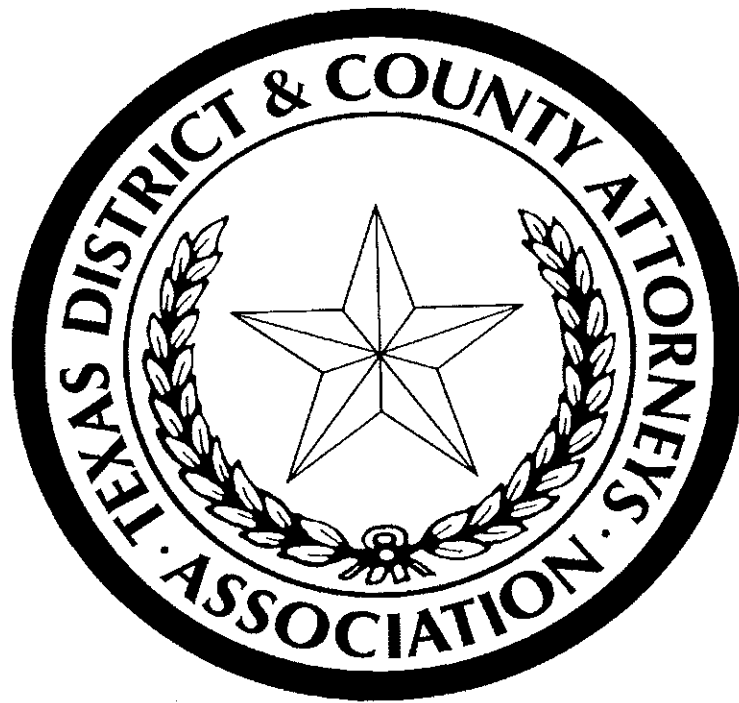


# **FY 2017 DWI Prosecutor Taskforce Minutes and Report**



**Created by TDCAA for the Texas Department of  
Transportation on December 9, 2016**

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# TEXAS DISTRICT & COUNTY ATTORNEYS ASSOCIATION

## **DWI Prosecutor Summit**

**TDCAA**

Austin, Texas

December 9, 2016

### **Friday, December 9, 2016**

**9:30 a.m. Introductions & Overview**

**10:00 a.m. Search Warrants**

*Invited guests: Charlie Vela, Brian Grubbs TMPA*

**11:00 a.m. Legislation**

Task Force Lists

Deferred (Mel Koehler)

Enhanced Intox MS (Tyler Dunman)

**12:00 p.m. Lunch (Provided)**

**1:00 p.m. Experts & Lab Communications**

Abusive Discovery, Mandamus, Forensic Science Commission (Lee Hon)

Waiving further testing

Communication

Courtroom Testimony Training

*Invited guests: Alice Amilhat, Anna Mudd & James Burris, DPS Crime Lab*

**2:00 p.m. Drugged Driving**

*Invited guests: Cecelia (Cecil) Marquart, Sam Houston State University*

*Dean Peterson, Round Rock PD*

**3:00 p.m. DWI Resource Prosecutor Grant**

- Publications

- Resources

- Training

- Direct Courtroom Assistance (Rob Kepple)

**4:00 p.m. Report Drafting & Assignments**

**4:30 p.m. Adjourn**

## 2016 DWI Prosecutor Taskforce

Kayla Allen\*  
Galveston County  
Asst. Criminal District Attorney  
600 59th St., Ste. 1001  
Galveston, TX 77551-4137  
Phone: 409.766.2355  
Hire date: 11/29/2004  
County Population: 312,880

Natalie Anderson  
Upshur County  
First Asst. Criminal District Attorney  
405 N. Titus St.  
Gilmer, TX 75644-1928  
Phone: 903.843.5513  
Hire date: 4/16/2012  
County Population: 42,223

Alison Baimbridge  
Harris County  
Asst. District Attorney  
1201 Franklin St., Ste. 600  
Houston, TX 77002-1930  
Phone: 713.274.5800  
Hire date: N/A  
County Population: 4,471,427

Tom Brummett  
Lubbock County  
Asst. Criminal District Attorney  
P.O. Box 10536  
Lubbock, TX 79408-3536  
Phone: 806.775.1122  
Hire date: 3/5/2003  
County Population: 295,257

Brody Burks  
Limestone County  
Asst. County & District Attorney  
200 W. State St., Ste. 110  
Groesbeck, TX 76642-1702  
Phone: 254.729.3046  
Hire date: 6/1/2009  
County Population: 24,761

Kelsey Downing  
Aransas County  
Asst. County District Attorney  
301 N. Live Oak St.  
Rockport, TX 78382-2798  
Phone: 361.790.0114  
Hire date: N/A  
County Population: 24,738

Ray Duke  
El Paso County  
Asst. District Attorney  
500 E. San Antonio Ave., Rm. 201  
El Paso, TX 79901-2419  
Phone: 915.546.2059  
Hire date: N/A  
County Population: 873,513

Tyler Dunman  
Montgomery County  
Asst. District Attorney  
207 W. Phillips St., 2nd Fl.  
Conroe, TX 77301-2824  
Phone: 936.539.7800  
Hire date: N/A  
County Population: 548,532

Jessica Frazier  
Bexar County  
Asst. Criminal District Attorney  
101 W. Nueva, 4th Fl.  
San Antonio, TX 78205-3406  
Phone: 210.335.2404  
Hire date: N/A  
County Population: 1,882,834

Daniel Gonzalez  
Dimmit County  
County Attorney  
103 N. 5th St.  
Carrizo Springs, TX 78834  
Phone: 830.876.4236  
Hire date: 1/1/2000  
County Population: 10,473

Mike Hartman  
Scurry County  
County Attorney  
1806 25th St., Ste. 201  
Snyder, TX 79549-2530  
Phone: 325.573.7440  
Hire date: N/A  
County Population: 17,884

Corby Holcomb  
Travis County  
Asst. County Attorney  
P.O. Box 1748  
Austin, TX 78767-1748  
Phone: 512.854.9415  
Hire date: N/A  
County Population: 1,144,887

Lee Hon  
Polk County  
Criminal District Attorney  
101 W. Mill St., Ste. 247  
Livingston, TX 77351-3228  
Phone: 936.327.6868  
Hire Date: 1/1/2007  
County Population: 48,633

