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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.*

2025 LEGISLATIVE UPDATE

Here are this year's recently passed legislative acts regarding traffic safety:

Public Chapter #55 (Vehicle seizure for license plate flipper)

A vehicle may be seized or impounded if a license plate flipper is installed on it. Vehicle owner must be allowed an opportunity to safely remove the plate flipper. If removed, the license plate flipper will be seized. Effective March 26, 2025.

Public Chapter #77 (Hemp product sales restriction)

It is a minimum 48 hour jail sentence and \$500 fine for the A misdemeanor offense of selling a hemp-derived product to anyone under 21 or allowing an employee under 21, access to hemp-derived products. Effective July 1, 2025.

Public Chapter #88 (Laser pointers at vehicles)

It is a class B misdemeanor to point a laser at anyone operating an automobile, boat, aircraft or other motor vehicle. Effective July 1, 2025.

Public Chapter #157 (Law Enforcement's Safer Tennessee Electronic Registration (LESTER) Act)

A law enforcement officer must accept an electronic display of the vehicle registration, unless the image is not clear or the officer believes the image is fraudulent or inaccurate. Effective July 1, 2025.

Public Chapter #160 (No Officer liability for damages if person injured is convicted of resisting stop, frisk, halt, arrest or search)

An officer who causes property damage or inflicts personal injury upon a person during the course of the officer's official duties is immune from civil liability if at the time the damage or injury occurred, the person was engaged in conduct that resulted in conviction for the offense of resisting a stop, frisk, halt, arrest, or search of the person. Effective March 28, 2025.

Public Chapter #167 (Court facility dogs can be used for witnesses)

A court may allow a court facility dog to accompany a victim or witness while testifying during court proceedings. Effective April 11, 2025.

Public Chapter #191 (Law Enforcement agencies shall provide alcohol related crash information to ABC upon request)

A law enforcement agency shall provide records related to a crash, the persons involved in such crash, and persons involved in providing or selling alcoholic beverages to persons involved in a crash upon receipt of a request for such records by the alcoholic beverage commission. Effective April 11, 2025

(Continued on page 2.)



2025 LEGISLATIVE UPDATE (Continued)

Public Chapter #262 (Hearsay allowed at Bail hearings)

Magistrates are allowed to consider reliable hearsay during bail hearings to determine a person's reasonable assurance to appear, while at the same time protecting the safety of the public. Effective April 24, 2025.

Public Chapter #269 (Indigency for Ignition Interlock funds if receiving certain funding)

A person required to install an ignition interlock device will be determined to be indigent if they receive funds from supplemental nutrition assistance (SNAP), temporary assistance for needy families (TANF), or state Medicaid funds. Effective April 24, 2025.

Public Chapter #288 (Driver's licenses issued to illegal aliens are not valid in Tennessee)

It is a class B misdemeanor to operate a motor vehicle in this state with a driver's license from another state that is issued exclusively to illegal aliens. Effective January 1, 2026.

Public Chapter #327 (TBI reporting of DUI cases with negative lab results)

From 2026 to 2029, on January 1 of each year, The Tennessee Bureau of Investigations will report, to the legislature, instances of arrests for DUI in which no drugs or alcohol intoxicants were detected in the person's blood or breath. Effective May 2, 2025.



Public Chapter #354 (Notification of legal proceedings)

TCA 40-38-507 provided for the Tennessee Sheriff's Association to establish a notification system to provide timely information regarding criminal proceedings to interested parties. This statute removed the termination date and made this system permanent. Effective May 2, 2025.

Public Chapter #356 (No handgun permits if DUI conviction)

Clarifies that no handgun permits will be issued or renewed if a DUI conviction occurred within five (5) years of the date of the handgun application or renewal (or within ten (10) years of two (2) or more DUI convictions.) The age of a handgun applicant was lowered to eighteen (18) years of age. Effective May 2, 2025.

Public Chapter #403 (Extends penalty for implied consent refusal, adds oral fluid testing)

The driver's license refusal penalty was extended to one (1) year and six (6) months (for first time offender) if the driver refuses to submit to a blood test. A refusal of the implied consent statute will be a violation, even if a blood sample is later obtained by other lawful means. Oral fluid testing may be administered roadside under certain circumstances. Driver's license restrictions were extended for vehicular assaults and vehicular homicides. Some parts effective on May 5, 2025 and the rest on January 1, 2026.

