

Criminal Justice Associations Leadership Meeting

November 12-13, 2006



Final Report



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Executive Summary

On November 13, 2006, the National Highway Traffic Safety Administration (NHTSA) and the National Criminal Justice Association (NCJA) convened a meeting of national criminal justice association leaders to address strategies to reprioritize traffic safety and reduce the occurrence of repeat DWI offenses. This report summarizes the Criminal Justice Associations Leadership Meeting and highlights priority actions the professional groups identified as crucial within their fields and across the criminal justice system to improve traffic safety. The points of view and opinions expressed at the meeting and in this report are those of the participants and do not necessarily reflect the official position or policies of NHTSA or the NCJA.

Meeting participants were charged with addressing two major issues:

- Elevating traffic safety as a priority at all levels of the criminal justice system; and
- Impediments to dealing with high-blood-alcohol-concentration (BAC) and repeat DWI offenders.

NHTSA encouraged participants to think strategically rather than tactically in addressing these issues. Advances in vehicle technology to detect and deter driver impairment were also discussed.

Making Traffic Safety a Priority

The leaders of the national associations discussed not only what their organizations have done or are doing to elevate traffic safety as a priority, but also innovative ideas to heighten awareness in the criminal justice system as well as with the public.

The discussion centered on drawing comparisons between the number of homicides versus the number of traffic fatalities; the need for a philosophical shift at the top administration and leadership levels; changing the public perception of traffic courts, especially the impression that traffic tickets serve only as revenue generators; targeting funding based on outcomes; and organizing a community-based response to traffic safety.

Some of the recommendations included:

- Design ways for law enforcement to interact with the public more positively when dealing with traffic issues;
- Use specialty courts, such as DWI courts, or lessons learned from specialty courts;
- Educate and train law enforcement executives on the correlations between traffic safety, officer safety, and reduced crime rates;
- Gain support of elected officials on traffic safety issues; and
- Develop a local response by getting the appropriate stakeholders to the table, where they can develop a strategic, data-driven approach.

Impediments to Addressing High-BAC and Repeat Offenders

The discussion of the criminal justice leaders on the impediments to dealing with high-blood-alcohol-concentration (BAC) and repeat DWI offenders centered on treatment for offenders, including treatment in jails/prisons and in the community; the importance of training officers to not only spot impaired drivers, but also on follow-up issues such as testifying in court; the need to change laws, making sure there are enough penalties in place; and the use of ignition interlock devices.

Some of the recommendations included:

- Focus training on outcomes based on proficiency, rather than specific hours of in-service training;
- Create a protocol for trial preparation, which should be included in agency procedures;
- Reexamine DWI laws to ensure there are enough penalties in place to address DWI and make BAC test refusals a separate offense with separate penalties;
- Bring Substance Abuse and Mental Health Services Administration (SAMHSA) to the table on treatment issues; and
- Break down funding barriers to allow coordination of funding streams to be used for DWI enforcement.

New In-Vehicle Technology for Deterrence and Detection

Current and future technology in vehicles designed to detect and deter DWI were raised. This technology includes ignition interlocks, dashboard cameras to measure pupils, driver feedback monitoring devices, and transdermal technology to measure alcohol concentration in perspiration. Problems that may make this new technology prohibitive include cost, the possibility of tampering, and public acceptance.

What's Next?

Collaboration and leadership are crucial to meeting NHTSA's stated goals. As deterrence and detection technologies evolve, officers and other members of the criminal justice community will have more tools at their disposal to reduce traffic crashes and drunk driving. By providing treatment to those who need it and more effective training to officers in the field, these goals can become realities. ♦

Introduction

More than 43,000 people were killed in traffic crashes and nearly 2.7 million people were injured in 2005. Given these statistics, NHTSA's goal is to reduce traffic crashes and fatalities. Elevating traffic safety to a priority within the criminal justice community, and dealing with high-BAC and repeat DWI offenders are two issues NHTSA has identified as ways to save lives.

With the intent to improve the quality of life by reducing crashes, NHTSA and NCJA convened a meeting of criminal justice association leaders to incorporate traffic safety as a core value. Participants were tasked with generating ideas to deter high-BAC and repeat offenders, as well as developing ways to change community mindsets. In addition, discussions about emerging vehicle technology for deterrence and detection showcased additional tools to further these goals.

The meeting, convened on November 13, 2006, in Herndon, Virginia, brought together 24 top leaders in the criminal justice field, representing law enforcement, prosecution, and the courts; together these leaders discussed ways to elevate the priority given to traffic safety.

These discussions allowed participants to share promising practices in their respective communities and begin a dialogue about real action to improve the traffic safety across our Nation. ♦

Issue One: Making Traffic Safety a Priority

The criminal justice system faces many competing priorities, such as homeland security and domestic preparedness, drug abuse, and increasing violent crime, to name just a few, but traffic enforcement and adjudication touches more people and claims more lives to death and injury than all other crimes. Therefore traffic safety can and should be a significant part of a community's strategic plan to combat crime.

The national leadership recommended six major steps in order to move forward. First, the impetus to focus on traffic safety must be community-based. Local level stakeholders must decide who should coordinate the effort and work in collaboration with State and Federal levels of government. Second, law enforcement's view of funding must change. Federal grants should be viewed as supplemental funding streams and not be used to supplant their general budgets. Third, administrators or managers must receive proper training and education about the importance of traffic safety in the enforcement duties and responsibilities of their agencies. Fourth, the group believed that the message was the key meaning and the issue must be presented in a way that will peak the interest of stakeholders in the effort to reduce traffic fatalities. Fifth, traffic safety practitioners should share evidence-based practices. Finally, participants highlighted the need to connect crime prevention to traffic safety enforcement.