Mel Koehler  
Comal County  
Asst. Criminal District Attorney  
150 N. Seguin Ave., Ste. 307  
New Braunfels, TX 78130-5161  
Phone: 830.221.1300  
Hire date: 10/23/2000  
County Population: 128,347

Jackson McMinn  
Tarrant County  
Asst. Criminal District Attorney  
401 W. Belknap St.  
Fort Worth, TX 76196-0201  
Phone: 817.884.1400  
Hire date: 2/2/2015  
County Population: 1,959,449

Dewey Mitchell  
Dallas County  
Asst. Criminal District Attorney  
133 N. Riverfront Blvd., LB-19  
Dallas, TX 75207-4399  
Phone: 214.653.3600  
Hire date: 3/10/2003  
County Population: 2,496,859

Chris Nevins  
Gillespie County  
County Attorney  
125 W. Main St., Ste. L41  
Fredericksburg, TX 78624-3707  
Phone: 830.990.0675  
Hire date: 10/1/2012  
County Population: 27,231

Laura Nodolf  
Midland County  
First Asst. District Attorney  
500 N. Loraine St., Ste. 200  
Midland, TX 79701  
Phone: 432.688.4411  
Hire date: 11/12/2003  
County Population: 147,653

Katherine Nolden  
Collin County  
Asst. Criminal District Attorney  
2100 Bloomdale Rd., Ste. 100  
McKinney, TX 75071-8318  
Phone: 972.548.3621  
Hire date: N/A  
County Population: 949,673

Brent Ratekin  
Smith County  
Misdemeanor Chief  
100 N. Broadway Ave., Ste. 400  
Tyler, TX 75702-7201  
Phone: 903.590.1701  
Hire date: 4/12/2004  
County Population: 225,731

Randall Sims  
Potter/Armstrong Counties  
47th Judicial District Attorney  
501 S. Fillmore St., Rm. 5A  
Amarillo, TX 79101-2444  
Phone: 806.379.2325  
Hire date: 1/1/2005  
County Population: 129,612

**\* Candice Freeman sat in on meeting for Kayla Allen since she was unable to attend the meeting and David Stidham sat in on meeting since Dewey Mitchell was unable to attend.**

# FY 2017 DWI Prosecutor Summit Meeting Minutes

TDCAA

Austin, Texas

December 9, 2016

## 9:30 a.m. Introductions & Overview

The Task Force discussed Diversion again and the vote was to still not make a standard policy for it in all prosecutors' offices.

## 10:00 a.m. Search Warrants

Invited guests: Charlie Vela, Brian Grubbs TMPA

There has been success with no refusal and blood search warrants. The Task Force agreed that we should push to create a model blood search warrants in the State of Texas

Next discussion was about using a Directive to the Officer/Physician. Some Doctors are not doing blood draws because they are needing more than a warrant to do so and need the Directive as well. Jessica says that it is absolutely necessary in her area (Bexar County), but Alison says they don't use one in hers (Harris County). Brody said that in his area, (Waco area), some hospitals want one, but some don't. Mike said he doesn't think it's a bad idea if it will help with people who are fighting the blood draw.

Next discussion was regarding having two search warrants. One for the drawing of the blood and one for the testing of the blood. Alison said that defense attorneys are filing a Motion to Suppress on the blood test results since there was not a warrant to actually test the blood. The statute is vague, so Clay said we should put language in the search warrant to make this issue go away. Jessica stated we needed case law where the search warrant needs to say "testing the DNA" instead of "testing for Intox". Another issue that Jessica is facing is that she cannot take blood out of the county to test it. Clay said that there should be an authorization in the search warrant to take it out of the county for testing and everyone agrees. Clay asked about other search warrant issues that needed to be addressed. Jessica said she's having a problem with CCP 18:02 (h)&(i) because Magistrates are saying you have to have a verbal refusal even if the suspect is unconscious. Clay said search warrants should be checkbox oriented and one of the checkboxes could say "refused to provide sample". Alison said their having a problem with underage suspects no being able to consent. Need to put working in search warrant to make their consent ok. Clay said we could make reference in the Juvenile book about this search warrant issue.

## **LEADRS**

Charles (Charlie) Ortiz and Brian Grubbs presented on behalf of LEADRS. Brian showed a program that they have been working on that lets you send search warrants remotely to Magistrates, ect., to be signed electronically. He said they made the program based on search warrants made up by Task Forces like ours. Brian says the electronic search warrants are a major game changer since it will cut down the amount of time it takes to execute one by two hours since you don't have to take the time to find a magistrate to physically sign it. Clay asked if the Magistrate/Judge is able to swear to the electronic warrant and he was told yes they can. Clay said we could get rid of the sworn part of the warrant then and just make it where the Judge can swear to it when he signs the warrant electronically. Mike (Scurry County), Tom (Lubbock County) and Katherine (Collin County) said that they have already been using electronic search warrants and haven't had any issues. Randall says they also do all theirs electronically and it saves a lot of time. Alison said they have problems with the electronic search warrants because the Judge won't sign checkbox warrants and the District Clerk considers the print out of the search warrant a copy since the original is electronic. She said there is always a Judge around so it's easier for them to just walk it across the street to them for a signature. Brian said they can change the search warrant for her that would make it to where you can insert sentence options instead of checkbox options. Ray (El Paso County) said that the program should make Judges put in a reason when they reject the search warrant and Alison agreed. Clay said that it probably wouldn't be a good idea to make the reason for rejection mandatory for Judges. Ray wanted to know if you could save the search warrant as a PDF and then e-file it. He said that once it is signed by the judge, it goes back to the officer and can be printed out multiple times. There is also a way you can save it as an unencrypted PDF. LEADRS only sees data from search warrant if they are subpoenaed for it. Brian Klas, TDCOA's Training Director, asked Judges can alter the form. Brian (LEADRS) said no they can't. They can only sign their signature or accept/reject the warrants. Alison wanted to know if you could save the info from the warrant for discover and Brian said yes you could, you just have to contact them to access it. He also said that officers usually save all PDF files through the program and then forward it on to the prosecutor. Brian said you can also use the program as a report writer. Jessica asked if she could get copies of the forms that are generated. Clay said she could contact Brian or Charlie and they could set up a time to come to their office for a demonstration. Brian said you can also do supplementals. Katherine asked if you could upload videos to the program and Brian and Charlie said no.