Public Chapter #409 (Giving false identification, transporting in a box truck prohibited)

It is a class C misdemeanor to intentionally give false or fictitious identification to an officer who has lawfully detained or arrested the person. It is a class B misdemeanor to approach within twenty-five (25) feet of an officer, after being ordered to stop approaching, if the officer is lawfully engaged in the execution of official duties. It is a class B Misdemeanor to transport passengers in the cargo area of a truck or van. It is a class B Misdemeanor to affix or attach a sign, signal or marketing to a bridge, overpass, or tunnel without permission. Effective July 1, 2025.

(Continued on Page 3.)

2025 LEGISLATIVE UPDATE (Continued)

Public Chapter #430 (Decreases enhancement level of BAC from .20 to .15 for AVA and AVH)

The BAC level used to enhance an aggravated vehicular assault and/or an aggravated vehicular homicide is lowered from .20% to .15%. Effective July 1, 2025.

Public Chapter #439 (Possession of a used, detached catalytic converter is a class A misdemeanor)

Possession of a used, detached catalytic converter is amended from fine only to a class A misdemeanor with a fine up to \$2,500. Effective July 1, 2025.

Public Chapter #451 (Creation of a committee to study a “Distance to Drive” program)

This creates a committee to study the feasibility of implementing a “Distance to Drive” program to reinstate suspended and revoked driver’s licenses for those who complete all the requirements of the program. The committee will evaluate the best practices of drug treatment courts, mental health treatment courts, and veteran treatment courts. Effective July 1, 2025.

Public Chapter #468 (Illegal to harm or threaten to harm individuals involved in the judicial process)

This amends TCA 39-16-510(a) and clarifies that it is a class E felony to harm or threaten to harm any individual involved in the judicial process, or their family members, with the intent to impede, intimidate, interfere with, or retaliate against the individual in connection to their involvement in the judicial process. The list of individuals protected includes jurors, judges, clerks, attorneys, prosecutors, law enforcement officers, or employees of these individuals. Effective July 1, 2025.

Public Chapter #472 (Makes Child abuse, neglect or endangerments a class E felony)

This amends TCA 39-15-401(a) from a class A misdemeanor to a class E felony. Effective July 1, 2025.

Public Chapter #504 (Limits points assessed for driving on a cancelled, suspended or revoked DL)

This limits the number of points to four (4) that can be assessed for driving on a cancelled, suspended or revoked driver’s license. Effective July 1, 2025.

Public Chapter #526 (Regulations on the manufacture, distribution or sale of hemp-derived products)

Amends TCA 57-7-101, et. al. All hemp-derived products are forbidden for manufacture, distribution or sale unless specifically provided in this chapter. Includes any cannabinoids derived from hemp in greater than 0.1% (Includes delta-8, delta-10, THCV and others). A license is required and it is prohibited to allow anyone under twenty-one (21) years of age to buy, possess, handle or receive these products. Cannot operate any vehicle while under the influence of a cannabinoids. Many other regulations. Effective January 1, 2026.

Lethal Weapon/Vehicular Homicide

The TSRPs from Tennessee and Kentucky presented a Lethal Weapon/Vehicular Homicide seminar in Pigeon Forge, TN, on April 28-May 1, 2025. Over 50 law enforcement officers and prosecutors from Tennessee and Kentucky participated in a mock crash and many classes presented by Professor John Kwasnoski. Next years’ seminar will be in Kentucky.



ORAL FLUID TESTING IN TENNESSEE



In 2025, the Tennessee Bureau of Investigation received a grant for 25 Abbott Sotoxa, road-side oral fluid testing devices, to be provided to Tennessee Law Enforcement. In coordination with the Tennessee Highway Safety Office, those devices are presently being distributed to law enforcement officers around the state. At present, 24 states authorize roadside oral fluid testing for drugs, in some form for DUI testing, and several states, including Alabama, Michigan, and Indiana have fully incorporated roadside oral fluid testing into their DUI investigations (California and Wisconsin are awaiting statutory changes). This past legislative session, the Tennessee Legislature amended Tenn. Code Ann. § 55-10-406 in the following two ways (effective May 5, 2025)¹:

Tennessee Code Annotated, Section 55-10-406(b) was amended by adding a new subdivision (b)(3), following subdivision (b)(2), as follows:

“(b)(3) Oral Fluid tests may be administered under the following circumstances:

- (A) The operator's consent to submit to oral fluid tests;
- (B) A search warrant;
- (C) Incident to a lawful arrest for any of the offenses set out in subsection (a); or
- (D) Without the consent of the operator if exigent circumstances to the search warrant requirement exist.”

AND by adding a new subdivision, which reads:

“The result of an oral fluid test conducted in accordance with this section shall be admissible in evidence at the trial of any person charged with an offense specified in subsection (a).”



