

GEORGIA traffic PROSECUTOR

A Publication of the Prosecuting Attorneys' Council of Georgia Traffic Safety Program

our mission

The goal of PAC's Traffic Safety Program is to effectively assist and be a resource to our fellow prosecutors in keeping our highways safe by helping to prevent deaths and accidents on the roads in Georgia.

contents



feature article >

In this day and time, there appears to be a prescription medication for any ailment. With the number of prescribed medications on the rise, so is the number of DUI Drug offenders. This publication will present two perspectives—one from a DRE Instructor and the other from a defense attorney. While prosecutors must appreciate the role of law enforcement in enforcing these laws, we must also fully understand our adversary's next move.

additional features

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Driving Under the Influence of Prescription Drugs

By Bruce Stanford, DRE Instructor

Although Operation Zero Tolerance was initiated several years ago, this was not the first indicator of law enforcement becoming serious about prosecuting the crime of Driving Under the Influence of Alcohol. Increased media campaigns, sustained enforcement events, and active multi-jurisdictional traffic enforcement networks are also clear displays of the efforts being made to reduce DUI fatalities. It is now time for these efforts to be geared toward detecting and stopping DUI Drug offenders, and specifically, those driving under the influence of prescription drugs. Although this is unfamiliar territory for many officers and prosecutors, proper training and experience will assist in the successful prosecution of DUI Prescription Drug offenses.

Unfortunately, law enforcement officers and prosecutors, like many jurors, have become caught up in the BAC game. The problem with the numbers is that no magical line exists between .079 and .080 where a person jumps from being sober to impaired. This is why all cases should be made with the goal of establishing the less safe standard. These principles apply equally to DUI Drug offenses. If the driver exhibits less safe behavior and physical manifestations of impairment, even with a prescription for a particular drug, he/she is still less safe to drive. While many people in society use lawfully prescribed medications, they must be responsible when taking those prescription drugs.

The National Highway Traffic Safety Administration (NHTSA) began working with the Los Angeles Police Department in the late 1980s to establish and validate the Drug Evaluation and Classification Program. In the double blind laboratory validation study conducted at Johns Hopkins University, subjects were given drugs either in a therapeutic dosage or an abusive dosage. The DREs were able to identify ninety-five

percent (95%) of the subjects given placebo doses as drug free. They also classified ninety-eight percent (98%) of the subjects given the high doses as impaired. Of the highly dosed subjects, they also correctly identified the category for the drug in ninety-one percent (91%) of those subjects. This study revealed that the most basic skill of DUI enforcement, detecting impairment, never really changes.

Driving Under the Influence of Prescription Drugs, like any other DUI offense, should be approached in a systematic manner. First, the officer must observe the driver's skills and mannerisms; document the reason for the stop; notice whether the driver responded to the emergency equipment (blue lights and/or siren); and record the manner in which the driver stopped his vehicle. All of these observations must be properly memorialized.

Second, at the personal contact phase, denote the driver's appearance and behavior. Did the officer smell anything peculiar or unique? Did the officer notice anything unusual about the driver's speech? Slurred speech and/or low soft voices are common characteristics in a DUI Drug case. What caused the officer to have the subject exit the vehicle and begin SFSTs? The answers to these questions should paint a picture of impairment for the fact-finder.

Finally, as the driver performs SFSTs, the officer should take meticulous notes regarding the suspect's performance. Remember to document validated clues of impairment as well as other indicators. Examples may include:

- + Swaying during HGN
- + Constricted pupils
- + Failing to count out loud during the Walk and Turn Evaluation
- + Slow and deliberate performance on the Walk and Turn

This newsletter is a publication of the Prosecuting Attorneys' Council of Georgia. The "Georgia Traffic Prosecutor" encourages readers to share varying viewpoints on current topics of interest. The views expressed in this publication are those of the authors and not necessarily of the State of Georgia, PACOG or the Council staff. Please send comments, suggestions or articles to Fay McCormack at fmccormack@pacga.org or Patricia Hull at phull@pacga.org.

- Very low count reached on the One Leg Stand Evaluation
- Lack of correlation between the HGN clues and the BAC of the driver.

While each indicator by itself may not show beyond a reasonable doubt that the suspect is under the influence of prescription drugs, each is a building block in making a DUI Prescription Drug case.