**11:00 a.m.    Legislation**

**Task Force Lists**

**Deferred (Mel Koehler)**

**Enhanced Intox MS (Tyler Dunman)**



Clay said we are trying to make diversion required. Treatment options would be a great way to go. Everyone said that if they had deferred, they would do less diversions. Jennifer Tharp is a sponsor for the bill regarding this. The Task Force then went through a list of Legislative Initiatives (attached) and decided what their stance would be for each. They are as follows:

*Prevention:*

- Conduct a study to determine the Texas Highway Safety Office's needs for better and more accurate impaired driving data – **Neutral**
- Establish funding based upon portions of fines, court costs, etc., to support long term projects and promote self-sufficiency – **Neutral**
- Enact a \$.10 per drink excise tax increase and dedicate a portion of new revenues to alcohol abuse and impaired driving prevention and treatment – **Neutral**
- Enact a strict social host liability statute holding all individuals liable for damages resulting from over service of alcohol to guest – **Neutral** (Tyler said he wish that this was just for minors who are over served. Everyone agrees Task Force shouldn't get involved in civil issues)
- Conduct an assessment of community based coalitions that address alcohol and substance use to determine the extent and nature of impaired driving prevention strategies and areas for potential collaboration with the traffic safety community – **Oppose** (Everyone agrees with conducting an assessment, but not standardization. If assessment also means standardization, then oppose all)
- Coordinate highway safety plans and programs with substance abuse prevention plans and programs – **Support** (Since we are seeing more with drugs these days, Clay asked if everyone would be ok with more options for probation. Everyone says yes to adding more options for alcohol and drug)

*Criminal Justice System:*

- Strengthen Administrative License Revocation to allow the process to immediately remove impaired drivers from the road – **Strongly Support**
- Enact reasonable constitutional guidelines through one or more politically accountable governing bodies regarding driving while intoxicated DWI/sobriety checkpoints – **For Bigger jurisdictions, Yes. Smaller jurisdictions, No. Middle Jurisdictions, Neutral** (Clay let the Task Force know that if their county is getting STEP money, they would have to do it on holidays and he also stated that jurisdictions will be judged on whether they participate or not. Lee said it should be a statewide option, but up to the county whether they do it or not. Brody suggested that in bigger jurisdictions with higher populations, it would be good to limit where the checkpoints could be set up. Daniel suggested that the elected prosecutor in the county have to sign-off on the checkpoint beforehand (would have to have both County Attorney and District Attorney if County

Attorney as Misdemeanor cases). Randall and Chris said they wouldn't want to have to sign-off on it because if they didn't, they would be under fire for not doing it.)

- Codify DWI deferral, diversion, and pretrial intervention programs so as to provide uniform statewide guidelines, requirements, and procedures that regulate the implementation, operation, and applicability of such programs – **Want deferred, but not diversion**
- Enact a statute that allows well planned and fairly executed sobriety checkpoints – **See above notes on sobriety checkpoints**
- Enact a statute establishing per se levels for controlled substances – **Oppose** (The body eliminates drugs fast, per se means we can't prosecute them. If you can't get the blood draw right when you stop them, then per se is not good.)
- Analyze the filings and dispositions from all courts, statewide and links to the arrest data and prosecution information for each court to identify weaknesses both geographically and systematically to strengthen efforts to improve the adjudication of impaired driving – **Oppose**
- Increase probation resources for the management of impaired driving cases – **Support** (probation offices should receive more money)
- Enact a DWI statute that would enable DWI/Drug Court Judges, upon motion from the prosecutor, reward those who successfully complete DWI/Drug court program of one year or longer in duration, by waiving surcharges/fines – **Support but take out DWI Courts**
- Ensure that ignition interlock monitoring is effective and that information about violations has some impact on the non-compliant user – **Support**
- Resolve the continued concern about the administrative hearings negative impact on criminal cases based on a study of the interaction administrative and criminal proceedings – **Support**
- Conduct a study of the effect of the Responsible Driver Act surcharge on subsequent compliance and re-licensure of drivers to determine if alternative and criminal proceedings – **Support, but oppose surcharges in any form**
- Provide accountability for the ignition interlock program by specifying in law or policy to whom responsibility for review of driver behavior and sanction of non-compliance belongs – **Support**
- Enact a law that allows vehicle sanctions to be used for DWI convictions – **Support** (2 time DWI conviction license plate)

*Alcohol and other Drug Misuse: Screening, Treatment, and Rehabilitation:*

- Require, develop, and implement a program of screening and assessment for all DWI offenders prior to sentencing – **Support**
- Provide results of screening and assessment and treatment recommendations to courts for consideration in sentencing of DWI offenders – **PSI**

- Require completion of appropriate treatment, as determined by standardized screening and assessment, as a condition of relicensing – **Support**
- Require the use of uniform and standardized screening protocols in community supervision (probation) – **Support**
- Require the use of uniform and standardized screening protocols in all driving while intoxicated education programs – **Support**
- Provide insurance coverage for screening brief intervention and treatment services – **Support**
- Repeal Alcohol Exclusion Laws in Texas – **Support**
- Implement screening, brief intervention, referral to treatment procedures in healthcare settings throughout Texas – **Support**
- Implement screening, brief intervention, referral to treatment procedures on college campuses throughout Texas – **Support**
- Support training for clergy to provide substance abuse counseling in rural areas – **Oppose**
- Require, develop, and implement a program of screening, assessment, and treatment for all DUI offenders prior to sentencing – **Support**
- Require the use of uniform and standardized screening protocols in all DWI education programs – **Support**

*Program and Evaluation:*

- Enact legislation that prevents removal of DWI conviction data from the driver history – **Support, unless the conviction was acquitted or expunged from someone’s record**

Alison said she would like to be able to stack FSRA’s, but Jessica she is worried about stacking being an issue, push back. Alison also stated that we needed to add an and/or in .08 and above (at time of test and time of stop).