Traffic enforcement is a crucial interdiction tool for counter-terrorism efforts and agencies that make traffic safety a priority tend to see an increase in a variety of criminal interdictions as a result. Elevating traffic safety in the minds of all of the stakeholders is a shared responsibility. Traffic stops are the most common avenue for citizen contact with law enforcement. Increased enforcement has been shown to reduce caseloads and calls for service and can be used to help inform the public about traffic safety issues instead of alienating them. Prosecutors must work with law enforcement to raise the profile of these cases and use them for deterrence and public education. Finally, the judicial system must embrace these cases as well. As a critical point of contact with the general public, traffic courts are instrumental in awareness and deterrence efforts.

Participants made the following recommendations to help elevate this issue:

- Develop a law enforcement strategy that focuses on positive interactions during traffic stops. The point of these interactions should be to get the public to listen to why their driving is dangerous instead of alienating them.
- Use the examples from specialty courts like DWI courts, where offenders are engaged in the process, instead of simply moving people through the system. Traffic courts are sometimes perceived as lesser courts and revenue generators because of institutionalized minimizations for example, that offenders can simply mail in fines without ever appearing before a judge.
- Support for making traffic safety a criminal justice priority must not only come from the top down but from within the community as well. The focus should be on training and educating law enforcement executives about the importance of traffic safety and gaining the support of elected officials.

- Build a grassroots community support system where all the stakeholders are invited to participate and develop a strategic data-driven approach. Develop a model that brings together both traditional and nontraditional partners, gets the right people involved, and has a clearly defined purpose.
- Change the way money is allocated so that funding is based upon outcomes.
- Develop a national database of courts of non-record so traffic court judges can be identified for additional education.
- Refine the message to include crime prevention in order to grab the interest of the public. Highlight the relationship between increased traffic enforcement and a reduction in crime. ♦

Issue Two: Impediments to Addressing High-BAC and Repeat DWI Offenders

Driving while intoxicated or impaired (DWI) is a serious crime that kills nearly 17,000 people each year, injures an estimated 250,000 others, and costs the public about \$110 billion each year. Repeat or hardcore DWI offenders and those with high BAC levels contribute significantly to this problem.

Four major areas were identified that should be addressed to deal effectively with this issue. Training for law enforcement officers should be outcome-based and based upon proficiency rather than simple time requirements of hours of in-service training. Additionally States should revisit their DWI statutes to make sure there are sufficient penalty options in place. Resources must be allocated to provide for treatment of high-BAC and repeat offenders. Finally, funding barriers must be broken down to allow collaborative use of funding stream.

Vehicle sanctions were discussed with some concern about whether they are the most effective way to deal with high-BAC and repeat offenders. The use of ignition interlock devices should be increased. Participants discussed ways of making these devices more widely available.

Participants made the following recommendations to deal with high-BAC and repeat offenders:

- Training at every level needs to be revamped, from recognizing DWI offenders on the road to testifying in court. Training must be outcome-focused, based on proficiency, rather than hours of training. Officers should be trained in what elements to look for when detecting DWI offenders. Officers should also be trained in preparation for court. Agencies should have a protocol for trial preparation in their policies.
- States must review DWI laws to ensure sufficient penalty options. There should be strict, stand-alone penalties for BAC test refusal. Without these penalties, participants argued there will always be test refusals.
- Resources must be increased for treatment of high-BAC and repeat offenders. Many barriers to treatment currently exist. Offenders must have access to treatment programs in jails and prisons. If not, the incarceration time will do little to assist offender rehabilitation. Structured reentry programs need to be in place. Community corrections resources are vital to successful treatment. According to participants, recidivism rates are greater for offenders who have gone to jail or prison than those who have not. If offenders cannot afford in-patient treatment on their own, resources must be put in place to provide treatment. According to participants, it is often in the best interest of the offenders, their families, and the community to keep offenders out of jail. It is critical that treatment options be available. Funding should also be made available to deal with underage drinking and provide treatment for underage drinkers. Participants agreed SAMHSA should be at the table for future discussions about treatment.

- A collaborative approach to funding is needed. Federal funding streams must be reexamined. Funding from the Departments of Transportation, Justice, and Homeland Security should be permitted to be used for DWI enforcement and training in coordinated ways in the field. A means to create or design a collaborative funding stream should be examined. ◆

New In-Vehicle Technology for Deterrence and Detection

Ignition interlock devices and other safety innovations for vehicles are being developed for implementation in the future. Effective use of ignition interlock devices has proven to reduce recidivism by 50 percent or more. However, devices are not used as often as they could be.

New technology on the horizon that could measure driver sobriety includes dashboard cameras that measure pupils; driver feedback monitoring; and transdermal technology that measures alcohol concentration through perspiration. It will take collaboration to bring this technology to fruition and many of these devices are still 15 to 20 years away from development. In addition, if this new technology is employed, it will not take the place of conventional deterrence practices. Participants saw that the use of this technology may be driven by the insurance industry to reduce liability and for use as antitheft devices.

However, there are obstacles to the implementation of these innovations. They include:

- Concerns about public acceptance of this new technology. Both privacy and monetary issues were raised.
- Concerns that automobile manufacturers will worry about liability issues if the technology fails.
- Ways to get around this technology exist, such as tampering with the device or having a sober passenger blow into an ignition interlock device.
- Finally, there are possible criminal justice implications, which include who will make sure the devices are used correctly and what happens once an impaired driver is detected?

