.

THE PRELIMINARY EXAMINATION

The third step begins your extensive physical contact with the suspect. Make sure you are wearing protective gloves at this time. Your primary purpose at this time is to look for any evidence of a medical complication that would warrant terminating the examination and summoning medical assistance. You will ask the suspect a series of questions, and you will examine their eyes to determine if the pupils differ significantly in size, or if the eyes are unable to "track" together. You will also check for an estimation of the angle of onset of nystagmus at this point. This will assist you in making the decision whether the suspect is under the influence of alcohol alone. You will also take the first of three measurements of the suspect's pulse at this point. If you find evidence of a medical problem, you will terminate the examination, and seek competent medical help for the suspect if appropriate. Otherwise, you will proceed with the examination. This stage of the examination is commonly called the "fork in the road" as you will be deciding whether to continue with the evaluation at this point.

EXAMINATIONS OF THE EYES

This is the time when you will administer three tests of the suspect's eyes. The first is Horizontal Gaze Nystagmus; that is the same test with which you are familiar from your training in Standardized Field Sobriety Testing. The test will be more precise for the DRE as you will be estimating the angle of onset of the nystagmus. The second test is Vertical Gaze Nystagmus, this involves an up-and-down jerking of the eyeball that occurs as the eyes gaze upward in the vertical plane. The third test is Lack of Convergence, which is the inability of a person's eyes to converge or cross as the person attempts to focus on a stimulus as it is pushed slowly toward the bridge of the nose. Nystagmus is caused by three of the seven drug categories: Central Nervous System **Depressants**; **Inhalants**; and **Phencyclidine**. It may help you remember this if you call them the "**DIP**" drugs. If a person is under the influence of any of the DIP drugs, he or she usually will exhibit Horizontal Gaze Nystagmus. And if the person is sufficiently impaired by a DIP drug, Vertical Gaze Nystagmus often will be visible. (Vertical Gaze Nystagmus is caused by a high dosage, for that individual, of a DIP drug.) But none of the other four drug categories will cause nystagmus.

(Drug Recognition cont'd)

So a suspect might be very much under the influence of a Stimulant, Hallucinogen, Narcotic, or Cannabis, but no Horizontal or Vertical Gaze Nystagmus will be observed in their eyes.

What about Lack of Convergence? First, the same drugs that cause nystagmus also cause Lack of Convergence. So, if a person is under the influence of any of the DIP drugs, they usually will be unable to cross the eyes. In addition, Cannabis causes Lack of Convergence. So when we check for Lack of Convergence, we try to remember the “DIP-C” drugs: any of those four will usually prevent the eyes from converging. The other three categories, CNS Stimulants, Hallucinogens and Narcotics, will not cause Lack of Convergence.

DIVIDED ATTENTION PSYCHOPHYSICAL TESTS

At this stage of the examination you will collect the evidence that will solidly establish whether the suspect, right now, is impaired and can not operate a vehicle safely. We all know, and judges and juries know too, that safe driving demands that we are able to attend properly to many things at the same time. We have to be able to steer, control the accelerator, look for other traffic, identify stop signs and signal lights, and on and on. This means that we have to be able to **divide our attention** among all of the individual tasks that constitute driving a car. One thing that all drugs have in common is that they impair a person's ability to divide attention. Drugs simply make it very difficult for people to handle several tasks at the same time. As a DRE, you will administer four divided attention psychophysical tests to your suspects. The tests are called Romberg Balance, Walk and Turn, One Leg Stand, and Finger to Nose. Each test is designed to require the suspect to do two or more things at the same time. Some of these things are **physical** tasks, like walking or standing on one leg. Others are mental, or **psychological** tasks, such as recalling instructions, counting, or estimating the passage of time. (That's why we call these things **psychophysical** tests.) People who are impaired by drugs won't be able to perform these tests very well, and the mental and physical mistakes they make will go a long way toward convincing the judge and jury that they were in fact impaired.



During DRE Training officers first conduct examinations on each other. After completion of the eighty hour course they complete examinations of twelve subjects with instructors evaluating their performance. They then take a final examination that lasts from six to eight hours before certification.

EXAMINATION OF VITAL SIGNS

The sixth component of the drug evaluation and classification process requires you to make very precise measurements of the suspect's pulse rate, blood pressure and body temperature. Actually, you will measure the suspect's pulse rate at three different times: once during the preliminary examination, a second time during the vital signs examination, and a final time during the injection site examination of the suspect. In order to measure blood pressure, you will learn to use medical instruments, including a stethoscope and a sphygmomanometer (i.e., blood pressure cuff). For body temperature, you will use an electronic digital thermometer, always protected by a disposable mouthpiece.