It is important to speak with the driver before arrest. Many suspects are more than willing to tell a law enforcement officer that they are taking prescription drugs. They may not always be truthful about the increments or amounts taken, but generally, the drivers will readily give the reason for the prescription. If

the suspect has the prescription bottle, ask for permission to view the bottle. Discern the drug. Observe the fill date and directions and determine if the quantity remaining is consistent with the date and directions. Lastly, rule out alcohol as the cause of impairment. The officer should remain steadfast when he/she knows the driver was impaired and confident when stating that the reason for the chemical test was to pinpoint the cause of the impairment. Speaking with a pharmacist and referring to the Physician's Desk Reference (PDR) are helpful aids in determining the side effects and indicators of prescription drugs.

At this stage, it is now each prosecutor's role to educate the fact-finder regarding the dangers of driving while under the influence

of prescription drugs. Point out all of the indicators through the officer's eyes that reveal impairment and effectively demonstrate how the officer ruled out alcohol as the cause of the impairment. Less safe driving is less safe driving, regardless of the reason.

The Georgia Police Academy offers an eight hour course entitled "Drugs That Impair Driving" once a month and the course is open to officers and prosecutors. A background in SFST is helpful before attending this course. For more information regarding this course, please contact Bruce Stanford at the Georgia Public Safety Training Center: stanford@gpstc.state.ga.us.

Mind-Mapping with Jurors: Closing Argument Technique

Courtesy *Between the Lines* Volume 11, Number 2

A challenge to all prosecutors is how to make DUIs visual. According to the National Highway Traffic Safety Administration (NHTSA) in studies on passive vs. active learning, people remember only:

- 20% of what they hear,
- 50% of what they hear & see,
- 90% of what they say & do.

And that goes for jurors too. A great tool to increase jury retention in closing argument is mind-mapping—that terrific brain-storming tool where a problem is put in the center and all ideas spoke out from it (a non-hierarchical form of outlining).

After a defense close focusing on a police officer's performance in writing reports, administering SFSTs and collecting evidence, this visual aid returns the trial's focus to where it belongs—the conduct of the defendant.

To mind-map a case with the jury, put a sketch of the defendant in the center of the board and spoke out all the evidence of impairment from trial. Draw a picture of his brain and talk about what jurors' common sense tells them about how alcohol affects judgment and divided attention skills. Draw voice bubbles from his mouth

and show how he has "talked out of both sides of his mouth" in his various accounts of how much he drank.

Now, there should be plenty of ink on the board, and the jury's entire focus is on the defendant. Draw an arrow down to a picture of a car and discuss how a person in this condition drives—and how, in fact, he drove that day.

Sprinkle the close with plenty of Socratic-like, rhetorical questions, and the jury will feel like they got to mind-map the case with you. Better yet, the jury goes to deliberate with the visual image of this "human land mine floating on your roads" stuck in their heads.