The Abbott Sotoxa devices will be distributed to trained law enforcement officers, along with a policy manual, developed by the Tennessee Highway Safety Office (in consultation with law enforcement agencies, the TBI and the District Attorneys General Conference). It is expected or anticipated that these testing devices will be used in cases, after an officer has developed probable cause that a driver is intoxicated to the level that they are unable to safely operate a motor vehicle, to further develop specific information about recent drug intoxicant use, which could then be used to apply for a search warrant to obtain blood evidence. The Abbott Sotoxa device, has been tested by TBI and by other agencies, and has performed with a very high degree of accuracy. This device will detect recent use of Marijuana, Amphetamines, Benzodiazepines, Cocaine, Methamphetamine, and Opiates.

The operation of the device is fairly simple. A swab of a suspect's cheek is taken by a sterile and sealed swab (pictured above), which indicates when a sufficient sample of oral fluid has been collected. The sample is then inserted into the Sotoxa device. In approximately five minutes, the device indicates positive or negative for any of six intoxicant categories detected in the sample. (Continued on page 5.)

ORAL FLUID TESTING IN TENNESSEE (Continued)

In August of 2023, the *Journal of Analytical Toxicology* published a 5-year review conducted by the Alabama Department of Forensic Sciences.² The study noted that over five years, drug prevalence was 77% when the blood alcohol concentration BAC was <0.08%, and 50% when the BAC was >0.08%, highlighting polydrug use among drivers. One of the oral fluid testing devices used in this study was the Abbott Sotoxa device. The Abbott Sotoxa indicated a 97-99% accuracy for the six drug categories. (Cocaine 98%, THC 99%, Opiates 98%, Benzodiazepines 98%, Methamphetamine 99%, and Amphetamines 97%). The device has a specific cutoff threshold before it will indicate a positive result. Therefore, false positives are extremely rare (this study indicated no false positives for THC and opiates). The study highlighted that since the oral fluid device detects the active, parent drug, it reflects only recent use. Combined with the three investigative stages of a DUI investigation (vehicle in motion, personal contact, and pre-arrest screening), oral fluid testing will be an additional tool for determining if a drug intoxicant is involved and if a blood sample should be requested. Analyzing blood and oral fluid allows for collecting more data regarding recency of use and identifying the substance or substances likely contributing to the impairment.

An oral fluid sample will be obtained in the same manner that a breath sample is currently obtained in a DUI case (Consent, a search warrant, incident to a lawful arrest, or if exigent circumstances to a search warrant requirement exist). Regarding a search incident to a lawful arrest, the U.S. Supreme Court, in *Birchfield v. North Dakota*, 579 U.S. 438 (2016), stated, “In prior cases, we have upheld warrantless searches involving physical intrusions that were at least as significant as that entailed in the administration of a breath test. Just recently we described the process of collecting a DNA sample by rubbing a swab on the inside of a person's cheek as a “negligible” intrusion. *Maryland v. King*, 569 U.S. 435, 446 (2013). We have also upheld scraping underneath a suspect's fingernails to find evidence of a crime, calling that a “very limited intrusion.” *Cupp v. Murphy*, 412 U.S. 291, 296, 93 S.Ct. 2000, 36 L.Ed.2d 900 (1973).” *Id.* at 462. Therefore, our legislature has indicated that a mouth swab, obtained for testing intoxicants, can be obtained as part of a search incident to a lawful arrest, similar to a breath test, in a DUI case.

Since the oral fluid device essentially consumes the sample collected for the oral fluid test, follow up or confirmatory testing would require the collection of a blood sample, pursuant to consent, a search warrant, or after establishing that exigent circumstances to the search warrant requirement exist. Also, the oral fluid device only indicates a positive or negative result, at certain thresholds, and unlike a blood test, the device does not provide a quantitative result. Therefore, obtaining a blood sample is still the best evidence to indicate the presence and level of a drug intoxicant. Still, we anticipate these oral fluid devices will be extremely helpful in developing accurate and recent evidence in DUI cases, where a drug intoxicant is involved.

1. See Public Chapter 403 (SB 1400/HB 1204).

2. Implementation of the first comprehensive state oral fluid drug testing program for roadside screening and laboratory testing in DUID cases—A 5-year review, Curt E. Harper, Jason S. Hudson, Kristen Tidwell, Rebekah Boswell, Hui Liu Yong, Antoinette J. Maxwell, *Journal of Analytical Toxicology*, 2023, 47, 694-702; DOI: <https://doi.org/10.1093/jat/bkad051> (August 1, 2023).

