



DUI NEWS

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TREATMENT COURTS

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In February, 2004, the National Highway Traffic Safety Administration and the National Drug Court Institute gathered highway safety advocates from the Southeast to talk about Treatment Courts for DUI offenders. Treatment Courts began with a 1989 Dade County, Florida experiment to develop an intensive, community-based, treatment, rehabilitation, and supervision program for felony drug offenders. The "drug court" movement spread and after a decade has had a significant impact on the disposition of drug related offenses and offenders.

The National Drug Court Institute was created in 1997. There are now more than 1,500 drug courts nationwide. Can the concept of drug courts work with recidivist DUI offenders? In 2003, 17,254 persons were killed in alcohol related crashes in America and over 250,000 more were injured. Two thirds of those convicted of first offense DUI do not get arrested for DUI again. Treatment Court is designed for those that do not stop after a first offense conviction.

Of all repeat DUI offenders, 37% are on probation when they get arrested again. Forty-eight hours in jail, license revocation, DUI school and probation did not matter enough to the repeat offender to make him or her stop committing this dangerous crime.

A fourth DUI conviction is a felony. Will prison stop the offender from committing a 5th offense? A University of Pennsylvania study shows that 95% of all inmates released from prison relapse to substance abuse within three years. Punishment alone does not stop the DUI offender from going back to his old ways of drinking and driving.

In Tennessee second offenders are permitted to spend 28 days of the 45 day sentence in treatment. Such treatment does not scratch the surface. Even long term treatment by itself does not have a significant impact on recidivist DUI offenders. About 90% simply quit within twelve months. Between half and two thirds never even show up after referral.

Several jurisdictions have begun DUI Treatment Courts to try and solve this ongoing problem. In Bernalillo County, New Mexico recidivism rates were cut in half. In Lansing, Michigan recidivism after five years with a DUI Court has dropped from 33% to 13%.

In this issue we have chosen to focus on a new DUI Treatment Court in Greeneville, Tennessee. A thank you is owed to Judge Tom Wright and his staff for the cooperation and desire to share the experiment with you. Treatment Courts appear to be the judiciary version of a tough love philosophy. It takes a certain type of person to supervise such a court. Judge Wright genuinely cares about the group of offenders accepted in the treatment court. He is also ready to use his position to correct mistakes.

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<p>Prosecutors with recently affirmed Decisions by judicial district:</p> <p>Scott McMurty, 20th James Freeland 25th Eleanor Cahill 24th (twice) Brooks Yelverton 30th William Copeland 12th Michael Randles 17th Marsha Mitchell 6th Steven Blount 12th William Harper 2nd William Locke 31st Scarlett Ellis 8th Parke Masterson 11th John Price III 16th</p>	<p>RECENT CASES</p>	
<p>The Assistant Attorney Generals that wrote and argued in the Appellate Courts were:</p> <p>Rachel Willis David Findley Richard Dunavant J Ross Dyer Brent Cherry Michelle Chapman Rene Turner Thomas Williams III Elizabeth Marney Elizabeth Ryan Michael Markham</p>	<p>State v. Parker, No. M2003-01423-CCA-R3-CD - Filed August 19, 2004</p> <p>Judge Welles rules that the affidavit from Kenneth Birdwell, indicating a defendant’s license was revoked on the date of the crime, is hearsay and is not a public record. The driving on revoked conviction is reversed. The need for such affidavits arose from Appellate decisions that driving records often cannot be introduced due to prejudice to the defendant. They often show prior violations.</p>	<p>State v. Rice, No. M2003-01294-CCA-R3-CD -Filed August 17, 2004</p> <p>A report of screeching tires resulted in officer Donald Prytle being dispatched to an area. He heard squealing tires and drove toward the sound. He saw a car matching the description of the complaint, a red Z28 Camero. His stop based on the complaint</p>
<p>Case Law Continued on Page 8</p>	<p>State v. Norman, No. W2003-00635-CCA-R3-CD - Filed August 5, 2004</p> <p>Defendant entered a plea to DUI third and then decided to challenge the two priors after he was sentenced to 150 days. The Court did not buy into the “I didn’t really mean to” mentality.</p> <p>Judge Smith wrote: "When the appellant pled guilty to “driving under the influence w/ 2 priors” he effectively accepted the validity of the two prior valid DUI convictions and admitted that he was guilty of DUI for the third time. That guilty plea effectively waived any non-jurisdictional defects or constitutional irregularities in the proceedings, including the possibility that the prior convictions could be used to enhance his punishment. In our opinion, any question as to the classification of the offense as a DUI third offense was waived by the guilty plea. Accordingly, we affirm the trial court’s decision to enhance the appellant’s DUI conviction by utilizing his two prior DUI convictions."</p>	<p>State v. Wright, No. W2003-01025-CCA-R3-CD - Filed August 12, 2004</p> <p>Field sobriety tests other than the HGN are not “scientific tests” requiring an expert witness. Thus the Trial Court was within its discretion when it rejected the defense attempt to call Williams Mitchell Taylor, a former Georgia SFST instructor to discredit the arresting officer.</p> <p>Note: Mr. Taylor was allowed to testify as an expert in field sobriety testing in <i>State v. Vance</i> by Judge Wyatt in Nashville. <i>Vance</i>, discussed in last issue, included Taylor’s testimony about the HGN and other SFST’s. <i>Vance</i> was tried in Davidson County. <i>Wright</i> was tried in Tipton County. This “expert” from Georgia appears to be seeing a lot of Tennessee.</p>
<p>State v. Roller, No. M2002-02911-CCA-R3-CD - Filed July 26, 2004</p> <p>This one serves as another reminder to insist on the use of the <u>Momon</u> procedure in which the defendant himself swears it is his decision to waive his right to testify. Without it we get to enjoy a retrial.</p>		