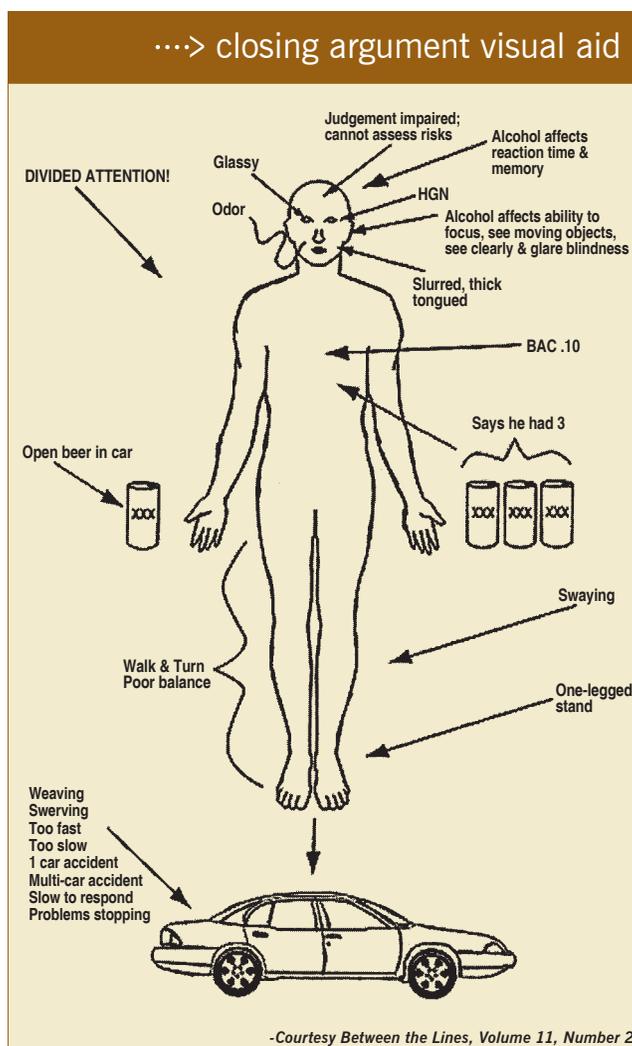
Defense CVs: Term of Confusion

In many impaired driving cases, the defense calls former law enforcement officers to the stand as "NHTSA Certified" experts in standardized field sobriety tests (SFSTs). These paid defense experts routinely inform jurors that they have been "NHTSA Certified" and that based on their certification and training the officer in this case administered the tests incorrectly.

What prosecutors need to remember is that NHTSA does not certify anyone as experts in SFSTs & DREs. At the most, the defense expert took a training course based on NHTSA curriculum (perhaps, they even taught the curriculum), and they may have received a piece of

paper certifying that they completed a training course that was presented by their academy, police department or a law enforcement association. (Many officers are certified by the International Association of Chiefs of Police.)

But, what's important for juries to understand is that none of these turncoat witnesses has a stamp of approval from the federal government on their abilities to administer or train SFSTs & DREs. NHTSA certifies the curriculum—not the people.



tip

Confusion about NHTSA certification is prevalent among prosecution witnesses. Make sure your witnesses understand the nature of their own certifications before they testify.

-Courtesy Between the Lines, Volume 11, Number 2

“Combination” DUI Cases: Alcohol and Other Drugs – the Explosion of New Polydrug Arrests

The following excerpts are provided by Atlanta, Georgia DUI Defense Attorney William C. Head with his express permission.

The proliferation of anti-anxiety, SSRI [selective serotonin reuptake inhibitors] (e.g., Prozac®, Paxil® and Zoloft®) and other mood-altering drugs has led to a significant increase of “combination” DUI cases. The consumption of alcohol with many of these prescribed medications causes an increased impairment of the subject beyond the expected “impact” that either drug alone – alcohol or the prescribed medication – might otherwise cause. Unsuspecting medical patients who had ingested prescribed medications are often clueless about the deleterious effects of combining their new medication with another drug, alcohol.

Yes, alcohol is a ‘drug’, by every scientific measurement and definition. As one writer has noted, alcohol is “the most commonly used and widely abused psychoactive drug in the country.” Source: <<http://www.gdcada.org/statistics/alcohol.htm>>

The phenomenon of increased impairment by combining alcohol and drugs is called “synergistic effect”. A simple mathematical analogy helps explain “synergism”.

Assume that a 120-pound female consumes two glasses of wine in a one-hour span. For some drinkers, this amount of alcohol alone may create a feeling of relaxation. Let’s assign these two drinks an impairment factor of 1 on a 10 scale (with “10” being the most impaired, i.e. unconscious). If the same subject were taking 75 mg of Effexor® twice a day (a common SSRI), this would normally [without alcohol] create a calming effect so as to make her more relaxed and less “anxious”. Let’s assign a “calming” effect (depressant effect) of 1 on a scale of 10.

When BOTH the two glasses of wine AND the prescribed, therapeutic dose of Effexor® are taken together, the combined impairment effect is not 2 on a 10 scale. It would be more like **5 or 6** on a scale of 10. In many instances where two or more central nervous system depressants are used, the effect is *not additive*; it is *geometric*. In other words, the person would be severely impaired or even comatose. Speech patterns would likely be affected. Often, memory would be disrupted. In rare instances, especially when the patient has just started taking the drug or increased the dosage, seizures may occur, creating loss of consciousness or ‘blackout’. Inhibitions would be lowered markedly. Field sobriety evaluation performance would be atrocious.

Medical professionals are well aware that it is extremely dangerous to mix barbiturates, SSRI drugs or hypnotics and alcohol. What would be

a non-dangerous dosage of either drug *by itself*, can interact in the body to the point of coma or fatal respiratory arrest. A similar danger exists in mixing the non-barbiturate hypnotics (Quaalude®, Doriden®, Neurosine®, Dalmane®, Noctec®, etc.) with alcohol.

Defense counsel must inquire of each new client about ANY medications that were taken before or during the time alcohol was consumed. Always ask for details on these issues:

(1) Complete description of ALL medications, including any herbal remedies, over-the-counter medications (including aspirin, ibuprofen, or other analgesics), prescribed medications, contraband substances and in “inspired” (inhaled) compounds (i.e., albuterol for asthma).