RECENT DECISIONS



State v. Valerie Garrett, 2025 WL 1455843 (Reasonable Suspicion to Stop/Failure to Maintain Lane)

At approximately 2:53 a.m., on September 6, 2022, Ms. Garrett was operating her Chevrolet Camaro southbound on Hollywood Boulevard in Jackson, Tennessee, when Deputy Jacob Nickell of the Madison County Sheriff's Office observed her to twice cross the centerline and then cross the segmented lane dividing line while making a left onto North Parkway. At a contentious suppression hearing (defense counsel argued that the police report did not indicate all of the conduct that the deputy testified to at the hearing, specifically the violations during the turn), the deputy testified to the facts described above, the video of the stop was entered into evidence, and the trial court denied the motion to suppress. Ms. Garrett was convicted at a bench trial, of driving under the influence, third offense, and failure to maintain her lane of travel. Ms. Garrett appealed, arguing that the trial court should have suppressed the reasonable suspicion for the stop.

“ ‘[R]easonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause’ and ‘can arise from information that is less reliable than that required to show probable cause.’ ” *State v. Hanning*, 296 S.W.3d 44, 49 (Tenn. 2009) The Court of Criminal Appeals stated that, while they are bound by the trial court's findings of fact, when there is video evidence, the CCA is “[e]qually as capable as the trial court of reviewing” the video.” *State v. Binette*, 33 S.W.3d 215, 219 (Tenn. 2000). After reviewing the video, the court was able to tell that there were two instances of Ms. Garrett's vehicle at least touching the yellow turning lane's center lines and that Ms. Garrett's vehicle also touched upon the segmented dividing line, while executing the left turn. The CCA determined that the angle of the deputy's camera prevents the court from definitively determining that the vehicle's line touches are actually line crosses, but, for the same reason, the video does not definitively refute the deputy's testimony, nor does it refute the trial court's findings. Therefore, the trial court's findings of fact are binding on the CCA. The CCA affirmed the trial court's ruling that the deputy had probable cause to believe that Ms. Garrett had violated Tenn. Code Ann. § 55-8-123(1) by failing to maintain her lane and the deputy had “reasonable suspicion, supported by specific and articulable facts” to conduct an investigatory stop to determine, whether Ms. Garrett was driving while impaired, *See State v. Smith*, 484 S.W.3d 393, 401 (Tenn. 2016) (quoting *Binette*, 33 S.W.3d at 218); *See State v. Patterson*, No. M2010-02360-CCA-R3-CD, 2011 WL 3668845, at *3 (Tenn. Crim. App. Aug. 22, 2011), *no perm. app. filed*, (holding lack of definitive video proof that the defendant crossed the line marking the lane of travel due to the low lighting and the angles from which the video was recorded, does not preponderate against the trial court's ruling that the officer, whose testimony that the defendant crossed the line was accredited, had reasonable suspicion to stop the defendant).

State v. Johnathan V. Duncan, 2025 WL 1219791 (Sleeping Jurors/Right to a Fair and Impartial Jury)

Although this case does not involve an impaired driver, it does involve important issues that occasionally occur during impaired driving jury trials. Mr. Duncan was convicted by a jury of first degree murder, felony murder, and aggravated robbery. The trial court sentenced him to an effective sentence of life imprisonment. Mr. Duncan appealed his convictions, based partially upon his right to a fair and impartial jury, which was violated because jurors slept during the trial, the trial court required the jury to work “extensive and unreasonable hours,” and the trial court interfered with the jury by holding ex parte meetings.

Mr. Duncan complained that jurors were sleeping, during the four-day jury trial, specifically during the replay of a video of a witness's interview. Although the trial court commented that four jurors were “full on asleep” during the video of Mr. Felton's interview, the defense did not object and the trial court did not make a specific finding. The trial court turned on the lights in the courtroom and encouraged the jurors to stretch or take a break. At the motion for new trial, the trial court found that only one juror, Juror Number Five, was asleep and that a few other jurors had their eyes closed. The trial court explained that by agreement of the parties, Juror Number Five was removed from the jury at the conclusion of the trial. (Continued on page 7.)

RECENT DECISIONS (Continued)

Not only does the record fail to reflect how long the juror was sleeping and/or what proof he missed, the record reflects that this juror was removed prior to deliberation. Therefore, Mr. Duncan cannot show prejudice necessary to establish that a substantial right was affected.