The use of these technologies tie back to making traffic safety a priority. Getting the public to see the need for this new technology may encourage law enforcement to refocus its attention. ◆

What's Next?

In order to make traffic safety a priority throughout the criminal justice system, law enforcement executives and justice leaders must adopt a philosophical change in their views toward traffic safety. The value of traffic safety and enforcement must be elevated by those making decisions in deployment of resources as well as those promulgating training and best practices in the field. The opportunities for positive interaction with the public in traffic stops and in traffic court must be maximized. By working with the public, justice system leaders can help create grassroots support from community stakeholders to be engaged in making traffic safety a community priority.

To combat the problem of repeat DWI offenders and those with high BAC, training of law enforcement officers must go beyond detection of impaired drivers to preparing for and testifying in court. Along with this expanded law enforcement training, States should make test refusal a separate, punishable offense while at the same time ensuring adequate penalty options for repeat offenders. Treatment for repeat and high-BAC offenders must be made available even in rural areas, as part of services provided in incarceration, and as part of the penalty options the court has available to it.

Ultimately traffic safety is also about officer safety. Once the criminal justice community and the general public understand the importance of traffic safety, officers will be less at risk.

Overarching Recommendations

To enhance these specific action steps, broader work must also be done to affect change.

- The State criminal justice planning agencies and the State Highway Safety Office should work together closely to use community-based planning strategies, find best practices, and give synergy to their joint efforts.
- Collaboration is crucial to the success of any traffic safety enforcement program. Other Federal agencies should also be part of these collaborative efforts such as the Enforcing Underage Drinking Prevention Program at the Office of Juvenile Justice & Delinquency Prevention (OJJDP). Collaboration at the State and local level must encompass all areas of the criminal justice system.
- The concept of “broken windows,” enforcing lower-level crimes in order to also reduce higher-level criminal activity should be brought to bear on the traffic safety issues.
- A collaborative research agenda should be developed.
- State legislators must be educated on the importance of traffic safety issues. Penalty options should be enhanced.
- Discussion on reentry issues is needed and should include corrections officials, judges, and prosecutors, with a focus on promising practices. ♦

Appendix A

Agenda

Sunday, November 12

6 p.m. – 7:30 p.m. Opening Reception

Monday, November 13

7:30 a.m. Continental Breakfast

8:15 a.m.

Welcome & Introductions

Sue Ryan, Director
Office of Safety Programs, NHTSA

James Burch, Deputy Director
Bureau of Justice Assistance, DOJ

Charge to Participants

Brian McLaughlin, Senior Associate Administrator
Traffic Injury Control, NHTSA

9 a.m.

Elevating Traffic Safety to a Priority in the Criminal Justice System

Introduction and Discussion of Issue Paper #1

9:45 a.m.

Break

10 a.m.

Continued Discussion of Issue Paper #1

11 a.m.

Advanced Vehicle Technology: Driver Impairment and Detection

Jeff Michael, Director
Office of Impaired Driving and Occupant Protection, NHTSA

12 p.m.

Networking Lunch

1 p.m.

Impediments Dealing with High-BAC and Repeat DWI Offenders

Introduction and Discussion of Issue Paper #2

3 p.m.

Break

3:15 p.m.

Summary of Issue Papers and Action Items

Marilena Amoni, Associate Administrator,
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3:45 p.m.

Wrap-Up and Next Steps

Sue Ryan, NHTSA

Appendix B

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Appendix C

Issue Papers

Issue Paper One

Elevating Traffic Safety as a Priority in the Criminal Justice System

INTRODUCTION

According to NHTSA, in 2005 more than 6,000,000 police-reported traffic crashes occurred in the United States, 39,189 of which were fatal.¹ The estimated economic cost of such traffic crashes was \$230.6 billion in 2000, and the human cost of traffic crashes totaled 2,699,000 Americans with injuries and over 43,000 American deaths in 2005. Comparatively, during the same year, there were 16,692 murders in the United States and approximately 1,389,251 incidents of violent crime.² Hence, traffic crash losses (deaths and injuries) exceed those associated with some of the crimes that receive the highest attention in our society.

In 2003, traffic crashes were the leading cause of death in the United States for people 4 to 34 years old. Traffic crashes are either the leading or third highest cause of death for people 1 to 44 years old. Traffic crashes rate in the top eight causes of death for every category of American.