**1:00 p.m. Experts & Lab Communications**

Abusive Discovery, Mandamus, Forensic Science Commission (Lee Hon)

Waiving further testing

Communication

Courtroom Testimony Training

*Invited guests: Alice Amilhat, Anna Mudd & James Burris, DPS Crime Lab*

Alice Amilhat, Anna Mudd and James Burris with the DPS Crime Lab were invited guests. Everyone wanted to know if a document waiving further testing with the prosecutor, the defense attorney and defendant be enough to stop testing on a blood draw. Anna said that

they could stop testing with just an email from the prosecutor and that even if you send an email to not test the blood, it is a minimum of 2 years before it's destroyed. Anna said they have been getting more request to stop testing on drug intox than alcohol. James said that their testifying in court on discovery has gone down. Corby said they have a basic template for discovery and if the defense wants more than what is on the template, they have to go in front of a judge. Lee said he was having issues with discovery orders coming in for things that are already available to the public. We shouldn't have to provide those things if they can get them themselves (policy-procedures). Alice said they use a standard litigation packet, but can give more information if needed. Anna said they can give you everything on a standard DVD if the county requests it. It's a case by case basis. James demonstrated what a head space vile and blood tube sample is. Tyler asked how often are DPS Crime Lab employees criticized on their methodology and how often are they audited. Alice said they have a disciplinary form that is sent for each scientist going to court. They also have proficiency tests and periodic audits of their personnel's education and continuing education. Tyler is concerned that a new misdemeanor prosecutor won't know (or will miss) the tech's disciplinary report sheet when looking through the packet. Alice says it's attached to the case reports so they should be able to find it easily. Brent asked about outsourcing testing because it's too expensive to bring in lab techs from out of state for trial. Anna said they try to do everything in house, but they do have a contract for outsourcing. They used that contract last year due to back log. Out of state lab techs can give their testimony by Webx. You can also get a certificate of analysis from them as well. Alison wanted to know if the Crime Lab will test one tube of blood more than once if requested. Anna said that its DPS policy to only test one tube, but it is a case by case basis. Will do it on alcohol and drug tests in intoxication manslaughter cases when there is a living driver and a deceased victim. Tom asked if the Crime Lab could broaden the category on synthetics to cover a class. Anna said that they can't since the chemical chemistry can change so much. A number of technical lab issues were discussed. Clay was approached about doing an Effective courtroom Testimony for the toxicologists. Clay wanted to know if everyone would want to go together or keep it separate. Everyone agreed together. Anna said that a good training for their toxicologists would be a training on cross examination. Clay said if he did that training, it would focus more on cross than direct. Anna voiced a concern about one analyst being needed by more than one prosecutor at the same time. Clay said that all of those prosecutors should be on one email and work it out amongst themselves so that doesn't continue to happen. Anna said there are a lot of prosecutors who refuse to budge on when they need the analyst. Mel suggested to have another prosecutor call the one that won't budge to see if something can be worked out. Katherine said they took their baby prosecutors to the open house at the Garland DPS Crime Lab and it was great. She wanted to know if they could do an open house more than once if a prosecutor requests one. Anna said that would shut down evidence testing so it wouldn't be a good idea. Anna said that Austin as two open house weeks so feel free to come to one or both of those. Brody said they toured the hospital lab and it was a great experience. Clay asked some people to look over the scripts for the lab video we would be producing at the end of the meeting.

Returning briefly to legislation, Shannon Edmonds, TDCAA's Director of Governmental Relations, came in and talked about prosecutors getting involved with Bills that they are interested in supporting or opposing. Stressed that it's very important for them to make a stance and not just TDCAA.

**2:00 p.m. Drugged Driving**

**Invited guests: Cecelia (Cecil) Marquart, Sam Houston State University**

**Dean Peterson, Round Rock PD**

Cecelia (Cecil) Marquart and Dean Peterson presented. It was discussed what components need to be in a 6 hour drugged driving course. Dean stated there were 7 drug categories. Alison suggested that they explain to prosecutors what a DRE is and help them figure out when they need to bring one in on a case. Dean stated to always pay attention to the EMS personnel on scene because they can have information that can help a DRE figure out impairment when they are doing a reconstruction. More thoughts on what needs to be taught were discussed. Clay said a good option for prosecutors is for them to sit in on a DRE/ARIDE training. Told the Task Force to talk to their departments about if they want a DRE training. Jessica asked if about in house training and Cecil said they could do that. All members of the task force agreed this was an area of need for prosecutors.

**3:00 p.m. DWI Resource Prosecutor Grant**

**- Publications**

No new books are needed at this time. Next revision of DWI should have a chapter on drugged driving and DRE, this would come out of 2017-2018 training.

**- Resources**

Presently doing well, two new videos this year focusing on drugged driving is right direction.

**- Training**

Next year's regional training should be on drugged driving, consider getting legalized marijuana states experience at annual conference. Continue Effective Courtroom Testimony for new officers and rural areas.

**- Direct Courtroom Assistance**

Clay related that there have been no requests at all in the first 60 day. Task force was not surprised, Recommended amend out of grant, do not repeat. The demand is for more prosecutors not an out of town prosecutor. Scheduling would be impossible. Juries would see an outside expert prosecutor as a sign their local prosecutor was inept and the defense would capitalize on the fact the "hired gun" got paid only if the case goes to court. Plea bargaining would be impacted negatively and frankly there is no demand for someone riding in the make local folks look bad, the present technical assistance, publications, training and resources

provided under the grant teach prosecutor how to fish and don't bring them a five day old fish from Austin (Special tip of the hat to Mike for that line).

### **Report Drafting & Assignments**

Clay asked about would be helpful written. Jessica said for bloodless drugged driving cases "don't dismiss the zeros". Jessica said she would help write it. Certificate of Analysis would be drafted by Jessica and Tyler. Resources would be drafted by Brody. DPS Columns would be drafted by Tom. Mel to review manual.

### **Adjourn**

**Impaired Driving  
Task Force  
Legislative Initiatives**

In 2010 and 2015, the National Highway Traffic Safety Administration (NHTSA) facilitated a technical assessment for the State of Texas' Impaired Driving Program. The technical assessment team provided a final report that consisted of recommendations that Texas could implement to improve the state's impaired driving program.