Recidivist Wall of Shame

Claud Simonton played football for the Big Orange from 1970-1972 and went on to play in the World Football League. Now he can watch the games on the Department of Corrections television. He killed his 81 year old mother when he drove impaired into a tree. He had six prior DUI's. He is serving an eight year sentence.

Joseph Bartos, 52, of Germantown pled guilty to DUI 12th offense in Dickson County. Bartos was traveling on I-40 west in the truck he had stolen from his girlfriend with a bottle of vodka and Memphis on his mind. He weaved from lane to lane and clipped the front end of a semi before spinning out and coming to a stop in the median. He refused all field sobriety and blood tests. His priors included nine convictions in Memphis as well as Mississippi and Arkan-

David N. Rowe, 42, was convicted in Macon County, Tennessee of DUI twelfth offense and driving on a revoked license for his eighth time. Rowe is serving 210 days in custody and agreed to be declared an habitual traffic offender. Deputy Bill Cothron, currently serving in Iraq, saw Rowe driving down the middle of Highway 52 in Macon County at about 6:30 p.m. Rowe told the deputy he had drunk either 3 or 7 beers. Rowe like most multiple offenders was driving on a revoked license and refused the breath test he was offered.

James Randy Dawson, 34, of White Bluff, Tennessee was recently convicted in Dickson County of DUI 9th offense, driving on a revoked license for the ninth time and violation of implied consent. He has served 155 days in custody for the felony DUI.

David Lawrence Buchanan, 40, consistently drives impaired in Washington County. He was indicted in March and pled guilty in August. His charges included two eighth offenses, evading arrest, driving on a revoked license for the 9th time, violation of implied consent and criminal impersonation. As a persistent felony offender he received a sentence of 4 years consecutive to all unexpired sentences. Fortunately the people of Washington County will get some relief from his dangerous adventures in driving.

Randy Neal Young, 42, pled guilty to his DUI 8th offense in Humboldt, Tennessee.

Raymond Rameriz Hazzard, of Dickson pled to DUI 8th offense, driving on revoked 5th offense and violation of the implied consent law.

16TH OFFENSE RATTLES LEGISLATURE

WKRN television in Nashville recently reported that an impaired driver was charged with his fifteenth DUI on a Friday night in August and was charged again the following Tuesday morning after a wreck at 8:00 a.m. State Representative Donna Rowland was quoted: "It was 8 am in the morning. My families are taking their children to school, they're heading off to work. We have a serious issue with this individual and looking at these habitual offenders." "The question is, what do we do with people who won't take personal responsibility, who don't learn the lessons when the punishment is applied to them?"

Funding DUI Treatment Courts will provide one answer. However, those that fail to respond to treatment need to be locked up a long time. Shouldn't the individual with 8 or more DUI's be punished with something more than a 1-2 year class E sentence? How about a gradual progression through the class ranges? Could 8th offense be a D felony? Twelfth offense a C felony? Sixteenth a B felony, etc. Representative Rowland is concerned even though this offense did not result in a death. Maybe some change will result.

BREAK DOWN THE WALL OF SHAME

SOLUTIONS FOR RECIDIVISM

GREENVILLE, TENNESSEE TRIES OUT A DUI COURT

Frustration can be a great motivator. Greenville, Tennessee, is a community of 15,000 in a county with 62,000 people. Court officials including the District Attorney, Public Defender, Sheriff, Police, Probation Officers, Clerks and the Judge were frustrated. They saw the same impaired drivers over and over again. They sentenced defendants to jail and probation and then saw them again with a new DUI. They began to search for solutions. The answer that is a work in progress is the Greene Count DUI Treatment Court.

BENEFITS TO GREENE COUNTY

The Treatment Court team states the benefits:

“The primary benefit of the DUI Treatment Court is the potential increase in public safety through the reduction of DUI recidivism. Any one of us could be the victim of a DUI crash. As opposed to other types of criminal activities, DUI defendants do not “choose” their victims placing each of us at risk to become a victim of this potentially devastating crime.

In addition, by reducing recidivism, we will save thousands of tax dollars that would have been spent on incarcerating repeat offenders. We will also save thousands of tax dollars that would have been spent to continue arresting and prosecuting these people.