(2) Establish a timeline for ingestion of BOTH the alcohol and ALL drugs, herbs, inhalants, etc. Recent use of many barbiturates or morphine-based drugs prior to or with alcohol will cause an even more deleterious effect than if a medication is taken 12 to 18 hours before the alcohol is consumed.

(3) Always determine HOW MUCH was taken at each “dosing”. You may find that the client “doubled-up” on his or her medications for a variety of reasons. On prescribed medications and any over-the-counter medications, obtain the dosage size of each tablet or capsule or milligram (or cubic centimeters) amount (for liquid medications).

(4) Be certain to inquire into any illnesses or “conditions” that the client may have had on the day of arrest. Often, clients will forget that they had a “cold” or “stuffy nose” and were taking antihistamines or Nyquil® (50 proof alcohol) all day and night.

(5) Try to obtain detailed factual information from the client on the events prior to arrest. Lack of memory or significant gaps in the client’s chronological account of the evening is often consistent with extreme impairment.

(6) For any prescribed medications, have the client bring the containers to your office for purposes of examining the vials and seeing what (if any) warning labels are affixed to the bottles. Look for any labels that advise against consuming alcohol, or (even without alcohol) advise to not drive heavy machinery.

(7) Obtain a package insert from the pharmaceutical company, a “PDR” (Physician’s Desk Reference) summary or pharmacy printout on the drug and look for warnings

on combining the drug with alcohol. Also determine the “classification” of the drug (benzodiazepine, barbiturate, analgesic, hypnotic, etc.). Several online websites may also help with your research.

(8) Perform a “Widmark” calculation on the alcohol ALONE. This helps you to see if the estimated blood alcohol content—even without considering the drugs or herbal compounds—could have caused visible signs of intoxication. This is an essential part of evaluating any case involving a ‘refusal’ to be tested (in states where refusal is still allowed). For cases with a breath or blood test, you can use the calculator to see if the quantity of alcohol reported by your client matches the state’s test. For an easy-to-use chart for most test subjects, see: <http://www.drunkdrivingdefense.com/general/bac.htm> or use the interactive calculator for most test subjects found at: <http://www.dot.wisconsin.gov/safety/motorist/drunkdriving/calculator.htm#use>

(9) Inquire of the client about how he or she felt on the night of this arrest versus other “similar” drinking episodes when NO drugs were taken in combination with medications.

(10) When in doubt about the combined effect of alcohol and drugs, consult an experienced medical doctor, Ph.D. level pharmacologist or Ph.D. level toxicologist or similar expert to assist you in assessing the client’s likely impairment on the night of arrest.

After going through these steps, you will be better prepared to advise the client about his or her chances at trial. You can also determine if a police report is consistent with the client’s likely level of impairment, or an exaggeration. Always review any videotapes showing your client’s condition at the time of arrest and interview any sober passengers or friends who observed the client immediately before the arrest.

Defense counsel must also be retrained about DUI-drugs offenses because the prosecution has already retrained many of its top DUI Task Force officers. The so-called “DRE” officers (drug recognition experts) who have taken a 72-hour core curriculum followed by 200 to 300 hours of “lab” work in jails and hospitals have been trained on how to evaluate manifestations and “signs” of drug usage for suspected impaired drivers. Armed with a stethoscope, a pupilometer, a blood pressure cup, a watch with a second hand (to take your pulse) and a digital thermometer, these police officers are taught to identify and document SYMPTOMS of drug use, in order

...> crashes aren't accidents

Impaired driving that results in death or injury is not an accident; it is a violent crime. An "accident" is something that could not have been prevented. When addressing the court, talking with victims or speaking with the media, refer to the incident that injured or killed someone as a CRASH, not an accident.

-Courtesy Between the Lines, Volume 6, Number 4

"Combination" DUI Cases... (cont.)

to support an arrest and future prosecution for DUI-drugs or "combination-DUI" cases involving both alcohol and drug ingestion.

The DRE course was originally started in 1990 by the IACP (International Association of Chiefs of Police), but is now the joint effort of NHTSA and IACP. Current objectives of the group are to create a "per se" drugs crime for certain commonly-abused drugs, including marijuana. Since 1990, almost 1 in 12 law enforcement officers have taken this new

training. Soon, all states will be presented with the same blackmail choice as they were for adopting the 0.10 BAC level and later the 0.08 BAC level—either pass laws to embrace the new crime of "DUI-per se drugs", or lose critical federal highway funds.