Mr. Duncan also complained that the trial court erred by requiring the jury to work extensive hours. In violation to his right to a fair and impartial jury. The trial took place over the course of four days. The first day started at 9:00 a.m. with jury selection and concluded at 6:21 p.m. At some point during that first day, during the video of Mr. Felton's interview, at least one juror fell asleep. The second day began at 9:06 a.m. and ended at 5:14 p.m. The third day started at 9:44 a.m. and ended at 5:38 p.m. The fourth and final day began at 8:04 a.m. and concluded at 9:05 p.m. with the verdict. During the trial, the trial court frequently discussed the timing of the proceedings with trial counsel, especially on the last day of trial, where the trial court allowed the jury to take multiple breaks, even telling the jury if they needed more time to deliberate, they were "welcome to deliberate into the next day." Our Supreme Court has determined that the "correct legal standard for reviewing whether a trial court errs in conducting late-night proceedings" as abuse of discretion. *State v. Walls*, 537 S.W.3d 892, 905 (Tenn. 2017). The CCA determined that the trial court did not abuse its discretion and Mr. Duncan could not argue plain error because he did not object at the time and he could not satisfy the factors required to argue plain error. The judgments of the trial court were affirmed.

State v. Aaron Joseph Van Arsdale, 2025 WL 1219791 (Motion to Suppress/Untimely Blood Draw)

On June 5, 2021, Mr. Van Arsdale met the victim, Theresa Mascolo, at the Froggy and Jethro's bar in Spring Hill. Ms. Mascolo had her designated driver abandon her at the bar, when the driver got into an argument and left. Mr. Van Arsdale drove Ms. Mascolo on his motorcycle. Mr. Van Arsdale crashed when the roadway turned right and he proceeded straight. Ms. Mascolo was thrown from the bike and suffered severe injuries, including fractured vertebrae in her neck and back, a fractured scapula and a stick was removed from her neck. Trooper Thompson, a DRE, responded to the scene and observed many signs of impairment during SFSTs and his investigation. Mr. Van Arsdale had .76 grams of cocaine in a baggie in his pocket. A blood draw was taken approximately three hours after the crash. The blood results indicated a BAC of .135% and the inactive metabolite for cocaine, benzoylecgonine. Mr. Van Arsdale filed a motion to suppress, based upon the delay in getting the blood draw. The motion was denied. A jury convicted Mr. Van Arsdale of Vehicular Assault, DUI second offense, Simple Possession of Cocaine, and Failure to Exercise Due Care. He appealed.

Mr. Van Arsdale argued that the delay in drawing his blood was unreasonable and that the delay prejudiced the accuracy of the testing. He argued that the blood draw was too remote in time to prove the actual BAC at the precise time of the wreck. Unfortunately, the defense did not include a transcript of the suppression hearing and they failed to support the issue with citation to the record or with argument. When a party seeks appellate review, he has a duty to prepare a record that conveys a complete account of what transpired as to the issues forming the basis of his appeal. *State v. Ballard*, 855 S.W.2d 557, 560 (Tenn. 1993). "When the record is incomplete, or does not contain the proceedings relevant to an issue, this [c]ourt is precluded from considering the issue." *State v. Miller*, 737 S.W.2d 556, 558 (Tenn. Crim. App. 1987). The CCA ruled that Mr. Van Arsdale waived this issue.

Mr. Van Arsdale also argued insufficiency of the evidence, because the evidence did not demonstrate his intoxication caused the wreck. The CCA stated, "Our standard of review for a sufficiency of the evidence challenge is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also* Tenn. R. App. P. 13(e). The evidence showed that Mr. Van Arsdale exhibited signs of intoxication and he failed to negotiate a curve on a dry and level road. The CCA determined that the victim's injuries were the proximate result of Mr. Van Arsdale's intoxication. Mr. Van Arsdale is not entitled to relief. The convictions were affirmed and a restitution order was modified.



UPCOMING TRAINING

THE UPCOMING TNDAGC DUI TRAINING SCHEDULE

Cops in Court - July 10, 2025, THP Training Center, Nashville, TN

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 from 1 p.m. to 4 p.m.

Drugged Driving Trial Academy - July 16-18, 2025, Chattanooga, TN

This three-day seminar is designed to train prosecutors in all aspects of prosecuting drugged driving cases. The agenda includes Ethics, Protecting victims, Charging decisions, Sentencing, Motions, How to understand and present impairment evidence in court, and How to develop and improve courtroom skills and strategies.

Tennessee Lifesavers Conference– August 6- 8, 2025, Nashville, TN

The Tennessee Highway Safety Office is presenting the TN Lifesavers Conference at the Sonesta in Nashville. There will be many classes on Impaired Driving, including Pre-Conference, DRE in-service classes.

Protecting Lives/Saving Futures - August 26-28, 2025, Nashville, TN

This three-day seminar is designed to jointly train law enforcement officers and prosecutors in all aspects of prosecuting drugged driving cases. The agenda includes a brief overview of the investigation technique involved in the detection of drug impaired drivers, how to understand and present impairment evidence in court, and how to develop and improve courtroom skills and strategies. A wet-lab will be included.

