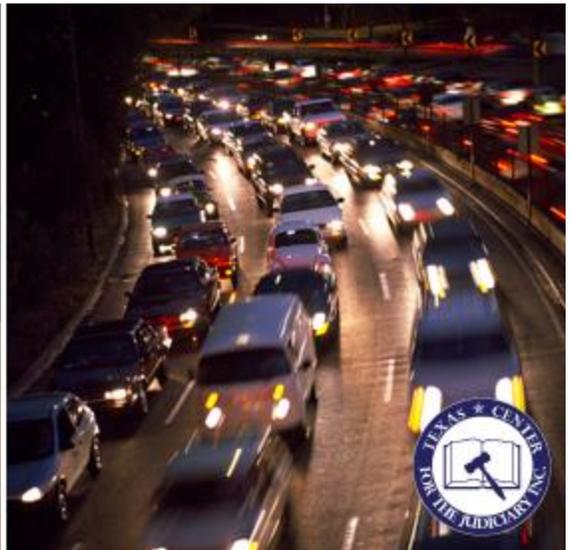


THE DWI NEWSLETTER

brought to you by

THE TEXAS CENTER FOR
THE JUDICIARY *and*
THE TEXAS DEPARTMENT
OF TRANSPORTATION



Fall 2014 Newsletter

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IN THIS ISSUE



Save a Life™

Texas Department of Transportation

In the Fall 2014 Edition of the DWI Newsletter, the "Report from the Texas Traffic Safety Grant Program" seeks your input with a very important (and short) impaired driving education survey.

Judge Laura Weiser, Judicial Resource Liaison, examines confidentiality laws in the article "Loose Lips Sink Ships: Confidentiality Concerns in DWI Courts."

Judge Kelly Case, 9th Judicial District Court, Montgomery County, presents the third installment in the science for judges series with his article, "Discovery - Raw Data."

"Before You Sign that Order for an Occupational License" links to a very informative article in the Texas Center's recent [*In Chambers*](#) publication.

"Conference Wrap-Up" provides highlights from the DWI Conference for DWI Court Teams.

The "Program Partner Spotlight" shines on the Texas A&M Transportation Institute's 2014 Impaired Driving Forum.

"In the News" provides a link to recent news articles involving impaired driving issues from sources local, statewide, national and international.

We are continuously adding to the [Texas Judges' DWI Resource Website](#) with news articles and upcoming educational opportunities. We hope you find information in this Newsletter interesting and helpful.

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REPORT FROM THE TEXAS TRAFFIC SAFETY GRANT PROGRAM

DWI

TEXAS JUDGES' RESOURCE

a TEXAS CENTER FOR THE JUDICIARY *grant program*

As we wrap up the FY 2014 grant year, we ask you to reflect on the activities of the past so we can learn how we can better serve you in the future. Please take 5 minutes to complete this [impaired driving survey](#). The input of judges like you who preside over impaired driving cases will help us design educational curricula so we can learn from each other and problem solve together. If you would like to become involved in impaired driving education, please consider serving on the DWI

Curriculum Committee, writing an article for the DWI Newsletter, inviting us to your jurisdiction to facilitate a DWI Summit or simply [contacting us](#) with topic ideas that you think would benefit the judiciary.

The new grant year will be full of some new initiatives, like the [Impaired Driving Forum](#), as well as familiar activities to ensure judges stay up-to-date on the latest developments in traffic safety. As always, we welcome input as to new and different projects which would assist those handling impaired driving issues.

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LOOSE LIPS SINK SHIPS: CONFIDENTIALITY CONCERNS IN DWI COURTS

Judge Laura A. Weiser, TxDOT Judicial Resource Liaison



DWI and other treatment courts deal in information. Team members must share information about the participants so that each participant can receive the appropriate care and supervision he or she needs to be successful. Because treatment courts are a mix of legal and medical models, the federal and state confidentiality laws come into play. This article will discuss how those laws apply to the treatment court team.

42 CFR Part 2 addresses the confidentiality of alcohol and substance abuse patient records. This law applies to any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation or research which is directly or indirectly assisted by any department or agency of the United States. If your county receives federal funds, revenue shares with any federal funds or has a tax exempt status, then this applies to your court. This law protects disclosure of the

following information: identity of client, diagnosis, treatment and prognosis. In other words, everything you need to know about your court participants.

The Health Insurance Portability and Accountability Act (HIPAA) protects the confidentiality and security of patient information. This act applies to all health insurance plans, health care clearinghouses and health care providers. Although HIPAA does not apply to treatment courts, it does apply to alcohol and substance abuse treatment providers.

Texas has its own HIPAA statute, Texas Health and Safety Code Chapter 181. This statute broadly applies to any person who comes into possession of Personal Health Information. The statute does exclude an agency described by Section 614.017 (THSC) with respect to the disclosure, receipt, transfer, or exchange of medical and health information and records relating to individuals in the custody of an agency or in community supervision. Section 614.017 describes judges, court appointed attorneys and probation officers, among others. So one can certainly argue that the Texas HIPAA does not apply to treatment courts but I have not seen that put in writing by anyone. The statute requires training regarding the state and federal law concerning protected health information both initially and then every two years.



So, if we assume that at a minimum 42 CFR applies, how do team members safely share protected information? The best way is by advising participants of their privacy rights and then obtaining consent from each participant. Ideally, the consent form should comply with both 42 CFR and HIPAA. Requirements of a valid consent include: (1) The name or designation of the program making the disclosure; (2) The name of the individual or organization that will receive the disclosure; (3) The name of the

person who is the subject of the disclosure; (4) The purpose or need for the disclosure; (5) A description of how much and what kind of information will be disclosed; (6) The person's right to revoke the consent in writing and the exceptions to that right to revoke; (7) The program's ability to condition treatment, payment, enrollment or eligibility on the patient signing the consent; (8) The date, event, or condition upon which the consent expires; (9) Participant's signature; and (10) the date. Take a look at a suggested consent form [here](#).