The highly trained defense attorney must adapt his or her practice to fit the growth in this area of DUI law. Failure to do so leaves your clients at the mercy of the so-called new "experts" in drug detection, the DRE police officers of America.

Driver Cell Phone Use in 2005: Overall Results

By Donna Glassbrenner, Ph.D.

Driver cell phone use increased in 2005, with 6 percent of drivers on hand-held phones in 2005 nationwide compared to 5 percent in 2004. This result is from the National Occupant Protection Use Survey (NOPUS), which provides the only probability-based observed data on driver cell phone use in the United States. The NOPUS is conducted annually by the National Center for Statistics and Analysis of the National Highway Traffic Safety Administration (NHTSA).

The 2005 rate translates into 974,000 vehicles on the road at any given daylight moment being driven by someone on a hand-held phone. It also translates into an estimated 10 percent of vehicles in the typical daylight moment whose driver is using some type of phone, whether

hand-held or hands-free. The 2005 survey also found the following:

1. Hand-held use increased in a number of driver categories, including female drivers (from 6 percent in 2004 to 8 percent in 2005), drivers age 16-24 (8 percent in 2004 to 10 percent in 2005), and drivers in suburban areas (4 percent in 2004 to 7 percent in 2005).
2. The incidence of drivers speaking with headsets on while driving also increased in 2005, from 0.4 percent of drivers in 2004 to 0.7 percent in 2005.
3. In the first nationwide probability-based estimate of the incidence of hand-held device

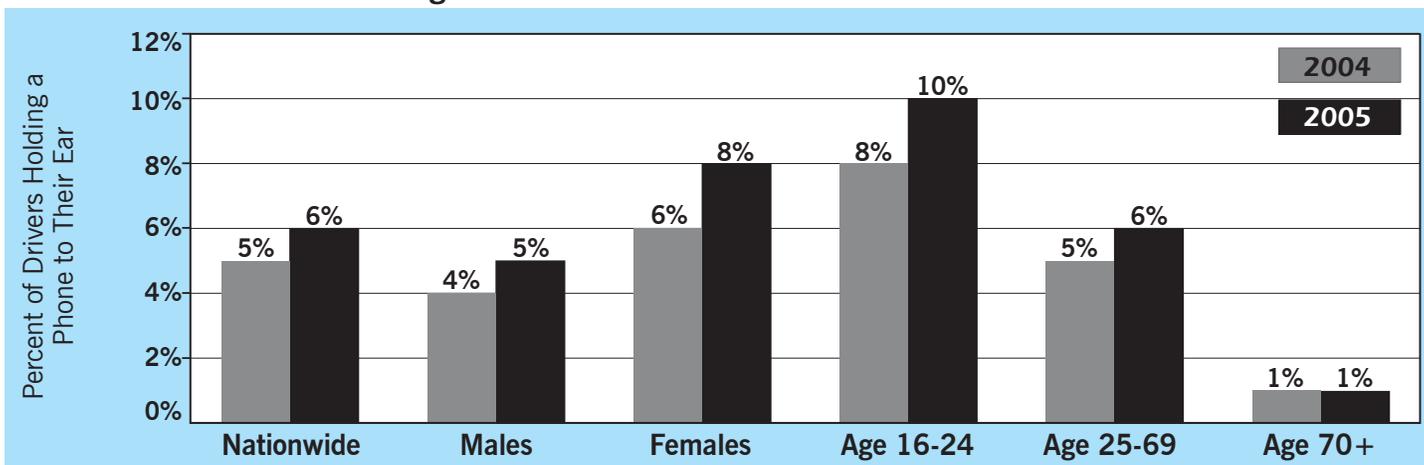
manipulation, the survey found that 0.2 percent of drivers were dialing phones, checking PDAs, or otherwise manipulating some hand-held device while driving in 2005.

...> fact

As of June 30, 2005, only three states—New York, New Jersey and the District of Columbia—had laws banning hand-held cell phone use while driving. In no other states did such laws take effect during the period June 30, 2004 - June 30, 2005. However, Connecticut enacted a law that took effect in October 2005.