Annual Conference: DUI Breakout - October 14, 2025, Knoxville, TN (Before the Conference Starts)

Our DUI breakout session at this year's conference will provide approximately two and one-half hours of education and training, covering the current issues in prosecuting an impaired driving case.

TENNESSEE HIGHWAY SAFETY OFFICE TRAINING CLASSES

DUI Detection and Standardized Field Sobriety Testing

August 25-27, 2025, Bristol, TN
October 27-29, 2025, Knoxville, TN

Advanced Roadside Impaired Driving Enforcement (ARIDE)

July 8-9, 2025, Ashland City, TN
July 14-15, 2025, Jasper, TN
July 17-18, 2025, Jackson, TN
September 9-10, 2025, Springfield, TN
October 14-15, 2025, Bristol, TN

Drug Recognition Expert School (DRE)

August 6, 2025, (TN Lifesavers Pre-Conference)

DUI TRACKER

DUI Tracker this last quarter

The results below were taken from the Tennessee Integrated Traffic Analysis Network (TITAN) from April 1, 2025, through June 30, 2025, and reflect the DUI Tracker conviction report for all judicial districts in 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 April 1, 2025, through June 30, 2025, since the last quarter were 1,808. This number is down from the previous quarter by 295 cases. DUI cases have stayed static the last few years. However, recent legislation has increased sentences. With a newly hired DRE/ARIDE coordinator, training opportunities for law enforcement officers will increase over the next few years. The total number of guilty dispositions during this same period of April 1, 2025 through June 30, 2025 were 1,291. Across the State of Tennessee, 71.40% of all arrests for DUI were actually convicted as charged. This percentage is lower than the last quarter, ending on March 31, 2025. During this same period of time, only 276 of the total DUI cases disposed of were to different or lesser charges. Therefore, only 15.27% of the total cases were disposed of to a charge other than the original 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 April 1, 2025 through June 30, 2025. During this period there were a total of 236 fatalities, involving 220 crashes, which is about the same from the previous quarter. Out of the total of 236 fatalities, 41 fatalities involved the presence of alcohol, signifying that 17.37% of all fatalities this quarter had some involvement with alcohol. Further, there were a total of 24 fatalities involving the presence of drugs, signifying that 10.17% of all fatalities this quarter involved some form of drugs. Therefore, over 27% of all fatalities this quarter involved some form of alcohol and/or drug involvement.

The year-to-date total number of fatalities on Tennessee roads and highways is 483. This is down by 63 from the 546 fatalities incurred last year at this same time. This decrease in alcohol and drug related fatalities is a welcomed change to the increases we have been experiencing in recent years. We must stop the pointless death and injuries caused by the preventable crime of impaired driving. Please do not let others drive impaired.

Traffic Safety Resource Prosecutor's Conference

Every year, Jack and Terry (Tennessee's TSRPs) attend the TSRP Conference. This year it was held in Birmingham, AL. We trained and networked with other TSRP's from across the nation. Our training included classes on oral fluid testing, dealing with impaired driving victims, and trial strategies. One of our training sessions included a study of how trained search dogs can be used to find computer equipment, telephones and other electronic equipment. There are many types of cases in which this type of information could be helpful.



VEHICULAR HOMICIDE MURDERER'S ROW



State v. James Eric Warden, Humphreys County Circuit Court (Plea/32 Years TDOC)

On November 8, 2021, at around 7:00 a.m., Mr. Warden was traveling northbound, entirely in the oncoming lane of travel, on Tennessee State Route 231 near McEwen, Tennessee. He crashed while negotiating a slight curve at 72 m.p.h., in his Ford F-150 truck. Ms. Vandiver was traveling in her 2020 Hyundai Elantra southbound in her own lane of travel with her two minor children in the vehicle. Seeing the imminent collision she steered left into Mr. Warden's lane of travel avoiding a head-on collision and making passenger-side to passenger-side contact with his truck before coming to rest in a ditch. She and her children suffered minor injuries. However, Ms. Sarah Schmidt was traveling directly behind Ms. Vandiver in her Toyota Camry. Unable to avoid Mr. Warden's truck, she collided head-on with it coming to a stop on the highway. She was killed almost instantly. Mr. Warden was transported to the hospital for his injuries.

Approximately two hours after the crash, a sample of Mr. Warden's blood was obtained and subsequently tested by the TBI, revealing the presence of methamphetamine (.17 ug/ml) and its metabolite. The testing also revealed the metabolite of THC. A search of Mr. Warden's vehicle revealed Marijuana, Methamphetamine, and Fentanyl, apparently packaged for resale, along with multiple firearms and paraphernalia. He had two prior convictions for Driving Under the Influence in Tennessee.