Participants who complete the program will be responsible members of our community, appropriately supporting their family and saving county and state the costs of providing food, housing and medical care for their dependents. And since our participants will be working, which most untreated addicts find difficult to maintain, they will be producing income that will be spent primarily in this county, increasing sales tax revenues and adding support to our local businesses.”

PARTICIPATION LIMITED

Few DUI offenders qualify for the treatment court. They must be approved by a panel that includes the prosecutor, public defender, probation officer, clerk, representatives from the police and sheriff and the treatment provider. The panel eliminates those that don't appear willing to sacrifice to succeed. Participants spend less time in jail. However for at least a year, the offender is under a microscope. The offender agrees to a participant contract. Failure to comply with the contract results in extended jail time. No one may participate if involved in a wreck with injuries or if he has a felony charge pending, resisted or evaded arrest, has a prior violent felony, a pending weapons charge, is on probation or parole, won't work, won't study and get at least a G.E.D. or is mentally unable to comply with the rules.

BENEFITS TO OFFENDERS

The immediate benefit to those that participate is a reduced sentence. Each participant receives a one level reduction. A DUI third offender pleads to a DUI second and spends 45 days in jail instead of 120. A DUI second gets a DUI first and spends 10 days instead of 45. The greatest benefit comes with completion of the program and recovery from alcohol addiction. Participants can take back their lives and receive improvement in their quality of life. The children and spouse of the participant are less likely to suffer the indignities and injuries of living with an alcoholic.



*Judge Tom Wright,
General Sessions Judge of
Greene County, Tennessee*

**WHY WE STARTED THE DUI TREATMENT COURT
JUDGE TOM WRIGHT**

“It doesn’t take much experience as a Judge to become frustrated with repeat offenders and the lack of opportunities for substance abuse treatment in the criminal justice field. For years I have felt like I was treading water dealing with criminal cases in the General Sessions Court. There are not enough beds in the jail and the sentences are not long enough simply to deal with the problem by incapacitation. I had no answers to the problems I saw in Court. One of the biggest problems I saw was repeat DUI’s. When drunk drivers crash, they do not choose their victims and the results are often devastating - - shattering lives and destroying families. Lengthy jail sentences alone are not an effective solution to the problem because jail has no impact on the offender’s addiction. In order to make Greene County a safer place, we need to address the defendant’s alcohol or drug addiction as well as punish them for the offense. When funds became available for creating a “Drug Court” model program, I was excited about the possibility of a more effective response to the problem of multiple DUI’s.”

**TREATMENT COURT
DEMANDS
A TOUGH LOVE KIND
OF JUDGE**

Judge Tom Wright wants all his treatment court offenders to succeed. He recognizes that even a small infraction begins the road to failure. Small infractions are not lightly tolerated. Any consumption of alcohol results in an immediate 5 day sentence and loss of points. Missed appointments, deceit, and other indications of a lack of responsibility bring punishment.

Those that strive to do well, follow the rules and don’t make up excuses receive rewards. Offenders understand swift punishment and they appreciate praise.

GRADUATES

Judge Wright looks forward to the first graduation. If an offender graduates, he will have:

- 1) Spent time in jail;
- 2) Reported regularly to probation;
- 3) Attended a multitude of court sessions;
- 4) Attended treatment sessions;
- 5) Completed the 12 step recovery process;
- 6) Complied with more rules and regulations than ever before;
- 7) Paid \$10.00 per week toward costs of treatment, supervision and testing;
- 8) Paid for and completed DUI school;
- 9) Supported his/her children;
- 10) Eliminated all drugs and alcohol from his system, his house and his life;
- 11) Refused to associate with those that consume alcohol or drugs;
- 12) Passed numerous drug and alcohol tests;
- 13) Informed his physician of his status;
- 14) Complied with his individual course of treatment. This may have included anger management, therapy, parenting, domestic violence education and other obligations;
- 15) Agreed to random searches of self, home and vehicle.

RECIDIVISM

Will the graduate drink and drive again?

Jurisdictions that have DUI Courts have significantly reduced recidivism. They have not eliminated it. In Bernalillo County, New Mexico in two years recidivism was reduced from 28.5% to 15.5%. In Lansing, Michigan the drop was from 33% to 13%.

No convicted DUI offender should ever drink and drive again. Some will disappoint Judge Wright. Most will not. The success of the Greene County DUI Court and others like it will be measured on our roadways. Judge Wright and the team will never know what life may have been saved through their Efforts but Greene County will be a safer place to drive.

GHSO EXPANDS DUI PROSECUTOR PROGRAM

Federal Fiscal Year 2005 begins October 1st. The District Attorney Generals Conference is delighted with the news that the Governor's Highway Safety Office has agreed to fund a DUI prosecutor and coordinator in seven more Judicial Districts. With the renewal of grants for nine offices with existing DUI prosecutors, the GHSO will have funded one or more prosecutors in **sixteen** of the thirty-one judicial districts. Joining the specialized prosecutor grantees this year are the 6th District (Knox County), the 10th (Bradley), 11th (Hamilton), 17th (Fayetteville), 19th (Clarksville), 20th (Nashville) and the 22nd (Lawrenceburg). New attorneys should be coming on board this fall to specialize in the prosecution of DUI offenses.