Since then, the Task Force has reviewed the assessors' recommendations annually to determine the status of each recommendation (whether a recommendation has been implemented) and provide progress detail and/or additional comments.

Below is a subset of recommendations from the 2010 and 2015 Impaired Driving Program Assessments. Only those recommendations that the Task Force has described as either "not currently being addressed" or "requires legislation" are listed below. **Please review the list below and consider three recommendations that you believe the Task Force should pursue.**

While some of the recommendations require legislation change, the Task Force can still pursue the issue by creating informational documents pertaining to the issue and presenting them to TxDOT or appropriate stakeholders. For instance, if the issue of sobriety checkpoints were selected, the Task Force could create a report on the type of infrastructure that would have to be in place in order to implement checkpoints in Texas, or it could create a document that details the potential impact of checkpoints on impaired driving in Texas.

TTI will compile the received results and bring them for discussion at the October 13, 2016 Task Force meeting. Please come prepared to the meeting to discuss the below recommendations.

Prevention	
Conduct a study to determine the Texas Highway Safety Office's needs for better and more accurate impaired driving data	<i>neutral</i>
Establish funding based upon portions of fines, court costs, etc., to support long term projects and promote self-sufficiency	<i>neutral</i>

Prevention	
Enact a \$.10 per drink excise tax increase and dedicate a portion of new revenues to alcohol abuse and impaired driving prevention and treatment	<i>neutral</i>
Enact a strict social host liability statute holding all individuals liable for damages resulting from over service of alcohol to guests	<i>neutral (notes)</i>
Conduct an assessment of community based coalitions that address alcohol and substance use to determine the extent and nature of impaired driving prevention strategies and areas for potential collaboration with the traffic safety community	<i>oppose</i>
Coordinate highway safety plans and programs with substance abuse prevention plans and programs	<i>support</i>

Criminal Justice System	
Strengthen Administrative License Revocation to allow the process to immediately remove impaired drivers from the road	<i>strongly support</i>



**Criminal Justice System**

Enact reasonable constitutional guidelines through one or more politically accountable governing bodies regarding driving while intoxicated (DWI) / sobriety checkpoints	notes
Codify driving while intoxicated (DWI) deferral, diversion, and pretrial intervention programs so as to provide uniform statewide guidelines, requirements, and procedures that regulate the implementation, operation, and applicability of such programs	
Enact a statute that allows well planned and fairly executed sobriety checkpoints	see above
Enact a statute establishing per se levels for controlled substances	oppose
Analyze the filings and dispositions from all courts, statewide and links to the arrest data and prosecution information for each court to identify weaknesses both geographically and systematically to strengthen efforts to improve the adjudication of impaired driving	support
Increase probation resources for the management of impaired driving cases	
Enact a driving while intoxicated (DWI) statute that would enable DWI/Drug Court judges, upon motion from the prosecutor, reward those who successfully complete a DWI/Drug court program of one year or longer in duration, by waiving surcharges/fines	support but take out DWI courts
Ensure that ignition interlock monitoring is effective and that information about violations has some impact on the non-compliant user	
Resolve the continued concern about the administrative hearings negative impact on criminal cases based on a study of the interaction administrative and criminal proceedings	oppose surcharges, fines support
Conduct a study of the effect of the Responsible Driver Act surcharge on subsequent compliance and re-licensure of drivers to determine if alternative source of revenue should be sought	support
Provide accountability for the Ignition Interlock program by specifying in law or policy to whom responsibility for review of driver behavior and sanction of non-compliance belongs	2 time DWI can lose plate support
Enact a law that allows vehicle sanctions to be used for DWI convictions	support

**Alcohol and Other Drug Misuse: Screening, Assessment, Treatment, and Rehabilitation**

Require, develop, and implement a program of screening and assessment for all DWI offenders prior to sentencing	
Provide results of screening and assessment and treatment recommendations to courts for consideration in sentencing of DWI offenders	PSI
Require completion of appropriate treatment, as determined by standardized screening and assessment as a condition of relicensing	
Require the use of uniform and standardized screening protocols in community supervision (probation)	
Require the use of uniform and standardized screening protocols in all driving while intoxicated education programs	
Provide insurance coverage for screening, brief intervention and treatment services	
Repeal Alcohol Exclusion Laws in Texas	support
Implement screening, brief intervention, referral to treatment procedures in healthcare settings throughout Texas	
Implement screening, brief intervention, referral to treatment procedures on college campuses throughout Texas	
Support training for clergy to provide substance abuse counseling in rural areas	AD

some

**Alcohol and Other Drug Misuse: Screening, Assessment, Treatment, and Rehabilitation**

Require, develop, and implement a program of screening, assessment, and treatment for all DUI offenders prior to sentencing

Require the use of uniform and standardized screening protocols in all DWI education programs

**Program and Evaluation**

Enact legislation that prevents removal of DWI conviction data from the driver history

*If acquitted or expunged, ~~then~~*

Recommendation	Total Sum	Rank Score
Enact a \$.10 per drink excise tax increase and dedicate a portion of new revenues to alcohol abuse and impaired driving prevention and treatment	23	0.67647
Codify driving while intoxicated (DWI) deferral, diversion, and pretrial intervention programs so as to provide uniform statewide guidelines, requirements, and procedures that regulate the implementation, operation, and applicability of such programs	22	0.64706
Conduct an assessment of community based coalitions that address alcohol and substance use to determine the extent and nature of impaired driving prevention strategies and areas for potential collaboration with the traffic safety community	16	0.47059
Enact a strict social host liability statute holding all individuals liable for damages resulting from over service of alcohol to guests	14	0.41176
Enact a statute that allows well planned and fairly executed sobriety checkpoints	14	0.41176
Coordinate highway safety plans and programs with substance abuse prevention plans and programs	12	0.35294
Strengthen Administrative License Revocation to allow the process to immediately remove impaired drivers from the road	12	0.35294
Increase probation resources for the management of impaired driving cases	12	0.35294
Enact a driving while intoxicated (DWI) statute that would enable DWI/Drug Court judges, upon motion from the prosecutor, reward those who successfully complete a DWI/Drug court program of one year or longer in duration, by waiving surcharges/fines	11	0.32353
Ensure that ignition interlock monitoring is effective and that information about violations has some impact on the non-compliant user	10	0.29412
Analyze the filings and dispositions from all courts, statewide and links to the arrest data and prosecution information for each court to identify weaknesses both geographically and systematically to strengthen efforts to improve the adjudication of impaired driving	10	0.29412
Conduct a study of the effect of the Responsible Driver Act surcharge on subsequent compliance and re-licensure of drivers to determine if alternative source of revenue should be sought	7	0.20588
Resolve the continued concern about the administrative hearings negative impact on criminal cases based on a study of the interaction administrative and criminal proceedings	6	0.17647