On April 21, 2025, James Eric Warden plead guilty to Aggravated Vehicular Homicide, a class A Felony, for which he received 20 years in the TDOC at 60%. He also pled guilty to Possession of Methamphetamine with the Intent to Distribute, a class B Felony, for which he received 12 years in the TDOC at 30%, consecutive to the Aggravated Vehicular Homicide. He also received three convictions for the class E Felony of Reckless Endangerment with a deadly weapon, a conviction for a class C Felony for Possession of fentanyl with the Intent to Distribute, and a conviction for the class D Felony of Possession of a Weapon During the Commission of a Dangerous Felony. His effective sentence was 32 years in the TDOC.



State v. Tra'Shawn Glass, 2025 WL 1517398 (Drag Racing/Sentencing)

On January 17, 2023, at around 3:11 p.m., Mr. Glass was drag racing with co-defendant, Trinity Clark, on a public street in Knoxville, Tennessee. They were both driving Dodge Chargers and driving at speeds close to 100 m.p.h. After running a red light, Mr. Glass crashed into a Ford Explorer being driven by Michael Williams. His two grandchildren (ages 5 and 11) were in the back seat. Mr. Williams was killed and the two children received serious bodily injuries. Mr. Glass entered open guilty pleas to three counts of vehicular homicide and two counts of reckless aggravated assault resulting in serious bodily injury. The three vehicular homicide convictions merged into one count. Mr. Glass was sentenced as a Range I, standard offender to 6 yrs for vehicular homicide and 3 yrs each for the reckless aggravated assault counts. He was ordered to serve his sentences in confinement and to serve them consecutively, for an effective twelve-year sentence. Mr. Glass appealed his sentence.

Under the revised Tenn. sentencing statutes, a defendant is no longer presumed to be a favorable candidate for alternative sentencing. *State v. Carter*, 254 S.W.3d 335, 347 (Tenn. 2008)(citing T.C.A. §40-35-102(c)). Mr. Glass challenged the trial court's finding that confinement is suited to effectively deter others, specifically that the substantial publicity of this case was a factor that could be considered. However, our Supreme Court has stated that such publicity may be considered in determining whether... (Continued on Page 11.)

VEHICULAR HOMICIDE MURDERER'S ROW

confinement will provide an effective deterrence. *State v. Hooper*, 29 S.W.3d 1, 11 (Tenn. 2000). The trial court properly used this factor and two other factors that Mr. Glass did not argue. The CCA also found that the trial court appropriately used factors in finding that the sentences should be served consecutively. *See State v. Pollard*, 432 S.W.3d 851, 859-60 (Tenn. 2012). The judgments of the trial court were affirmed.



State v. Harlan V. Ferguson, 2025 WL 1514077 (Error Coram Nobis/Newly Discovered Evidence)



On February 3, 2016, Mr. Ferguson was involved in a crash after trying to evade law enforcement. Sarah Howe, his passenger, died from her injuries after their vehicle veered off the roadway, rolled and struck a tree. A hospital blood draw from Mr. Ferguson revealed a BAC of .180%. Mr. Ferguson was convicted by a jury of vehicular homicide, vehicular homicide by intoxication, evading arrest, reckless endangerment with a deadly weapon, DUI per se, DUI and failure to drive within a single lane. The trial court sentenced him to ten-years, with one year to be served in confinement and the remainder on probation. Mr. Ferguson appealed and while the appeal was pending, he filed a writ of error coram nobis based upon a federal investigation into one of the testifying officers, Chief Henderson.

Mr. Ferguson argued that on April 17, 2020, news reports emerged that Chief Henderson was under investigation by the FBI and that Chief Henderson retired shortly thereafter. Chief Henderson was accused of misappropriating agency funds. His testimony at trial consisted of being part of the initial pursuit and being on scene after the crash. The majority of Chief Henderson's testimony was also testified to by other witnesses and the officers involved, testified that Chief Henderson never requested them to engage in "untoward" behavior. The trial court denied the writ of error coram nobis, ruling that there was no reasonable basis to believe that the outcome may have been different had the newly discovered evidence been presented at trial.