nhtsa National Highway Traffic Safety Administration's National Center for Statistics and Analysis												
Top 10 Leading Causes of Death in the United States for 2003, By Age Group ¹												
RANK	Cause and Number of Deaths										Years of Life Lost ²	
	Infants Under 1	Toddlers 1-3	Young Children 4-7	Children 8-15	Youth 16-20	Young Adults 21-24	Other Adults			Elderly 65+		All Ages
						25-34	35-44	45-64				
1	Perinatal Period 14,254	Congenital Anomalies 480	MV Traffic Crashes 479	MV Traffic Crashes 1,582	MV Traffic Crashes 5,988	MV Traffic Crashes 4,312	MV Traffic Crashes 6,675	Malignant Neoplasms 15,509	Malignant Neoplasms 145,535	Heart Disease 563,390	Heart Disease 685,089	Malignant Neoplasms 23%(8,672,799)
2	Congenital Anomalies 5,621	Accidental Drowning 401	Malignant Neoplasms 444	Malignant Neoplasms 859	Homicide 2,489	Homicide 2,744	Suicide 5,065	Heart Disease 13,600	Heart Disease 102,792	Malignant Neoplasms 388,911	Malignant Neoplasms 556,902	Heart Disease 21%(8,027,887)
3	Heart Disease 439	MV Traffic Crashes 385	Congenital Anomalies 166	Suicide 412	Suicide 1,813	Suicide 2,012	Homicide 4,516	MV Traffic Crashes 6,790	Diabetes 16,389	Stroke 138,134	Stroke 157,689	MV Traffic Crashes 5%(1,725,870)
4	Homicide 341	Homicide 333	Accidental Drowning 149	Homicide 389	Accidental Poisoning 752	Accidental Poisoning 1,221	Malignant Neoplasms 3,741	Suicide 6,602	Stroke 16,073	Chronic Lwr. Resp. Dis. 109,139	Chronic Lwr. Resp. Dis. 126,382	Stroke 5%(1,641,883)
5	Influenza/ Pneumonia 322	Malignant Neoplasms 272	Exposure to Smoke/Fire 145	Congenital Anomalies 320	Malignant Neoplasms 749	Malignant Neoplasms 795	Accidental Poisoning 3,435	Accidental Poisoning 6,230	Chronic Lwr. Resp. Dis. 15,614	Alzheimer's 62,814	Diabetes 74,219	Chronic Lwr. Resp. Dis. 4%(1,486,130)
6	Septicemia 278	Exposure to Smoke/Fire 169	Homicide 113	Heart Disease 248	Heart Disease 450	Heart Disease 633	Heart Disease 3,250	HIV 5,340	Chronic Liver Disease 13,894	Influenza/ Pneumonia 57,670	Influenza/ Pneumonia 65,163	Perinatal Period 3%(1,110,448)
7	Nephritis/ Nephrosis 181	Heart Disease 159	Heart Disease 93	Accidental Drowning 209	Accidental Drowning 309	Accidental Drowning 223	HIV 1,588	Homicide 3,110	Diabetes 10,324	Diabetes 54,919	Alzheimer's 63,457	Suicide 3%(1,104,339)
8	MV Traffic Crashes 144	Influenza/ Pneumonia 141	Influenza/ Pneumonia 79	Exposure to Smoke/Fire 140	Congenital Anomalies 241	Congenital Anomalies 171	Diabetes 657	Chronic Liver Disease 3,020	MV Traffic Crashes 9,700	Nephritis/ Nephrosis 35,254	MV Traffic Crashes 43,340	Diabetes 3%(1,067,600)
9	Stroke 101	MV Nontraffic Crashes ⁴ 101	MV Nontraffic Crashes ⁴ 43	MV Nontraffic Crashes ⁴ 120	MV Nontraffic Crashes ⁴ 108	HIV 131	Stroke 583	Stroke 2,460	Accidental Poisoning 6,804	Septicemia 26,445	Nephritis/ Nephrosis 42,453	Homicide 2%(827,103)
10	Meningitis 77	Septicemia 77	Septicemia 35	Chronic Lwr. Resp. Dis. 114	Accidental Falls 106	MV Nontraffic Crashes ⁴ 117	Congenital Anomalies 426	Diabetes 2,049	HIV 5,959	Hypertension Renal Dis. 18,657	Septicemia 34,069	Accidental Poisoning 2%(749,593)
ALL ³	28,025	4,205	2,556	6,555	16,141	16,030	41,300	89,461	439,300	1,804,373	2,448,288	All Causes 100%(37,488,508)

¹ When ranked by specific ages, motor vehicle crashes are the leading cause of death for age 3 and each age 5 through 33.
² Number of years calculated based on remaining life expectancy (2002 data from CDC) at time of death; percents calculated as a proportion of total years of life lost due to all causes of death.
³ Not a total of top 10 causes of death.
⁴ A motor vehicle nontraffic crash is any vehicle crash that occurs entirely in any place other than a public highway.
 Source: National Center for Health Statistics (NCHS) CDC, Mortality Data 2003.
 Note: The cause of death classification is based on the National Center for Statistics and Analysis (NCSA) Revised 68 Cause of Death Listing. This listing differs from the one used by the NCHS for its reports on leading causes of death by separating out unintentional injuries into separate causes of death, i.e., motor vehicle traffic crashes, accidental falls, motor vehicle nontraffic crashes, etc. Accordingly, the rank of some causes of death will differ from those reported by the NCHS. This difference will mostly be observed for minor causes of death in smaller age groupings.

¹ NHTSA Traffic Safety Facts 2005, <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSF2005/OverviewTSF05.pdf>
 Washington, DC: National Highway Traffic Safety Administration.
² FBI Uniform Crime Report, 2005. [needs more reference data]

Crime Crash CLOCK



1 Murder every 31.5 minutes

1 Violent Crime every 22.7 seconds

1 Property Crime every 3.1 seconds



1 Fatality every 12 minutes

1 Injury in a crash every 12 seconds

1 Property damage crash every 7.3 seconds



Total property crime damage was estimated at 16.5 billion in 2005

Total damage due to traffic crashes was estimated at 230.6 billion dollars in 2000

Source: NHTSA Traffic Safety Facts, 2000 and Uniform Crime Report, 2000, Department of Justice

Fatal vehicle crashes occur more than 2½ times as often as homicides and 1.9 injury crashes occur for every violent crime.

Efforts to reduce losses due to traffic crashes could benefit from an increased prioritization among law enforcement, prosecutorial, judicial, and other criminal justice officials in the United States. With competing agency concerns regarding issues such as homeland security, drugs, and violent crime, increasing the priority of traffic safety in the criminal justice system will likely require strong support from criminal justice leaders, strategic planners, and the public.