Enact reasonable constitutional guidelines through one or more politically accountable governing bodies regarding driving while intoxicated (DWI) / sobriety checkpoints	5	0.14706
Establish funding based upon portions of fines, court costs, etc., to support long term projects and promote self-sufficiency	4	0.11765
Provide accountability for the ignition interlock program by specifying in law or policy to whom responsibility for review of driver behavior and sanction of non-compliance belongs	4	0.11765
Conduct a study to determine the Texas Highway Safety Office's needs for better and more accurate impaired driving data	3	0.08824
Enact a statute establishing per se levels for controlled substances	3	0.08824
Enact a law that allows vehicle sanctions to be used for DWI convictions	3	0.08824
Repeal Alcohol Exclusion Laws in Texas	3	0.08824
Enact legislation that prevents removal of DWI conviction data from the driver history	3	0.08824
Require completion of appropriate treatment, as determined by standardized screening and assessment as a condition of relicensing	2	0.05882
Implement screening, brief intervention, referral to treatment procedures in healthcare settings throughout Texas	2	0.05882
Implement screening, brief intervention, referral to treatment procedures on college campuses throughout Texas	1	0.02941
Support training for clergy to provide substance abuse counseling in rural areas	1	0.02941
Require, develop, and implement a program of screening, assessment, and treatment for all DUI offenders prior to sentencing	1	0.02941
Require, develop, and implement a program of screening and assessment for all DWI offenders prior to sentencing	0	0
Provide results of screening and assessment and treatment recommendations to courts for consideration in sentencing of DWI offenders	0	0
Require the use of uniform and standardized screening protocols in community supervision (probation)	0	0
Require the use of uniform and standardized screening protocols in all driving while intoxicated education programs	0	0
Provide insurance coverage for screening brief intervention and treatment services	0	0
Require the use of uniform and standardized screening protocols in all DWI education programs	0	0

## Intoxication Assault/Manslaughter Punishment Enhancement

### Fact Sheet

- Proposed Legislation would amend Texas Penal Code 49.09 pertaining to enhanced offenses and penalties for intoxication related offenses.
- Increase the punishment range for Intoxication Assault from a 3<sup>rd</sup> degree felony to a 2<sup>nd</sup> degree felony if the following aggravating factors exist:

#### Aggravating Factors include:

- Victim suffers traumatic brain injury that results in a persistent vegetative state\*
- Victim is a peace officer, firefighter or EMS discharging official duty\*
- More than one person during the same criminal transaction
- A person younger than 17 years of age
- Failed to stop, render aid, or provide information (550.021TTC or 550.023 TTC)
- Operating vehicle without a driver's license
- Operating vehicle without insurance (601 TTC)
- Failed to stop, fled from or evaded law enforcement
- Previously convicted of operating motor vehicle, aircraft, water craft or amusement ride while intoxicated

\*Already enhanced to a 2<sup>nd</sup> degree under current law

- Increase the punishment range for Intoxication Manslaughter from a 2<sup>nd</sup> degree felony to a 1<sup>st</sup> degree felony if the following aggravating factors exist:

#### Aggravating Factors include:

- Victim is a peace officer, firefighter or EMS discharging official duty\*
- More than one person during the same criminal transaction
- A person younger than 17 years of age
- Failed to stop, render aid, or provide information (550.021TTC or 550.023 TTC)
- Operating vehicle without a driver's license
- Operating vehicle without insurance (601 TTC)
- Failed to stop, fled from or evaded law enforcement
- Previously convicted of operating motor vehicle, aircraft, water craft or amusement ride while intoxicated

\*Already enhanced to a 2<sup>nd</sup> degree under current law

By: \_\_\_\_\_

\_\_\_\_.B. No. \_\_\_\_\_

A BILL TO BE ENTITLED

1

AN ACT

2 relating to enhancing the penalty for intoxication assault in  
3 certain circumstances.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Sections 49.09(b-1), (b-2), and (b-3), Penal  
6 Code, are amended to read as follows:

7 (b-1) An offense under Section 49.07 is a felony of the  
8 second degree if it is shown on the trial of the offense that the  
9 person:

10 (1) caused serious bodily injury to:

11 (A) a peace officer, a firefighter, or emergency  
12 medical services personnel while in the actual discharge of an  
13 official duty;

14 (B) another in the nature of a traumatic brain  
15 injury that results in a persistent vegetative state;

16 (C) more than one person during the same criminal  
17 transaction; or

18 (D) a person who is younger than 17 years of age;

19 (2) failed to stop, render aid, or provide information  
20 in violation of Section 550.021 or 550.023, Transportation Code;

21 (3) was operating a motor vehicle:

22 (A) without a valid driver's license appropriate  
23 for the class of vehicle being operated in violation of Section  
24 521.021, 521.025, 521.457, 522.011, or 601.371, Transportation

1 Code; or

2 (B) without evidence of financial responsibility  
3 in violation of Subchapter G, Chapter 601, Transportation Code;

4 (4) failed to stop for, fled from, or evaded a pursuing  
5 law enforcement officer in violation of Section 38.04 of this code  
6 or Section 545.421, Transportation Code; or

7 (5) had previously been convicted one or more times of  
8 an offense relating to the operating of a motor vehicle while  
9 intoxicated, operating an aircraft while intoxicated, operating a  
10 watercraft while intoxicated, or operating or assembling an  
11 amusement ride while intoxicated.

12 (b-2) An offense under Section 49.08 is a felony of the  
13 first degree if it is shown on the trial of the offense that the  
14 person caused the death of a peace officer, a firefighter, or  
15 emergency medical services personnel while in the actual discharge  
16 of an official duty [person described by Subsection (b-1)].