Data gathered during this fiscal year indicates that those districts with specialized prosecutors have seen much success. Over thirteen hundred cases have been entered into a databank. Of these 84.72% (over 1100) have resulted in offenders being convicted as charged. Approximately 75% of those arrested also violated the implied consent law and refused to have their blood tested.

The twenty third judicial district had 501 arrests. Of those, 325 cases have been resolved and 258 resulted in convictions to the offense charged. In the fourth district 498 persons were arrested and 207 were found guilty as charged of the 250 cases so far resolved.



At several seminars this year officers and prosecutors have been trained in conducting the horizontal gaze nystagmus by eye doctors. The eyes hold no secrets. If a person is under the influence of a depressant the properly trained officer will know it. Dr. Karl Citek brings an eye camera to seminars. After volunteers consume alcohol under supervision of faculty and staff the officer in training watches the eye of the subject. Dr. Citek and other experts can watch the monitor to determine if the officer is seeing clues of depressant influence.

No question is so difficult to answer as that to which the answer is obvious.

George Bernard Shaw

Attorney General Opinions

To read the full opinion go to: <http://www.attorneygeneral.state.tn.us/opyear.htm>

Opinion No. 04-122

Judge's Authority to Order a DUI Offender to Attend an Exclusive State-Certified DUI School
QUESTIONS

1. If a county government has authorized the sheriff to enter into a contract with a state certified DUI school to provide the mandatory schooling required by Tenn. Code Ann. §55-10-403, may the probation order of a general sessions judge require a person convicted of driving under the influence to attend the sheriff's school to the exclusion of all other state-certified DUI schools?
2. May a general sessions court judge select, within his or her discretion, a certified DUI school and use such school exclusively to fulfill the requirements of Tenn. Code Ann. § 55-10-403?

OPINIONS

1. Yes. Tenn. Code Ann. § 55-10-403(a)(1) gives a general sessions judge the authority to choose a school in which a DUI offender may participate.
2. Yes. Tenn. Code Ann. § 55-10-403(c) provides that the judge has the discretion to impose any condition of probation which is reasonably related to the offense.



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Web Site:

This and all previous issues are available <http://tndagc.com/NL.htm>

Opinion No. 04-118

Admissibility of Laboratory Reports

QUESTION

Whether the affidavit accompanying a laboratory report, required pursuant to Tenn. Code Ann. § 40-35-311(c)(1), must be signed by the laboratory technician who performed the test?

OPINION

Yes. The statute appears to contemplate that the affidavit be from the laboratory technician who performed the test and who has personal knowledge of the accuracy of the items required by

Opinion No. 04-111

Constitutionality of a Specialty License Plate for DUI Offenders

QUESTION

Is a law requiring a person convicted of DUI to have a special license plate indicating that the offender was convicted permissible under the state and federal constitutions?

OPINION

Yes, such a law is permissible if it is not deemed to be a punishment. If it is deemed to be a punishment, it will nevertheless be permissible if the penalty imposed comports with federal and state protections against cruel and unusual punishment, and if the penalty is applied prospectively.

Horizontal Gaze Nystagmus For The Horizontal

Did you know the HGN is accurate even if a person is lying on his back? A peer reviewed study was conducted at the College of Optometry at Pacific University where ninety six volunteers were tested.

Conclusions: The HGN test administered in the standing, seated, and supine postures is able to discriminate impairment at criterion BACs of 0.08% and 0.10%. The VGN test can identify high levels of impairment at any test posture. Therefore, these tests can be used by an officer to determine if a driver is impaired, regardless of whether the driver is standing, seated, or supine.



Forced Blood Testing in Vehicular Homicide and Serious Bodily Injury Crashes

If there is probable cause to believe a driver was under the influence and caused the death or serious bodily injury of another party, the suspect can not refuse a blood test. T.C.A. 55-10-406(e) provides an exception to the implied consent refusal statute in cases of vehicular homicide and aggravated assault by an impaired driver. This exception allows the State to obtain the suspects blood by any means lawful. The following are quotes from the cases themselves followed by the entire cases.

(1) Dowdy

Vehicular homicide and vehicular assault cases are exempted from the inadmissibility provision of the failure to obtain consent. Tenn. Code Ann. § 55-10-406(e).

(2) Burnette

Such tests are admissible provided that the sample was taken by a properly trained person and handled through a proper chain of custody between the time the blood was drawn and the time it was analyzed.

(3) Copeland The State must prove by a preponderance of the evidence that:

- a) The officer compelling the extraction of blood from the accused has probable cause to believe that the accused committed the offense of aggravated assault or vehicular homicide while under the influences of an intoxicant or drug, and there is a clear indication that evidence of the accused's intoxication will be found if the blood is taken from the accused's body and tested;
- b) Exigent circumstances exist to forego the warrant requirement;
- c) The test selected by the officer is reasonable and competent for determining blood-alcohol content; and
- d) The test is performed in a reasonable manner.