TRAFFIC SAFETY A PRIORITY FOR AMERICANS

According to a Gallup survey conducted in 2005 for the U.S. Department of Transportation, American drivers "perceive their risk of being in a car crash or being hit by a drunk driver to be much greater than being a victim of terrorism or personal assault."³ Thus, in order to meet the expectations of the public whom they serve and receive resources from, criminal

³ Thomas, M. 2006. "Development of State Traffic Law Enforcement Officers for Homeland Security." Naval Postgraduate School Thesis. Monterey, California.

justice officials should perceive a greater need to devote more time and effort to traffic safety.

POTENTIAL PATHWAYS FOR ELEVATING TRAFFIC SAFETY AS A PRIORITY

NHTSA has established programs and held seminars that can give criminal justice agencies support for traffic safety programs. Training for law enforcement officers regarding detection of impaired drivers and other criminal activity occurring during traffic stops is available. Additionally, NHTSA has also developed traffic safety training for prosecutors and education for the judiciary. Analysis of impaired driving crackdowns, safety belt mobilizations, and other enhanced enforcement has shown that traffic enforcement creates significant criminal interdiction. Some traffic enforcement programs result in more criminal arrests than specialized investigation units. In North Carolina the *Click It or Ticket* program has consistently led to significant numbers of arrests for stolen vehicles, illegal firearms, drugs, and the apprehension of fugitives.⁴ This analysis demonstrates that agencies that make traffic enforcement a priority will see an increase in criminal interdiction as a result. This should result in an overall reduction in crime.

MEDIA

It is well established that a country unites in response to public outrage, as demonstrated by the population's commitment to heightened airport procedures following 9/11. If the media accurately portrays the high costs of traffic crashes, encourages drivers to obey traffic laws and practice prudent driving habits, and emphasizes the level of control that drivers have in their own traffic safety, public awareness and outrage may reach levels significant enough to warrant a unified action to elevate traffic safety within the criminal justice system.

AGENCY CONTRIBUTIONS FOR MAKING TRAFFIC SAFETY A PRIORITY

While each agency in the criminal justice system can provide specific contributions toward the elevation of the traffic safety priority in the United States, a collective working culture must be created among officials. This collective action will unify the attack at the roots and causes of traffic issues and increase public awareness of traffic safety. That is, the onus of this endeavor should not fall on one entity within the larger system: there should be a perception of shared responsibility for promoting the priority of traffic safety. Nonetheless, there are specific contributions different criminal justice agencies can make toward this effort.

POTENTIAL FOR LAW ENFORCEMENT

Management and members of the law enforcement community must adopt the principle that traffic-related infractions are as significant and preventable as other serious crimes that confront them. With management leadership, the law enforcement group can perform a pivotal role in the reduction of traffic-related losses and impact crime in general. Increased traffic enforcement programs have been shown to reduce the case load and calls for service of patrol and specialized units can be one of the most efficient uses of law enforcement resources.

⁴ Williams, A., Reinfurt, D., & Wells, J. 1996. "Increasing seat belt use in North Carolina." *Journal of Safety Research* 27:33-41.

The most common avenue for citizens to contact law enforcement is via a traffic stop. This is an opportunity for law enforcement to promote public awareness and gather support for traffic safety in addition to reducing crime and the other benefits of traffic enforcement.

PROSECUTION CONCERNS

Given that the prosecutor's role is to see that justice is served from the public's viewpoint, it may be beneficial to educate the public that American drivers assume a greater risk of being involved in a traffic crash than being involved in a terrorist or personal attack. As noted above, the public will more likely become involved with a prosecutor through a traffic violation than through a violent crime such as murder or robbery. Prosecutors can focus their attention on seeing that drunk drivers and repeat traffic offenders are properly punished.⁵ Prosecutors who have been trained to deal with traffic offenses may increase the working culture among criminal justice officials,⁶ as law enforcement officials can be assured that their traffic enforcement efforts will not be made in vain, and offenders will receive due justice. In addition, efforts should be made to incorporate the prosecutors into key law enforcement training to reinforce important items such as report writing, current legal interpretations, adequate support for search and seizure, etc. Prosecutors should strive for reduced time between hiring and trial practice training, including the importance of understanding the significance of traffic offenses, i.e., working a DWI can be as complex as a murder case, due to evidentiary problems, scientific evidence, expert witnesses, etc.

JUDICIAL CONCERNS

Understanding that the courts' role is to ensure that justice is served and to be independent arbiters of the facts, judges can attend education programs like the ones held at the National Judicial College and through the American Bar Association's Judicial Division, to learn about current traffic safety issues, to receive legal updates, and to learn effective sentencing practices for traffic offenders in an environment that allows for independent thought. As with law enforcement officers and prosecutors, the public generally has contact with the courts through traffic offenses, and this will be the lasting impression of many drivers. As such, dealing with these offenders in firm but constructive ways might provide opportunities to redirect the driving habits of people otherwise headed toward the commitment of more serious offenses.⁷ Thus, judges can consider treatment of first-time or young offenders as opportunities to teach, and can sentence repeat offenders at the upper-end of the sentencing continuum, to effectively retrain.

Judges (in serious traffic offenses) may also sentence traffic offenders to intensive supervision programs in an effort to intervene before more serious offenses occur,⁸ and impaired drivers may be sentenced to treatment facilities to deal with potential substance abuse issues.⁹ Such an influence on the prevention of future traffic offenses and the improvement of the general quality of life across the nation should motivate judges to ensure that offenders and the general public are aware that traffic safety is a public health and economic necessity and violations of such will be sanctioned.