The CCA consolidated Mr. Ferguson's direct appeal and his appeal denying the writ. On appeal. He challenged (1) the trial court's denial of his motion to suppress his statements to law enforcement; (2) the State's failure to establish the chain of custody for his blood samples; (3) the trial court's denial of his motion to dismiss due to the destruction of evidence; (4) the trial court's admission of lay testimony regarding the cause of the victim's injuries; (5) the trial court's admission of his medical records; (6) the trial court's exclusion of defense evidence; (7) the trial court's failure to issue a missing witness instruction; (8) the State's comments during closing arguments; (9) the State's failure to disclose evidence; and (10) the trial court's denial of his petition for writ of error coram nobis. Mr. Ferguson also argued that the cumulative effect of the errors entitled him to relief. The CCA determined that the only error made by the trial court was the court's admission of all 1,500 pages of the defendant's medical records. The CCA concluded that the error was harmless. Therefore, since Mr. Ferguson was unable to establish that multiple errors were committed in the trial proceedings, he was not entitled to relief. The judgments of the trial court were affirmed.

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THE 6TH CIRCUIT WEIGHS IN ON HEMP V. MARIJUANA

The 6th Circuit recently clarified the Federal standard on a *Terry* stop, based upon a smell of marijuana. In *United States v. Santiago*, __ F.4th __, 2025 WL 1604156, Mr. Santiago was observed driving up to a used car dealership in Nashville, TN. Two Metro Nashville Police detectives, in plain clothes, were standing outside of the dealership. An “obvious odor of marijuana” was coming from the car, which grew stronger as Mr. Santiago opened his car door. Mr. Santiago was the only occupant. As Mr. Santiago entered the Auto Market, a pistol was observed on his waistband. While open carry is legal, doing so while under the influence of marijuana is not. The detectives put on their police vests and turned on their body cameras. As Mr. Santiago exited the Auto Market, the detectives approached him and told him to keep his hands up. One officer started to handcuff Mr. Santiago and stated, “It reeks of weed... [Y]ou’ve got a gun on your hip, man.” Mr. Santiago filed a motion to suppress. The trial court ruled that the odor alone, gave the officers reasonable suspicion for the stop and probable cause for the arrest. Mr. Santiago was later convicted of felon in possession of a firearm.

The 6th Circuit ruled that the smell of an illegal substance, like marijuana, localized to a suspect supports a *Terry* stop. *United States v. Foster*, 376 F.3d 577, 586 (6th Cir. 2004); *United States v. McCallister*, 39 F.4th 386, 375 (6th Cir. 2022). “These facts provided at least a reasonable suspicion that Santiago possessed marijuana...” The 6th Circuit went on to rule that, “So if, in the search context, the smell of marijuana alone supplies probable cause to believe that drugs are located in a particular place, the same holds true in the arrest context.” Although Mr. Santiago argued that marijuana smells the same as hemp, which is legal in Tennessee, the 6th Circuit stated that they “have already decided that even though illicit marijuana smells like legal hemp, the smell of marijuana still supports a *Terry* stop. *McCallister*, 39 F.4th at 375. “As for the arrest, the Supreme Court has made clear that probable cause ‘does not require officers to rule out’ an ‘innocent explanation for suspicious facts.’” *Columbia v. Wesby*, 583 U.S. 48, 61 (2018). “So the mere fact that Santiago *could* have possessed hemp did not negate the officers’ reasonable ground for believing Santiago possessed marijuana.”

The Tennessee Supreme Court recently ruled that a positive alert from a drug-sniffing dog is not per se probable cause, but it could be used with other factors, based upon the totality of the circumstances, to form sufficient probable cause to justify a search. *State v. Green*, 697 S.W.3d 634, 642 (Tenn. 2024) (See DUI Newsletter Issue #88). The *Santiago* case is informative because the CCA recently ruled in *State v. Bishop*, 2024 WL 1564346 that an odor of marijuana by an officer was sufficient alone to justify a search of a vehicle, which revealed a stolen firearm. The Tennessee Supreme Court sent the *Bishop* case back to the CCA to be determined in light of their decision in *Green*. The CCA, in *State v. Bishop*, 2024 WL 4798895, then ruled that they no longer had jurisdiction to decide this case, as the certified question was no longer dispositive of the case, as the *Bishop* court did not use the totality of circumstances analysis when they determined that probable cause existed. The *Bishop* case will again go back to the Tennessee Supreme Court. See *State v. Bishop*, 2025 WL 832433. Since the ruling in the *Green* case was published, the Tennessee Legislature has redefined and heavily regulated the manufacture, sale and possession of hemp and hemp-derived products, effective January 1, 2026, See *Public Chapter 526* (HB 1376/SB 1413). For example, it is illegal to possess hemp that contains THCp, and it is illegal to drive a vehicle while under the influence of a hemp-derived cannabinoid. It is now possible that the possession of hemp may be illegal, under certain conditions.

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