(4) Jordan

Based upon legal analysis of this issue by both the United States Supreme Court and this Court in previous cases, as summarized herein, we conclude that Tennessee Code Annotated § 55-10-406(e) is constitutional. Our case law requires that specific procedures must be followed in obtaining a blood sample from a defendant charged with vehicular homicide and even allows the forcible taking of blood in certain situations. We are unpersuaded to overrule previous holdings by this Court on this issue.

5) Branch - In *State v. Ridge*, 667 S.W.2d 502, 505 (Tenn.Crim.App.1982), this Court held that Tennessee Code Annotated section 55-10-406 applies to tests conducted at the requests of law enforcement officers, rather than medical personnel. However, *Ridge* also clearly held that blood drawn pursuant to a medical request and analyzed for blood alcohol content may be properly admitted into evidence. *Id.* Moreover, in *State v. Goldston*, 29 S.W.3d 537 (Tenn. Crim.App.1999), we determined that records concerning blood test results performed after the defendant's motor vehicle accident were properly admitted in a DUI prosecution under the business records exception to the hearsay rule, where the records were medical reports compiled by medical personnel, the hospital's practice was to regularly compile such reports, the defendant's blood tests were performed in the course of regularly conducted hospital activities, and each report was prepared near the time of testing and admitted through testimony of the proper records custodian. *Id.* at 540. Although the defendant in *Goldston* was charged with DUI, rather than vehicular homicide, the rationale equally applies here.

CASE LAW (continued)

State v. Boxx, No. W2004-01104-CCA-R3-CD - Filed August 18, 2004

Imagine the saga of Brooks Yelverton. Brooks was hired in Memphis as a DUI prosecutor. He has an office in the basement (dungeon) of 201 Poplar Street. He never imagined the world of prosecution to be quite like it is. For years he had heard the defense lawyers rant about how every officer, TBI chemist or potential expensive expert witness was at the beck and call of the prosecutor. Instead he inherits a new and novel issue. If the officer sees a patron of a bar take a beer can out of his car and leave it on the ground, can the officer stop the patron as he drives away for littering? The Court of Criminal Appeals has answered affirmatively. Brooks let the defendant reserve the question for appeal. The littering law is the law and stopping a driver for littering is permitted. Kudos to Brooks and officer B.E. Copley.

DUI RECIDIVISTS POSE THREAT TO THE PUBLIC

This editorial first appeared in the Memphis Commercial Appeal

July 31, 2004

CLAUD SIMONTON has at least a half-dozen convictions for driving under the influence, but he doesn't have the worst driving record in Tennessee. Other nominees for what Tennessee prosecutors call the "Recidivist Wall of Shame" have racked up more than twice as many. Simonton's case offers a compelling argument, however, for intervention, treatment and tougher sentencing, in many cases, to prevent people with serious substance abuse problems from getting behind the wheel of a car.

The 53-year-old Covington man, was drinking - again, police say - on Jan. 16, 2002, when his car ran off the road in Frayser and crashed into a tree, fatally injuring his 80-year-old mother, Mary Nelson Hunt Simonton. The accident turned what would have been one more drunken driving incident into a case of vehicular homicide, and it will surely earn Simonton some jail time. He's out on bail now, with a possible eight-year prison term hanging over his head.

Criminal Court Judge James Beasley, Jr. will decide in September between incarceration or probation.

One of the tragic aspects of the case is that Simonton was driving with a .17 percent blood alcohol content - putting his mother at tremendous risk - despite six or seven previous convictions (records are sketchy) for driving under the influence, all of them in Tennessee. His driver's license had been suspended several times, but he stubbornly kept climbing behind the wheel.

As simple as it might seem to remove repeat offenders from the road, officials say it is complicated by the difficulty of keeping track of individual conviction records and the transfer of data from one jurisdiction to another.

Efforts to develop a set of special DUI prosecutors across the state and improve the flow of information from police to the courts and back should help improve things, eventually. Still, the record on some drivers suggests a lingering attitude toward drunken driving that still fails to recognize the deadly threat offenders represent to other motorists.

Records on Simonton reflect a pattern of plea bargaining that resulted in various charges being dropped or reduced. He spent some time in jail and a lot of time on probation. Nothing seemed to stop him from drinking or driving, however, during two lengthy stretches of his life: the early to mid '80s in Lauderdale County, and then again between 1996 and 2001 in neighboring Tipton.

If he had not crashed his car in 2002, he might have joined the "Recidivist Wall of Shame," a feature in Tennessee prosecutors' statewide newsletter that lists some of the more egregious examples: James Staggs of Lawrence County, with 15 drunken driving offenses; James Dixon of Washington County, with 12; Charles Deason of Waverly, who has 10.