⁵ Evan, L. 2003. "A New Traffic Safety Vision for the United States." *American Journal of Public Health* 9: 1384-1386.

⁶ *Traffic Safety Today 2003 Final Report*. Sponsored by NHTSA.

⁷ *Traffic Safety Issues for the Future: A Long Range Research Agenda, 2006*. Sponsored by AAAFTS, FHWA, and NHTSA.

⁸ *Traffic Safety Issues for the Future: A Long Range Research Agenda, 2006*. Sponsored by AAAFTS, FHWA, and NHTSA.

⁹ *DUI Treatment Courts: Drunk Driving Prevention through Intervention*, American Council on Alcoholism, <http://www.aca-usa.org/dui.htm>.

SUMMARY

It is clear that making traffic safety a priority has become increasingly difficult with the rise in concerns regarding homeland security and domestic preparedness, drugs, and violent crime in America. These and other public safety and crime control issues are competing with traditional priorities in many agencies in the justice system.

Traffic enforcement and the adjudication of offenders can be an effective crime reduction tool and should be considered as a solution to dwindling Federal funds in traditional areas such as multi-agency drug task forces. Homeland security will continue to be a high priority for Federal money but local jurisdictions will be expected to continue their missions to reduce crime and maintain quality of life. Elevating traffic safety as a priority can be a significant part of a community's strategic plan to combat crime in this environment.

Issue Paper Two

Impediments to Dealing with High-BAC and Repeat DWI Offenders

HIGH-BAC AND REPEAT DWI OFFENDERS ARE A MAJOR THREAT

Three-fourths (75%) of drivers with positive blood alcohol concentration (BAC) levels in fatal crashes had BAC levels of .10 g/dL or .11 g/dL, which is greater than the legal limit in all States, the District of Columbia, and Puerto Rico (Pickrell, 2006). One-fourth (25%) of drivers with positive alcohol levels in fatal crashes had BAC levels of .21, which is more than twice the legal limit in all States, the District of Columbia, and Puerto Rico (Pickrell, 2006). In addition, it is estimated that about one-third of all drivers arrested for DWI are repeat offenders (National Highway Traffic Safety Administration, 1995). Of drivers convicted of driving while intoxicated (DWI) in California, for example, 44 percent were reconvicted of DWI within 10 years (Peck et al., 1994). DWI is a serious crime. In 2005 there were 16,885 fatalities and an estimated 254,000 people injured in alcohol-related crashes (NHTSA, 2006a). Alcohol-related crashes cost the public about \$110 billion each year (NHTSA, 2006b). Repeat DWI offenders and those with high BAC levels contribute significantly to this problem.

According to NHTSA, in 2005, 39 percent of all traffic fatalities were alcohol-related. Of the 16,885 alcohol-related fatalities in that year, more than 85 percent, or 14,539, were killed in crashes involving at least one driver or nonoccupant with a BAC at or above .08 g/dL. Of the 14,539 people killed in such crashes, 71 percent were drivers or nonoccupants with BAC levels at or above .08 g/dL (NHTSA, 2006a). Eighty-five percent of the alcohol-involved driver or motorcycle operators in fatal crashes had BACs greater than or equal to .08 g/dL. Nearly 60 percent of the alcohol-involved driver or motorcycle operators in fatal crashes had BACs greater than or equal to .15 g/dL (NHTSA 2006a).

According to NHTSA's Fatality Analysis Reporting System (FARS), there is a positive, direct correlation between high BACs and repeat offenders. Drivers with BACs of .08 g/dL or higher involved in fatal crashes were 9 times more likely to have a prior conviction for driving while impaired than were drivers with no alcohol (NHTSA, 2006a). In addition, a 1994 study published in the *New England Journal of Medicine* concluded that each DWI arrest increases the likelihood of future death in an alcohol-related crash (Brewer, 1994).

FEDERAL CRITERIA ENCOURAGE ENACTMENT OF REPEAT OFFENDER AND HIGH-BAC LAWS

Congress has established Federal programs to encourage States to enact effective repeat offender and high-BAC laws. The Federal program that encourages States to enact repeat offender laws is a sanction (transfer) program; the Federal program that encourages States to enact high-BAC laws is part of an incentive grant program.

In 1998, Congress enacted the Transportation Equity Act for the 21st Century (TEA-21) Restoration Act, which established the Section 164 transfer program. Under this program, States are encouraged to enact and implement repeat offender laws that conform to Federal criteria. To conform, the law must establish certain minimum penalties for repeat offenders, including a suspension of all driving privileges for one year; mandatory jail for specified periods of time; mandatory assessment and referral to treatment as appropriate; and either impoundment or immobilization of the offender's vehicles during the suspension, or installation of an ignition interlock following the hard suspension period. Any State

without a conforming law is subject to a transfer of highway construction funds, which may be used only for impaired driving or hazard elimination activities (NHTSA, 2006c).

In 2005, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA-LU), which modified the Section 410 Impaired Driving Incentive Grant Program. Under this program, States are encouraged to adopt and implement a number of measures effective at reducing impaired driving. States can qualify for incentive grants based either on their alcohol fatality rates or on specified Federal criteria. To qualify based on the criteria, States must satisfy three of eight criteria in the first year of the grant program, four out of eight in the second year and five out of eight after that. One of the criteria that States may choose from is a conforming high-BAC law. To conform, the law must establish a high BAC of .15 or higher; require mandatory assessment and referral to treatment as appropriate; and require a one-year driver's license suspension under which either the full year must be a hard suspension or a period of 45 days must be a hard suspension and the remainder covered by a requirement to use an ignition interlock device.