17 (b-3) For the purposes of Subsections [~~Subsection~~] (b-1)  
18 and (b-2):

19 (1) "Emergency medical services personnel" has the  
20 meaning assigned by Section 773.003, Health and Safety Code.

21 (2) "Firefighter" means:

22 (A) an individual employed by this state or by a  
23 political or legal subdivision of this state who is subject to  
24 certification by the Texas Commission on Fire Protection; or

25 (B) a member of an organized volunteer  
26 fire-fighting unit that:

27 (i) renders fire-fighting services without

1 remuneration; and

2 (ii) conducts a minimum of two drills each  
3 month, each at least two hours long.

4 SECTION 2. Section 49.09(b-4), Penal Code, is repealed.

5 SECTION 3. The change in law made by this Act applies only  
6 to an offense committed on or after the effective date of this Act.  
7 An offense committed before the effective date of this Act is  
8 governed by the law in effect on the date the offense was committed,  
9 and the former law is continued in effect for that purpose. For  
10 purposes of this section, an offense was committed before the  
11 effective date of this Act if any element of the offense occurred  
12 before that date.

13 SECTION 4. This Act takes effect September 1, 2017.



By: \_\_\_\_\_

\_\_\_\_.B. No. \_\_\_\_\_

A BILL TO BE ENTITLED

1

AN ACT

2 relating to enhancing the penalty for intoxication manslaughter in  
3 certain circumstances.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Sections 49.09(b-2) and (b-3), Penal Code, are  
6 amended to read as follows:

7 (b-2) An offense under Section 49.08 is a felony of the  
8 first degree if it is shown on the trial of the offense that the  
9 person:

10 (1) caused the death of:

11 (A) a peace officer, a firefighter, or emergency  
12 medical services personnel while in the actual discharge of an  
13 official duty;

14 (B) more than one person during the same criminal  
15 transaction; or

16 (C) a person who is younger than 17 years of age;

17 (2) failed to stop, render aid, or provide information  
18 in violation of Section 550.021 or 550.023, Transportation Code;

19 (3) was operating a motor vehicle:

20 (A) without a valid driver's license appropriate  
21 for the class of vehicle being operated in violation of Section  
22 521.021, 521.025, 521.457, 522.011, or 601.371, Transportation  
23 Code; or

24 (B) without evidence of financial responsibility

1 in violation of Subchapter G, Chapter 601, Transportation Code;

2 (4) failed to stop for, fled from, or evaded a pursuing  
3 law enforcement officer in violation of Section 38.04 of this code  
4 or Section 545.421, Transportation Code; or

5 (5) had previously been convicted one or more times of  
6 an offense relating to the operating of a motor vehicle while  
7 intoxicated, operating an aircraft while intoxicated, operating a  
8 watercraft while intoxicated, or operating or assembling an  
9 amusement ride while intoxicated [person described by Subsection  
10 (b-1)].

11 (b-3) For the purposes of Subsections [~~Subsection~~] (b-1)  
12 and (b-2):

13 (1) "Emergency medical services personnel" has the  
14 meaning assigned by Section 773.003, Health and Safety Code.

15 (2) "Firefighter" means:

16 (A) an individual employed by this state or by a  
17 political or legal subdivision of this state who is subject to  
18 certification by the Texas Commission on Fire Protection; or

19 (B) a member of an organized volunteer  
20 fire-fighting unit that:

21 (i) renders fire-fighting services without  
22 remuneration; and

23 (ii) conducts a minimum of two drills each  
24 month, each at least two hours long.

25 SECTION 2. The change in law made by this Act applies only  
26 to an offense committed on or after the effective date of this Act.  
27 An offense committed before the effective date of this Act is

1 governed by the law in effect on the date the offense was committed,  
2 and the former law is continued in effect for that purpose. For  
3 purposes of this section, an offense was committed before the  
4 effective date of this Act if any element of the offense occurred  
5 before that date.

6 SECTION 3. This Act takes effect September 1, 2017.



# Impaired Driving Initiatives 2017 TRAINING CALENDAR



## **DRE - DRUG RECOGNITION EXPERT BASIC CERTIFICATION**

April 24-May 4, 2017 Cedar Park, TX  
June 11-22, 2017 Irving, TX  
July 10-20, 2017 Humble, TX

## **DRE - DRUG RECOGNITION EXPERT RECERTIFICATION**

October 20, 2016 Humble, TX  
November 9, 2016 Irving, TX

## **DRE - INSTRUCTOR COURSE**

October 2-7, 2016 Huntsville, TX

## **ARIDE - ADVANCED ROADSIDE IMPAIRED DRIVING ENFORCEMENT**

October 3-4, 2016 Midland, TX  
October 5-6, 2016 Abilene, TX  
October 18-19, 2016 Lubbock, TX  
November 1-2, 2016 Amarillo, TX  
November 7-8, 2016 Allen, TX  
November 9-10, 2016 Humble, TX  
November 29-30, 2016 Amarillo, TX  
December 13-14, 2016 Irving, TX  
December 14-15, 2016 Edinburg, TX  
January 10-11, 2017 Laredo, TX  
January 25-26, 2017 League City, TX  
February 22-23, 2017 Burnet, TX  
March 7-8, 2017 Galveston, TX  
April 10-11, 2017 Tyler, TX  
June 5-6, 2017 Dallas, TX  
August 3-4, 2017 Georgetown, TX

## **NATIONAL AND STATE CONFERENCES/MEETINGS**

October 13-14, 2016 Impaired Driving Task Force Mtg - Austin, TX  
October 15-18, 2016 TAP Meeting - San Diego, CA  
December 9, 2016 TDCAA Meeting - Austin, TX  
March 26-28, 2017 Lifesavers National Conference - Charlotte, NC  
April 26, 2017 TXDOT Forum - Austin, TX  
April 27, 2017 TXDOT Task Force Meeting - Austin, TX  
June 7-9, 2017 2017 Traffic Safety Conference - Las Colinas, TX  
August 12-14, 2017 2017 DRE Conference - National Harbor, MD