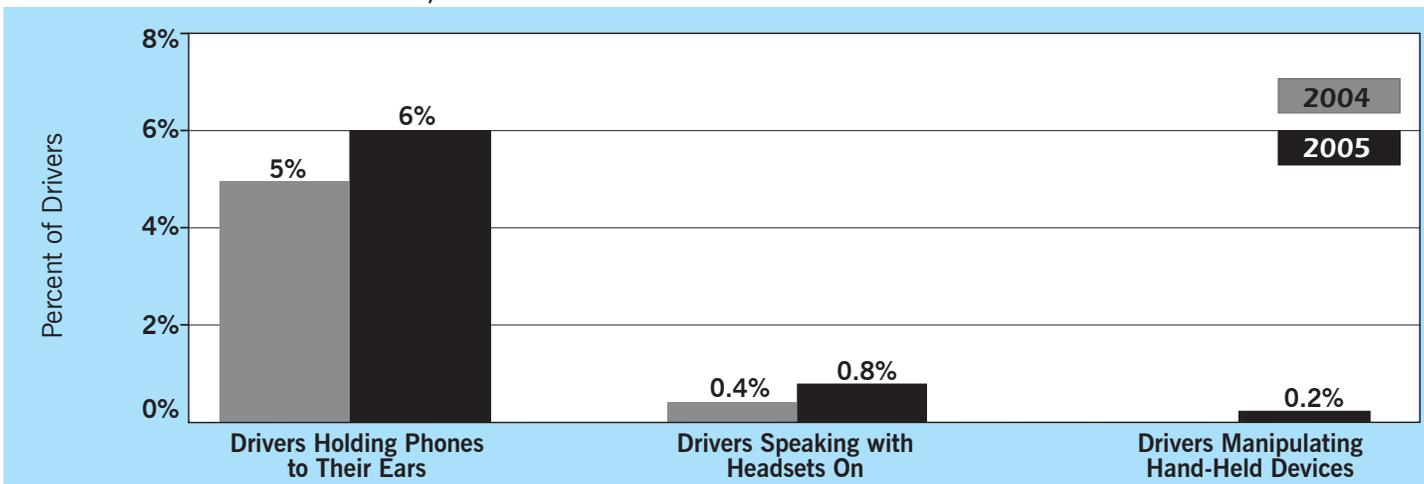
-Courtesy NHSTA

The Percent of Drivers Holding Phones to Their Ears



Source: National Occupant Protection Use Survey, NHTSA's National Center for Statistics and Analysis, 2004-2005

Various Distraction Behaviors, 2004-2005



Source: National Occupant Protection Use Survey, NHTSA's National Center for Statistics and Analysis, 2004-2005