The last few years have seen some improvement in Tennessee's approach toward DUI - lowering the threshold for arrest on DUI charges from .10 percent to .08 percent blood alcohol content, laws mandating more restrictions on repeat offenders and the like.

An electronic data-gathering pilot project at the University of Memphis called the Driving Under the Influence Information Tracking System promises to bring better efficiency to the flow of information about DUI cases to prosecutors in Tennessee.

Better tracking of repeat offenders should translate to tougher court sentences and more intervention aimed at keeping recidivists from driving.

Grants doubling the number of special DUI prosecutors across Tennessee have been issued by the National Highway Traffic Safety Administration through the Governors Highway Safety Office.

When substance abusers who drive demonstrate an unwillingness or inability to change their behavior, friends, family members, employers and co-workers also have a difficult but necessary role to play. They may be the first to see a need to intervene, and shouldn't hesitate to act when the problem drinker is clearly not in control of his or her impulses.

Drunken driving must be recognized as a serious threat to the public at large, not that different from waving a loaded gun on a crowded street or randomly setting fires in a neighborhood. The consequences are too often tragic.

M E M O R Y O F N O R M A B Y E R S

The Protecting Lives; Saving Futures course conducted in August in Kingsport was dedicated to the memory of Norma Byers and all victims of drunk driving. About a month prior to the course I called Jim Byers at the suggestion of 1st District victim witness coordinator Cathy Campbell. I asked Jim to come speak to our group and bring a picture of Norma. Jim created an incredible moving video that brought home to all the importance of identifying, arresting and convicting impaired drivers before they kill. Participants at the conference were invited to write the name of any victims of drunk driving they knew. A large list resulted. Each morning a moment of silence was dedicated to the memory of those listed.

VIDEO PUTS FACES TO VICTIMS OF DUI-RELATED CRASHES

By Becky Campbell Kingsport Times News

This story appeared in the Kingsport Times News August 10,2004

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KINGSPORT — Fifteen minutes after talking to his mom on March 18, 2003, Shannon Byers passed a fatal wreck on his way to pick up his children from school.

About three hours later, he learned from a Johnson City Police Department chaplain that his mother, Norma, died in that fiery crash on Interstate 181 near University Parkway. Byers then had to lie to his father on the phone to get him to come home. Jim Byers passed the same crash scene while driving home and somehow instinctively knew that his wife of 37 years was dead. The father and son have spent 16 months trying to heal from their loss, which was caused by a woman driving under the influence of prescription drugs.

Jim Byers, who owns a Christian book printing company, and some of his employees made a video to put a face with the story — the face of Norma Byers and how her death — and life — impacted their lives.

The Byers family showed the video to local law enforcement and district attorneys attending a four-day seminar in Kingsport on field sobriety testing.

“I wish I could tell you how to do your job, but I can’t,” Jim Byers told the group. “I wish there was a way we could come up with a solution to all of this.”

Putting his wife’s life on a 15-minute video may be the only way to show what happens beyond a DUI crash scene, he said. “It’s the only thing I could give you,” he told the officers and prosecutors at the seminar. “Norma was a beautiful lady. She was even more beautiful on the inside,” he said.

Before starting the video, Jim Byers asked everyone if they could remember what they were doing March 18, 2003. Then he asked them to close their eyes and visualize a loved one. “Visualize your last moment with them. What did you say to them and what were the last words they said to you?” he asked.

“How would your life be different without them and what if you could never see or touch them again?”

In the background, the 1967 hit “Happy Together” by The Turtles begins to play as photographs of Jim and Norma as young adults flash on the screen.

The photos go quickly at first.

Imagine me and you, I do

I think about you day and night, it’s only right

To think about the girl you love and hold her tight

So happy together

If I should call you up, invest a dime

And you say you belong to me and ease my mind

Imagine how the world could be, so very fine

So happy together

(continued next page)

M E M O R Y O F N O R M A B Y E R S (continued)

The life Jim and Norma had together, it seems, was meant to be from the beginning. As children, the two grew up in the same neighborhood and attended the same schools until Norma's family moved away. "She graduated from Elizabethton and I graduated from Happy Valley," he said after the presentation. But one day after high school, he saw a beautiful woman walking down the street and realized it was Norma. He called her, and two years later they married.

"She was everything a man could ask for in a lady," he said.

I can't see me lovin' nobody but you

For all my life

When you're with me, baby the skies'll be blue

For all my life

The video photos, which Jim later said came from "going through our photo albums," flash quickly through the Byers's' life together — happy times depicting their marriage, their son Shannon as he grew up, family vacations and picnics, their grandchildren and more family vacations.

Me and you and you and me

No matter how they toss the dice, it has to be

The only one for me is you, and you for me

So happy together

As the photos progress toward the time of Norma's death, the picture show slows, and the song abruptly ends when a photo of the vehicle crash appears.

The Mercedes that hit Norma's truck has visible damage where it smashed into the truck. The impact caused the truck to burst into flames.

Norma's truck — like her body after rescuers got her out of it — is not recognizable.