## **DITEP-DRUG IMPAIRMENT TRAINING FOR EDUCATIONAL PROFESSIONALS**

November 11, 2016 Kingsville, TX  
June 13, 2017 San Angelo, TX  
September 12, 2017 Houston, TX

## **DITTE-DRUG IMPAIRMENT TRAINING FOR TEXAS EMPLOYERS**

November 29, 2016 Waco, TX  
December 1, 2016 Houston (Metro), TX  
January 10, 2017 The Woodlands, TX  
January 11, 2017 Pasadena, TX  
February 2, 2017 Waco, TX  
March 1, 2017 San Angelo, TX  
March 30, 2017 The Woodlands, TX

Sam Houston State University, Impaired Driving Initiatives

Office: 936.294.3079; Email: dre@shsu.edu; Website: [www.cjcenter.org/idi](http://www.cjcenter.org/idi)

The Impaired Driving Initiative programs are funded through a grant from TxDOT

# Advanced Roadside Impaired Driving Enforcement

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## ARIDE

### Course Introduction

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Many law enforcement officers are trained in Standardized Field Sobriety Testing (SFST) and use the skills gained in the course as part of their overall enforcement of driving while impaired (DWI) laws. Additionally, some officers complete more advanced training through the Drug Evaluation and Classification (DEC) program and become Drug Recognition Experts (DRE). This course is **not** designed as a substitute to the DEC program and will not qualify or certify an individual as a DRE. This course is intended to bridge the gap between the SFST and DRE courses and to provide a level of awareness to the participants, both law enforcement and other criminal justice professionals, in the area of drug impairment in the context of traffic safety. Based on that premise, the Advanced Roadside Impaired Driving Enforcement (ARIDE) course was developed with the following goals in mind:

*This course will train law enforcement officers to observe, identify and articulate the signs of impairment related to drugs, alcohol, or combination of both, in order to reduce the number of impaired driving incidents as well as crashes which result in serious injuries and fatalities.*

*and*

*This course will educate other criminal justice professionals (prosecutors, toxicologists, judges, etc.) to understand the signs of impairment related to drugs, alcohol, or combination of both, to enable them to effectively work with law enforcement in order to reduce the number of impaired driving incidents as well as crashes which result in serious injuries and fatalities.*

In order to deal with impaired drivers on our roadways, it is important for the law enforcement community and other criminal justice professionals to be aware of the signs and symptoms of impairment related to drugs, alcohol, or combination of drugs and alcohol as well as their effects on driving. In addition to identifying the impaired driver, law enforcement agencies need to have the proper information to utilize their available resources including DREs and appropriate screening methods (blood, urine, or saliva).

Criminal justice professionals such as prosecutors and toxicologists must also understand the impaired driving detection process in order to support enforcement efforts, which will increase the probability of successful prosecution and adjudication. The traffic safety community is well aware that it is essential to address both enforcement and adjudication in order to effectively impact DWI incidents as well as associated crashes.

In order to meet these goals, this course will train participants to:

1. Define and describe the relationship of drugs to impaired driving incidents.
2. Demonstrate, articulate, and properly administer the Standardized Field Sobriety Tests proficiently.
3. Observe, identify and articulate the observable signs of drug impairment with the established seven drug categories associated with DEC program.
4. Recognize possible medical conditions, which may mimic the obvious observable signs of impairment.
5. Identify, document and describe indicators observed and information obtained related to impairment which leads to the arrest/release decision.
6. Articulate through testimony, impairment related to alcohol, drugs or combination of both based on a complete investigation.

This course is divided into sessions which are designed to provide the participant with an overview of the issue of impaired driving, the effects of drugs and alcohol on a person's ability to operate a vehicle safely, as well as demonstrate methods of identifying and processing the impaired driver. The following summarizes the sessions contained in the ARIDE course:

- Introduction & Overview of Drugs and Highway Safety
- SFST Update, Review and Proficiency Examination
- Drugs in the Human Body
- Observations of Eyes and other Sobriety Tests to Detect Alcohol and Drug Impairment
- Seven Drug Categories
- Effects of Drug Combinations
- Pre- and Post-Arrest Procedures

This course is designed to build on the Standardized Field Sobriety Test practitioner course. In order for the participant to effectively utilize the information presented in this course, NHTSA has set a prerequisite of SFST proficiency. The participant will receive a short review and update for the SFSTs as part of Session II of this course. After completing that session, the participant will be required to pass a SFST proficiency evaluation. Failure to successfully complete the SFST proficiency evaluation will result in dismissal from class.

Website: <http://www.cjcenter.org/idi/ARIDE/>

# Training Agenda

## Day One

Time	Topic
0800 – 0810	Course Registration and Orientation
0815 – 0830	Participant & Instructor Introductions
0830 – 0900	Pre-Course Assessment
0900 – 1000	Session I - Introduction and Overview: Drugs and Highway Safety
1000 – 1010	Break
1010 – 1130	Session II - SFST Update and Review
1130 – 1330	Session III - SFST Proficiency Examination Lunch
1330 – 1420	Session IV - Drug in the Human Body
1420 – 1430	Break
1430 – 1600	Session V - Observations of the Eyes & Other Sobriety Tests for Impairment
1600 – 1610	Break
1610 – 1640	Session VI – Seven Major Drug Categories - CNS Depressants
1640 – 1700	Wrap up

## Day Two

0800 – 0830	Session VI – Seven Major Drug Categories - CNS Stimulants
0830 – 0900	Session VI – Seven Major Drug Categories - Hallucinogens
0900 – 0930	Session VI – Seven Major Drug Categories - Dissociative Anesthetics
0930 – 0940	Break
0940 – 1010	Session VI – Seven Major Drug Categories - Narcotic Analgesics
1010 – 1040	Session VI – Seven Major Drug Categories - Inhalants
1040 – 1110	Session VI – Seven Major Drug Categories - Cannabis
1110 – 1230	Lunch
1230 – 1300	Session VI - Seven Major Drug Categories - Effects of Drug Combinations
1300 – 1400	Session VII - Pre- and Post- Arrest Procedures
1400 – 1410	Break
1410 – 1600	Session VII - Pre- and Post- Arrest Procedures (continued)
1600 – 1700	Final Exam and wrap up