State Alcohol Estimates

Fatalities by Highest Blood Alcohol Concentration (BAC) in the Crash, 2004

| State | Total Fatalities | BAC = .00 g/dL | | BAC = .01-.07 g/dL | | BAC ≥ .08 g/dL | | BAC ≤ .01 g/dL | |
|-------------------|------------------|----------------|-----------|--------------------|----------|----------------|-----------|----------------|-----------|
| | | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| Alabama | 1,154 | 713 | 62 | 48 | 4 | 394 | 34 | 442 | 38 |
| Alaska | 101 | 70 | 69 | 1 | 1 | 30 | 30 | 31 | 31 |
| Arizona | 1,150 | 715 | 62 | 60 | 5 | 376 | 33 | 435 | 38 |
| Arkansas | 704 | 428 | 61 | 40 | 6 | 236 | 33 | 276 | 39 |
| California | 4,120 | 2,477 | 60 | 276 | 7 | 1,367 | 33 | 1,643 | 40 |
| Colorado | 665 | 406 | 61 | 34 | 5 | 225 | 34 | 259 | 39 |
| Connecticut | 291 | 164 | 56 | 15 | 5 | 112 | 38 | 127 | 44 |
| Delaware | 134 | 83 | 62 | 3 | 2 | 48 | 36 | 51 | 38 |
| Dist of Columbia | 43 | 26 | 59 | 5 | 12 | 12 | 28 | 18 | 41 |
| Florida | 3,244 | 2,023 | 62 | 169 | 5 | 1,053 | 32 | 1,222 | 38 |
| Georgia | 1,634 | 1,109 | 68 | 75 | 5 | 450 | 28 | 525 | 32 |
| Hawaii | 142 | 77 | 54 | 13 | 9 | 52 | 37 | 65 | 46 |
| Idaho | 260 | 167 | 64 | 12 | 4 | 81 | 31 | 93 | 36 |
| Illinois | 1,356 | 752 | 55 | 87 | 6 | 517 | 38 | 604 | 45 |
| Indiana | 947 | 648 | 68 | 45 | 5 | 254 | 27 | 299 | 32 |
| Iowa | 390 | 280 | 72 | 19 | 5 | 91 | 23 | 110 | 28 |
| Kansas | 461 | 313 | 68 | 27 | 6 | 121 | 26 | 148 | 32 |
| Kentucky | 964 | 656 | 68 | 39 | 4 | 269 | 28 | 308 | 32 |
| Louisiana | 904 | 490 | 54 | 69 | 8 | 345 | 38 | 414 | 46 |
| Maine | 194 | 124 | 64 | 11 | 6 | 58 | 30 | 70 | 36 |
| Maryland | 643 | 357 | 55 | 55 | 9 | 231 | 36 | 286 | 45 |
| Massachusetts | 476 | 274 | 57 | 22 | 5 | 181 | 38 | 203 | 43 |
| Michigan | 1,159 | 729 | 63 | 64 | 6 | 367 | 32 | 430 | 37 |
| Minnesota | 567 | 383 | 68 | 14 | 2 | 170 | 30 | 184 | 32 |
| Mississippi | 900 | 559 | 62 | 23 | 3 | 317 | 35 | 341 | 38 |
| Missouri | 1,130 | 681 | 60 | 62 | 5 | 388 | 34 | 449 | 40 |
| Montana | 229 | 124 | 54 | 6 | 3 | 100 | 43 | 106 | 46 |
| Nebraska | 254 | 162 | 64 | 14 | 5 | 78 | 31 | 92 | 36 |
| Nevada | 395 | 243 | 61 | 20 | 5 | 133 | 34 | 152 | 39 |
| New Hampshire | 171 | 112 | 65 | 8 | 5 | 51 | 30 | 59 | 35 |
| New Jersey | 731 | 461 | 63 | 42 | 6 | 227 | 31 | 270 | 37 |
| New Mexico | 521 | 310 | 60 | 26 | 5 | 185 | 36 | 211 | 40 |
| New York | 1,493 | 906 | 61 | 93 | 6 | 494 | 33 | 587 | 39 |
| North Carolina | 1,557 | 1,005 | 65 | 57 | 4 | 496 | 32 | 553 | 35 |
| North Dakota | 100 | 61 | 61 | 5 | 5 | 35 | 35 | 39 | 39 |
| Ohio | 1,286 | 794 | 62 | 75 | 6 | 418 | 32 | 492 | 38 |
| Oklahoma | 774 | 496 | 64 | 34 | 4 | 245 | 32 | 278 | 36 |
| Oregon | 456 | 257 | 56 | 40 | 9 | 159 | 35 | 199 | 44 |
| Pennsylvania | 1,490 | 877 | 59 | 72 | 5 | 541 | 36 | 614 | 41 |
| Rhode Island | 83 | 41 | 50 | 1 | 2 | 41 | 49 | 42 | 50 |
| South Carolina | 1,046 | 583 | 56 | 51 | 5 | 413 | 39 | 464 | 44 |
| South Dakota | 197 | 111 | 56 | 10 | 5 | 76 | 39 | 86 | 44 |
| Tennessee | 1,288 | 769 | 60 | 65 | 5 | 454 | 35 | 519 | 40 |
| Texas | 3,583 | 1,941 | 54 | 225 | 6 | 1,417 | 40 | 1,642 | 46 |
| Utah | 296 | 224 | 76 | 1 | 0 | 70 | 24 | 72 | 24 |
| Vermont | 98 | 66 | 68 | 12 | 12 | 20 | 20 | 32 | 32 |
| Virginia | 925 | 567 | 61 | 52 | 6 | 307 | 33 | 359 | 39 |
| Washington | 563 | 317 | 56 | 23 | 4 | 223 | 40 | 246 | 44 |
| West Virginia | 411 | 275 | 67 | 22 | 5 | 114 | 28 | 136 | 33 |
| Wisconsin | 792 | 434 | 55 | 40 | 5 | 318 | 40 | 358 | 45 |
| Wyoming | 164 | 105 | 64 | 5 | 3 | 54 | 33 | 59 | 36 |
| U.S. Total | 42,636 | 25,942 | 61 | 2,285 | 5 | 14,409 | 34 | 16,694 | 39 |
| Puerto Rico | 494 | 246 | 50 | 27 | 5 | 221 | 45 | 248 | 50 |