Jim's fear is confirmed when he arrives home and sees the police waiting.

Months later the woman who killed Norma pleaded guilty to vehicular homicide and to a previous DUI charge — her second offense. She was sentenced to nine years in prison.

"I find it hard to believe that killing someone with a bullet and killing someone with a vehicle have a different punishment," Shannon Byers said on the video.



PROTECTING LIVES, SAVING FUTURES Class in Kingsport, TN, August 16-19, 2004. Pictured are faculty members and participants.

CRASH RECONSTRUCTION COURSE

Friday, September 3rd was the final day of an intensive 80-hour, two-week training course for 25 Southeast Tennessee police officers on accident and vehicular homicide investigations.

Sheriff Dan Gilley told the graduating officers that traffic investigations by local officers have come a long way since his career began nearly 30 years ago.

"When a county deputy or a smaller town officer would roll up on a (traffic accident with injuries or fatalities), what was the standard operating procedure? You would get out. You would try to keep the traffic flowing, and who were you waiting on? The state trooper," Sheriff Gilley said.

The officers completing the course Friday, he said, have professional backgrounds. "And that's the kind of service we want to give folks who are involved" in traffic injury or fatality investigations, the sheriff said.

Lt. W.G. Campbell said the officers came from Hamilton County, Chattanooga, Cleveland and Bradley County, Red Bank, Rhea County and Etowah, TN.

"The course is designed around an IPTM (Institute of Police Technology and Management) curriculum out of the University of North Florida," Lt. Campbell said after the ceremony. "It is designed to give the responding officers a little bit more knowledge of crashes when they arrive at the scene."

The officers learn to use mathematics and physics as they draw diagrams to scale. The course also helps officers get a better understanding of what went on in crashes that involve deaths that they can use later in court, he said.

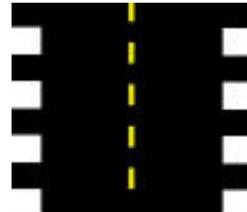
All officers get eight to 16 hours on basic accident investigation, Lt. Campbell said. The course here, he said, goes to the next level of preparedness.

Two more advanced steps, advanced crash investigations and re-construction of accident scenes, will be offered later this year and next year, he said.

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Bradley County Sheriff Dan Gilley



Were you driving down the road if you leave it and land in a ditch?

THE ROAD/PUBLIC ACCESS DEFENSE

During the last quarter I have received requests from several ADA's concerning "public access". In various parts of the State defense attorneys have claimed that the client was not on any of the public roads, streets, alleys and highways or any other premises generally frequented by the public at large required for DUI

violations.

Several cases define public access. In State v. Hodge, a 2002 decision of the Court of Criminal Appeals **No. M2001-03168-CCA-R3-CD** the defendant claimed he was not driving or in physical control in an area generally frequented by the public, because he was stuck in a field at the bottom of a steep

embankment. He was 80-90 feet from the road. The Court rejected the argument and advised that the totality of the circumstances be examined.

Common sense should teach us that Hodge's vehicle did not land at the bottom of the embankment without being driven. There were no helicopters in the area.

MORE KILLED ON TENNESSEE ROADS IN 2003

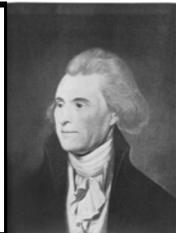
IMPAIRED DRIVING TRAFFIC FATALIES DECREASE.

Statistics received from NHTSA indicate that sixteen more people died on our roads in 2003 than in 2002. The number of people killed rose from 1,177 to 1,193. The number killed in Alcohol related crashes decreased from 485 to 447.

		2002			2003				
S O U T H E A S T S U M M A R Y	State	Total Fatalities	Alcohol related fatalities	% Alcohol related	Total Fatalities	Alcohol-Related fatalities	% Alcohol related	Change in Alcohol related	% Change Total Fatalities
	Alabama	1038	410	39%	1001	415	41	+5	+1.2%
	Arkansas	640	241	38%	627	254	41%	+13	+5.4%
	Florida	3136	1279	41%	3169	1274	40%	-5	-0.4%
	Georgia	1524	533	35%	1603	488	30%	-45	-8.4%
	Kentucky	915	302	33%	928	276	30%	-26	-8.6%
	Louisiana	907	427	47%	894	406	45%	-21	-4.9%
	Mississippi	885	335	38%	871	320	37%	-15	-4.5%
	South Carolina	1053	549	52%	968	488	50%	-61	-11.1%
	Tennessee	1177	485	41%	1193	447	37%	-38	-7.8%
Virginia	914	379	41%	943	364	39%	-15	-4.0%	
West Virginia	439	179	41%	394	148	37%	-31	-17.3%	

The care of human life and happiness, and not their destruction, is the first and only object of good government.