The vital signs provide some very important clinical evidence of drug impairment. Two drug categories, i.e., the Depressants and the Narcotic Analgesics, usually lower the pulse rate, while the other five categories usually elevate the pulse. Depressants, Narcotic Analgesics and some Inhalants will usually lower blood pressure, while CNS Stimulants, Hallucinogens, Phencyclidine, Cannabis and most Inhalants usually cause the blood pressure to rise.

(Drug Recognition cont'd)

Narcotic Analgesics usually cause the temperature to be lower than normal. CNS Stimulants, Hallucinogens, Phencyclidine and some Inhalants usually elevate temperature. Depressants, Cannabis and other Inhalants typically don't effect body temperature.

DARK ROOM EXAMINATIONS

At this point in the examination, you will take the suspect into a separate room. Depending on the policies established by your agency, you might handcuff the suspect at this time or request another officer to accompany you. The first thing you will do in the room is to obtain a estimate of the suspect's pupil size in room light. You will use a device called a **pupillometer** to do this. It is simply a cardboard or plastic card on which a number of dark circles appear. You will hold the pupillometer next to the suspect's eye, and you will locate the particular dark circle that is closest in size to the suspect's pupil, and you will record the size of that circle. You will do this first for the left eye, then for the right. Then, you will turn out the lights in the room. You and the suspect will remain in the dark for ninety seconds, this will allow your eyes to adapt to the darkness. You will then use a penlight to introduce different levels of illumination into the suspect's eyes. At first, a very low level of light will be used, just enough to allow you to see the pupils and obtain an estimate of their size. Next, you will shine the penlight directly into the suspect's eyes. For each level of illumination, you will hold the pupillometer up next to the eyes and obtain a numeric estimate of pupil size. While you are directly illuminating the eyes, you will hold the light steadily on the eye for fifteen seconds, and observe how quickly the pupil reacts to the direct light. Pupil size and pupil reaction to light are affected by some, but not all of the drug categories. Narcotic Analgesics usually cause the pupils to become very **constricted**, i.e., smaller than normal. CNS Stimulants and Hallucinogens typically cause the pupils to **dilate**, i.e. grow larger than normal. Cannabis often causes some dilation of the pupils, although usually not as severe as that caused by CNS Stimulants or Hallucinogens. And, some but not all Inhalants cause dilation. Phencyclidine and Depressants usually will not affect the size of the pupils.

Before you leave the dark room, you will also use your penlight to illuminate the suspect's nasal area and mouth. The purpose of this is to check for any signs of ingestion in the oral or nasal area. Many times you will be able to observe evidence of ingestion of various drugs. Often you will spot debris or discoloration caused by snorting, smoking or eating certain drugs. In some cases you might even find that the suspect has attempted to conceal drugs in the mouth, usually wrapped in small balloons or bits of foil and lodged between the gum and teeth. You will also be very close to the suspect and may detect odors on their breath.

EXAMINATION FOR MUSCLE TONE

After you leave the dark room, you will have the suspect sit down and place his or her arms on a table. Make sure you are wearing protective gloves, and “work” the muscles of the suspect's arms with your hands. Some drugs, i.e., Depressants and Narcotics Analgesics, often will cause the muscles to be very flaccid, or loose and rubbery. Others, such as Phencyclidine and possibly CNS Stimulants and Hallucinogens, cause a rigid, stiff or tense feeling in the muscles.

EXAMINATION FOR INJECTION SITES

At the same time that you inspect the suspect's arms for muscle tone, you will carefully inspect the arms, the hands, the fingers, etc. for signs of recent or past hypodermic needle injections. Look for the characteristic scarring, or “track marks”, of the habitual “hype”. Search especially in and around tattoos and scabs. Feel with your fingers for “bumps” or welts that might be fresh injection marks. You will use an illuminating magnifying lens (called a **schematic light**) for a close visual inspection of possible injection sites.

When we think of drug use by hypodermic needle, we usually think primarily of Narcotic Analgesics, especially Heroin. But many people routinely inject other drugs. Cocaine and Methamphetamine for example, are often “shot” and hypodermic injection of certain Depressants, Phencyclidine and LSD is not unheard of.