Courtesy NHTSA's National Center for Statistics and Analysis

Upcoming Training: Lethal Weapon Course

Location: Georgia Public Safety Training Center –Forsyth, Georgia
Dates: September 12-15, 2006

Vehicular homicide cases are complex and require prosecutors and law enforcement to have a working knowledge of crash reconstruction and toxicology, as well as skills to work with expert witnesses and victims. The Lethal Weapon course is focused on assisting the development of the knowledge and skills needed in investigating and trying these cases. A substantial portion of this three and one half-day course involves presentations on crash reconstruction, technical investigation at the scene and toxicology. The course also provides an advanced trial advocacy component in which participants receive a case file and participate in mock trial sessions. A unique feature of Lethal

Weapon is the opportunity for prosecutors to conduct direct and cross-examinations of actual reconstructionists and toxicologists.

This course teaches prosecutors and law enforcement to:

- Learn how crash reconstructionists determine speed from skid marks and vehicle damage.
- Determine how vehicle and occupant kinematics assist in cases involving driver identification.
- Understand the prosecutor's role at the scene of a traffic fatality.
- Learn how experts calculate BAC by alcohol "burn-off" rates and the Widmark formula.
- Improve trial advocacy skills, particularly conducting direct and cross-examination of expert witnesses.

Identifying the Operator

By John Kwasnoski, Professor of Forensic Physics, Western New England College, Springfield, Massachusetts *Courtesy Between the Lines, Volume 4, Number 4*

Proof of operation is often under-investigated at the time of a crash, only to become a troublesome challenge at trial. Although operator identification may be established through eyewitness observations of the collision or from statements made by the suspected operator to medical or law enforcement personnel, do not overlook forensic proof of who was driving. For example:

- blood, tissue and hair transfers to the vehicle interior
- injury match-ups to vehicle interior damage
- brake pedal or accelerator marks on suspect's shoes
- knee injuries from contact with dash board components
- safety belt abrasions on occupants
- pattern injury from contact with steering wheel
- injuries from windshield or side window glass
- seat position as it relates to height of occupants

Five means of obtaining evidence to prove operation include: 1) securing statements from anyone who assisted or removed the occupants from the vehicle; 2) prompt forensic processing of the vehicle; 3) preservation and laboratory analysis of trace evidence; 4) detailed documentation and photography of abrasions, bruises, lacerations and related injuries of all vehicle occupants; and 5) extensive photography of the vehicle interior.

Reconstructing the movements of vehicle occupants during the collision with point-by-point matching of injuries, transfers and body motions can be most convincing to a jury but requires thorough investigation at the scene.

Who Should Attend?

- Prosecutors with a preferred level of two to three years trying impaired driving cases.
- Prosecutors who currently handle vehicular homicide cases.
- Experienced prosecutors who want to increase their understanding of the technical evidence required to prove guilt in cases involving vehicular fatalities, and at the same time improve their trial advocacy skills.
- Law enforcement officers who conduct accident reconstruction and investigate vehicular homicide cases.

For more information regarding PAC's DUI training programs, please contact Fay McCormack at 404-969-4001 or Patricia Hull at 478-751-6645 or e-mail them at: fmccormack@pacga.org or phull@pacga.org

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Prosecuting Attorneys' Council of Georgia
Traffic Safety Program
104 Marietta Street, NW
Suite 400
Atlanta, Georgia 30303

---> traffic safety program staff



Fay McCormack
Traffic Safety Coordinator
404-969-4001 (Atlanta)
fmcormack@pacga.org



Patricia Hull
Traffic Safety Prosecutor
478-751-6645 (Macon)
phull@pacga.org

---> fact:

Drunk driving is the nation's most frequently committed violent crime, **killing someone every 31 minutes.** Because drunk driving is so prevalent, about three in every ten Americans will be involved in an alcohol-related crash at some time in their lives. In 2003, an estimated 17,013 people died in alcohol-related traffic crashes in the USA. These deaths constituted 40 percent of the nation's 42,643 total traffic fatalities.

-Statistics courtesy MADD

The "Georgia Traffic Prosecutor" addresses a variety of matters affecting prosecution of traffic-related cases and is available to prosecutors and others involved in traffic safety. Upcoming issues will provide information on a variety of matters, such as ideas for presenting a DUI/Vehicular Homicide case, new strategies being used by the DUI defense bar, case law alerts and other traffic-related matters. If you have suggestions or comments, please contact Editors Fay McCormack or Patricia Hull at PAC.