Thomas Jefferson



DRUGS AND ALCOHOL IN THE EMERGENCY ROOM

DAWN, the DRUG ABUSE AWARENESS NETWORK, collects data from 437 Emergency Rooms across the country. The DAWN report can be viewed at www.Dawninfo.net

The 2002 Summary:

In 2002, there were 670,307 drug abuse-related Emergency Department episodes in the coterminous U.S., with 1,209,938 drug mentions (on average, 1.8 drugs per episode)

Alcohol is reportable to DAWN only when present in combination with another reportable drug.

Among the major substances of abuse, the highest rates of Emergency Department drug mentions in 2002 occurred for the following substances:

- Alcohol-in-combination (81 mentions per 100,000 population),
- Cocaine (78),
- Marijuana (47), and
- Heroin (36).

Alcohol-in-combination was mentioned in 31 percent of ED drug episodes in 2002 (207,395 mentions) and remains the most common substance reported in drug-related ED visits (Table 2.2.0 and Figure 3). Alcohol is reported to DAWN only when present in combination with another reportable drug, so the actual number of alcohol-related ED visits is higher than the DAWN estimate for alcohol-in-combination episodes.

Mentions of alcohol-in-combination were statistically unchanged from 2001 to 2002, but have increased 24 percent (from 166,897 mentions) since 1995 (Table 2.2.0 and Figure 3).

COCAINE, HEROIN, MARIJUANA

Cocaine continues to be the most frequently mentioned illicit substance, present in 30 percent of ED episodes (199,198 mentions) in 2002. Cocaine was followed in frequency by marijuana (18%, 119,472 mentions), and heroin (14%, 93,519 mentions).

Cocaine, heroin, and marijuana mentions were statistically unchanged from 2001 to 2002.

About one-fifth of the cocaine mentions in 2002 (21%, 42,146 mentions) were attributed to "crack." This number has been stable since 1995. Most cocaine mentions (78%, 155,381) were reported to DAWN simply as "cocaine," and it is not possible to determine what proportion of these might be crack. Mentions that were reported simply as "cocaine" increased 54 percent from 1995 to 2002 (from 101,043 to 155,381), but did not increase from 2000 to 2002, or 2001 to 2002. Taking changes in population into account, from 1995 to 2002, cocaine mentions increased 33 percent (from 58 to 78 mentions per 100,000 population). Also during this period, heroin mentions increased 22 percent (from 30 to 36), and marijuana mentions increased 139 percent (from 19 to 47).



Powder
cocaine



Heroin

DRUGS AND ALCOHOL IN THE EMERGENCY ROOM (continued)

AMPHETAMINES AND METHAMPHETAMINE

In 2002, amphetamines and methamphetamine were each mentioned in 3 percent of drug abuse-related ED episodes (21,644 mentions of amphetamines; 17,696 mentions of methamphetamine) Only rarely were they reported together in the same ED visit, and it is not possible to know the accuracy of distinctions between them. Most mentions of amphetamines (93%) are reported simply as "amphetamine," while methamphetamine mentions are most frequently identified as "methamphetamine" (66%) or "speed" (13%). Together amphetamines and methamphetamine accounted for 39,340 mentions in 2002.

From 1995 to 2002, mentions of amphetamines increased 126 percent (from 9,581 to 21,644), and the rate of amphetamine mentions increased 105 percent (from 4 to 8 mentions per 100,000 population). From 2001 to 2002, mentions of amphetamines rose 17 percent (from 18,555), and the rate of mentions of amphetamines increased 15 percent (from 7 to 8 mentions) (Table 12.2.0). Methamphetamine mentions were statistically unchanged from 2001, 2000, or 1995. This stability masks a period of great fluctuation in methamphetamine ED mentions during the late 1990s.

Other Trends

Among the less frequently mentioned major substances of abuse (Table 2.2.0):

- Mentions of inhalants increased 187 percent (from 522 in 2001 to 1,496 in 2002), returning to the level observed in 2000.
- Mentions of PCP increased 25 percent (from 6,102 to 7,648) from 2001 to 2002.
- Mentions of LSD continued to decline, with a 68 percent decrease from 2001 to 2002 (from 2,821 to 891).
- No significant changes were evident for miscellaneous hallucinogens from 2001 to 2002 (from 1,788 to 1,428).

THE POLICE ENCOUNTER

Emergency room physicians and nurses discover the chemical content in an injured person by taking a history, blood pressure, body temperature, examining eyes, smelling odors and observing the actions of the patient.

As an officer approaches a car that has been stopped due to suspicious driving he does not know what the driver may have consumed. Different drugs have different effects. Will this driver be cooperative? Will he be agitated? Will he become violent? The DAWN study teaches us that a great number of persons that visit the Emergency Room and have drugs in their system combine their drugs with alcohol. This often makes each more potent. The officer must be careful and maintain control.

DRUG/ALCOHOL COMBINATIONS IN COURT

Current Tennessee law forces the officer to select a breath or a blood test. The data from DAWN indicates we should opt for blood. Breath Alcohol tests do not detect drugs. Many impaired E.R. visitors combined drugs and alcohol. It is very likely that many DUI offenders that get stopped before needing an ER Doctor do the same.