As of January 2006, 39 States plus the District of Columbia have laws that have been determined to conform to the Federal Section 164 Repeat Offender requirements (NHTSA, 2006d). As of September 2006, 42 States have enacted high-BAC laws. Alabama, Kansas, Michigan, Mississippi, Oregon, Vermont, West Virginia, and Wyoming do not have sanctions for high-BAC offenders (NHTSA, 2006e). The adopted high-BAC levels vary from State to State from .15 g/dL to .20 g/dL.

CRITICAL ELEMENTS IN SENTENCING REPEAT AND HIGH BAC OFFENDERS

The criteria contained in these Federal programs include certain critical elements that are supported by the research as being effective at reducing recidivism among impaired driving offenders:

- Driver's license suspension – The research is clear. A driver's license suspension is one of the most effective strategies for reducing recidivism among impaired driving offenders. Studies of license suspension demonstrate its effectiveness in reducing recidivism and the risk of crash involvement among drinking drivers (NHTSA, 1986; Mann et al., 1991; McKnight & Voas, 1991; Ross, 1991; Sadler et al., 1991; Williams, 1992; Rodgers, 1994). While the length of the suspension may vary, the research shows that what's most critical is that the sanction be swift and certain (NHTSA, 2006f).
- Ignition Interlocks – Research in this area is growing. Recidivism is reduced significantly when the ignition interlock is installed on the offender's vehicle (Voas et al., 1999; Beck et al., 1999; Coben & Larkin, 1999). Once the interlock is removed, recidivism returns to rates similar to those experienced by offenders who have not been subject to this measure (Morse & Elliott, 1992; Willis et al., 2004; NHTSA 2006f). New Mexico recently strengthened its law to require installation of ignition interlocks (for one year) for first offenders, and longer periods (two years or more) for repeat offenders. The impact of this approach is being studied. The cost for installing ignition interlocks can be paid for largely by the offenders themselves.
- Vehicle Sanctions – Research has shown that other vehicle sanctions also can be effective at reducing recidivism rates (Rodgers, 1994; Voas & Tippets, 1994; DeYoung, 1999; DeYoung, 2000; Voas & DeYoung, 2002). Examples include impoundment or immobilization of the offender's vehicle, forfeiture of the vehicle, or

removal of the vehicle's license plate. Some jurisdictions have structured their programs to make them self-supporting or even to generate additional revenue.

- Mandatory Assessment and Referral to Treatment as Appropriate – Impaired driving is often merely a symptom of an underlying alcohol abuse or addiction problem. Mandatory assessment enables a certified alcohol treatment counselor to determine whether an impaired driving offender has such a problem and should be referred to treatment. Treatment has been shown to be effective at reducing recidivism (Wells-Parker et al., 1995; NHTSA & NIAAA, 2006). Success is dependent largely on the length of treatment, even if the offender is in treatment under duress citation (National Drug Court Institute, 2004).
- Close Supervision – Research has shown that close supervision of DWI offenders, to ensure that they complete their sentences and receive the treatment they need, is effective at reducing recidivism (Jones et al, 1996; Jones & Lacey, 1998). Courts can institute close supervision using the DWI/Drug Court model or other strategies, such as those that rely on probation services.

CHALLENGES

In 2001, the Traffic Injury Research Foundation (TIRF) of Canada conducted a comprehensive study designed to identify ways to improve the efficiency and effectiveness of the criminal justice system in dealing with hard-core impaired driving offenders. The study was based on interviews conducted with law enforcement officers, prosecutors, judges, and probation officials across the United States. The findings were released as four separate documents; each report deals with the problems faced at different levels in the system – enforcement, prosecution, adjudication and sanctioning, and monitoring.

Based on the study, TIRF was able to identify opportunities to improve effective enforcement, prosecution, adjudication, and monitoring of impaired driving offenders. Some examples are:

- Detection – A 2002 report from the AAA Foundation for Traffic Safety found that 21 percent of driving-age Americans reported they had driven after drinking in the past year, making 950 million drinking-driver trips (Hedlund & McCartt, 2002). In 2004, the FBI's Uniform Crime Reporting Program estimated that over 1.4 million drivers were arrested for driving under the influence of alcohol or narcotics. This is an arrest rate of 1 for every 139 licensed drivers in the United States (NHTSA, 2006a).
- BAC Test Refusal - Three-fourths of prosecutors interviewed as part of the TIRF study said a blood alcohol test is the single most critical piece of evidence needed for a conviction. Refusal rates vary greatly from State to State (Robertson & Simpson, 2002a). A NHTSA study found that rates varied across States from 5 percent to 85 percent (NHTSA, 2005). Refusal rates can occur especially in States with increased penalties for high BACs, unless the State establishes equally strict (or even stricter) penalties for refusals (McCartt & Northrop, 2004; NHTSA, 2006f). Some States have developed alternative approaches to address breath test refusals. For example, law enforcement officers in several States will request a warrant for a blood sample if a driver refuses to provide a breath sample. In at least two States, Arizona and Utah, law enforcement officers have been trained as phlebotomists and are authorized to conduct blood draws of offenders who refuse to submit to a test, upon the issuance of a judicial warrant.

- Recordkeeping - Inadequate recordkeeping is cited by both prosecutors and judges as a significant problem, particularly in cases involving repeat offenders (Robertson & Simpson, 2002b). If records are not complete, accurate, and accessible, it is difficult to determine whether an offender before the court is a first or repeat offender. Delays in retrieving records and decentralization can prevent enforcement agencies and prosecutors from learning about previous convictions. A lack of uniformity can make it difficult to compare offenses between agencies and jurisdictions. In 2002, NHTSA selected four states (Alabama, Nebraska, Iowa, and Wisconsin) to demonstrate a Model Impaired Driving Records Information Systems that would alleviate many of these problems. In 2004, a fifth demonstration site (Connecticut) was added. Based on the findings and experiences in these States, NHTSA published guidelines in the Federal Register in September 2006 for Impaired Driving Records Information Systems (NHTSA, 2006g).
- Use of Ignition Interlocks – Despite consistent research findings showing the effectiveness of ignition interlocks, this technology is currently underused (Beirness & Marques, 2004). An estimated 1.4 million impaired driving arrests are made every year, while only about 100,000 ignition interlocks are in use. A California study surveyed police enforcement agencies and found that low use is a consequence of operational problems, namely that many offenders are unable to pay for an ignition interlock, many offenders have no vehicles, and monitoring offenders who are ordered to install an ignition interlocks is time-consuming and difficult (DeYoung, 2000). In addition, ignition interlock technology requires training and education of prosecutors and judges and the expansion of capabilities, a timely and expensive process.
- Resources - Judges are often burdened with high case volumes, leaving them with little time to fully evaluate case specifics and the offender’s behavioral patterns (Robertson & Simpson, 2002b). This can result in increased dismissals and acquittals. Prosecutors’ caseloads are even higher and plea negotiations to lesser charges are often used as a time reduction tool, mitigating the deterrence that might occur from mandatory penalties. Many offenders with alcohol abuse or dependency problems should be referred to treatment, but treatment resources often are not available in the community. DWI courts generally involve frequent interaction of the offender with the DWI court judge, intensive supervision by probation officers, intensive treatment, random alcohol and other drug testing, community service, lifestyle changes, positive reinforcement for successful performance in the program and going back to jail for noncompliance (National Association of Drug Court Professionals, 1997; National Drug Court Institute, 2002). There is some evidence that DWI courts involving close monitoring and alcohol treatment can reduce recidivism (Jones & Lacey, 2000). Breckenridge, Winfree, Maupin, and Clason (2000) report that such a program significantly reduces recidivism among alcoholic DWI offenders. Other studies of DWI courts are currently underway. According to a study by the National Drug Court Institute, there are 86 DWI courts in the United States and 90 Drug/DWI courts (NDCI, 2005).
- Training and Education – In many jurisdictions, DWI cases are handled by the least experienced prosecutors and judges, and yet these cases are extremely complex and difficult to handle (Robertson & Simpson, 2002b). Training and education for prosecutors and judges are therefore extremely important. Traffic safety resource prosecutors serve as traffic safety experts in their States and provide support, especially for new prosecutors handling DWI or other traffic safety cases. Traffic safety resource prosecutors and State judicial educators can play an important role

in providing technical assistance, responding to questions, and ensuring that appropriate education and training are made available.

OTHER IMPORTANT STRATEGIES

In addition to the approaches outlined above, additional strategies are being implemented that could also have an impact on reducing the number of High BAC and Repeat Offenders on our highways.

- High-Visibility Enforcement - NHTSA is actively promoting the use of high-visibility enforcement across the country. In particular, the agency is promoting coordinated National Impaired Driving Crackdowns during the Labor Day holiday period and during Drunk and Drugged Driving (3D) Prevention Month (December), supported by paid advertising based on an enforcement impaired driving theme. This year, NHTSA launched a new message, "*Drunk Driving. Over the Limit. Under Arrest.*" The agency also supports the use of sustained, highly visible impaired driving enforcement during the remainder of the year, particularly at high risk times. The purpose of these efforts is not simply to make additional impaired driving arrests. Rather, the primary goal is to create general deterrence and convince "would-be" impaired driving offenders (including repeat and high-BAC offenders) that it is not worth the risk to drive impaired, because they might get caught (NHTSA, 2006h).
- Screening and Brief Intervention - NHTSA is also actively promoting the use of alcohol screening and brief intervention. This strategy is implemented in emergency departments, trauma centers, and other health care facilities. It involves a doctor, nurse, or other health care provider asking a few simple questions to determine whether the patient might have an alcohol abuse or dependency problem. If they do, the health care provider will conduct a brief intervention, seeking to empower them to change their drinking behavior. Research has shown that alcohol screenings and brief interventions reduced both drinking and alcohol-related traffic crashes and injuries. (D'Onofrio & Degutis, 2002; Moyer et al., 2002; NHTSA, 2006f; Wilk et al., 1997). Dill et al. (2004) reviewed nine studies that evaluated alcohol screening and brief intervention effects on injury. These studies generally found that alcohol screening and brief interventions reduced both drinking and alcohol-related traffic crashes and injuries. It is hoped that the routine use of this strategy can address underlying drinking problems and reduce the number of repeat and high-BAC offenders who are operating a vehicle.

A COLLABORATIVE APPROACH IS NEEDED

A collaborative approach is needed to face challenges and prevent death. It is encouraging that so many States have enacted high BAC laws and even more have increased penalties for repeat DWI offenders.

However, additional progress can occur by improving coordination and communication to most effectively deter high-BAC and repeat DWI offenders. The unification of records, discussion between agencies, and a clear expression of penalties to the public are all important to reduce DWI crime. A system-wide approach is necessary to accomplish this, involving all disciplines within the criminal justice system as well as the treatment and service communities.

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