It is crucial to obtain this consent at the time a referral for an assessment or treatment is made. If you have not obtained a written consent, your treatment provider may not even be able to tell you whether the person referred showed up for the assessment or treatment.

You may also want to issue a court order that complies with HIPAA to help protect disclosures from treatment providers. You may review a sample order [here](#).



There are some other exceptions to the confidentiality rules. Briefly, they are: (a) disclosures that contain no patient identifying information; (b) if there is a medical emergency; (c) if there is a court order; (d) if there is a crime perpetrated by the participant at a program or against program personnel; (e) for some research purposes if the information is general and doesn't identify a participant; (f) if child abuse is suspected; and (g) for purposes of an internal audit or evaluation.

Now that you have your paperwork in order, what other best practices should your court have to

ensure compliance with state and federal laws? First, designate a privacy official who will be responsible for compliance with state and federal statutes and make sure that person has the resources they need; second, periodically review your consent and disclosure documents; third, train your team members and staff and then periodically retrain them on confidentiality issues; fourth, limit persons in your staffing to those who will need to know the information discussed. If you have guests, have them read and sign a notice prohibiting redisclosure of information revealed in staffing; fifth, be sensitive to when and how you discuss private health information with your participants. DWI Court may not be the time or place to discuss those topics, especially if it does not directly relate to their compliance with your program; and finally, read Chapter 9 of the National Drug Court Institute's Judicial Bench Book. There is also a book entitled "Confidentiality and Communication, A Guide to the Federal Drug and Alcohol Confidentiality Law and HIPAA" published by the [Legal Action Center](#). It is very helpful and can be purchased from the center.

Confidentiality laws can be confusing to interpret and apply. That is why it is crucial to have at least one member of your DWI Court team become an expert in this area and advise the rest of the team on best practices to avoid any unprotected disclosure of confidential information. I stand ready to assist you in any way I can. Good luck!

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DISCOVERY – RAW DATA

Judge Kelly W. Case, 9th Judicial District Court, Montgomery County



"Overburdensome, cumulative, fishing expedition."

If you hear civil cases, you have heard this objection repeatedly. Sometimes you see it as a response to every request for production made by a litigant. I call it the "feel-sorry-for-me" response. In the civil context, this response makes sense. Large civil cases with the thousands of pages generated by discovery can generate costs in the hundreds of thousands of dollars, very quickly. Accordingly, this response makes sense to keep costs down and prevent oppressive discovery requests and their compliance to dictate who can afford to obtain justice.

However, in a criminal case, specifically, a criminal case involving analysis of blood ethanol using a gas chromatograph (GC), this response is specious, at best.

When a GC is used to perform analysis, an ASCII file is, and must be retained on the hardware of the computer upon which the GC run is made. This file, along with all other lab records, must be "readily available^[1]" for review.

An ASCII file is a small text file that is easily copied to a disk the same as adding an attachment to your email. It is very small and easily accomplished. In the case of analysis performed on a GC, it is a "copy" or "recording" of the actual GC analysis. It is invaluable to show what happened during the GC testing (run) as well as preserving the settings on the GC (calibration) for later comparison. Without a doubt, it is Brady^[2]material.

I have my own discovery orders that are entered in every case involving blood alcohol analysis and the "raw data" is ordered to be disclosed in this order.

In order to review or analyze the ASCII file, the GC software must be utilized. At this time, the only

software currently used in Texas is Agilent ChemStation™. ChemStation™ is opened and the ASCII file is then opened, just like opening a Word document that you have saved on your computer. The reviewer can see the entire run as well as the calibration records from the run.

This is a huge savings in terms of time, paper and efficiency. Let me explain.

Even though there are currently very few defense attorneys that have access to the software, experts that analyze these cases, have the ChemStation™ software readily available.

The fact that this is Brady material is clearly enough reason to order it to be disclosed. However, the cost and time savings to the court is immeasurable. At the time I am writing this article, the approximate delay in obtaining blood ethanol results is running 6 – 8 months. Then, once the results are obtained there are the inevitable delays and rather than disposing of felony cases within one year of filing them, we are taking approximately two (2) years to dispose of some of these cases, if not longer! By turning over the “raw data” you can replace the existing need for thousands of pages of analysis to be printed, copied, delivered and analyzed by the defense. This will substantially reduce the amount of time necessary to prepare for trial in these cases or make the determination that a plea bargain agreement is the best solution.

By providing the defense with discovery of the “raw data”, the time spent in discovery on a blood ethanol case can be drastically reduced, allowing your dockets to move quicker and cases to resolve more easily. It saves paper costs for both sides as well as time that must be spent analyzing paper data versus computer assisted data compilation and is no more burdensome that attaching a file to your email.

[1] ISO 17025, Section 5.10.1 and 5.10.4.

[2] *Brady v. Maryland*, 373 U.S. 83 (1963).

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BEFORE YOU SIGN THAT ORDER FOR AN OCCUPATIONAL LICENSE...

Judge Laura A. Weiser, TxDOT Judicial Resource Liaison

“If you believe that the petitioner would be a danger to the community, DON'T feel compelled to grant the petition.”

Judges of both civil and criminal jurisdiction will be presented with petitions for occupational or essential needs drivers' licenses (ODL). Some judges may base their decisions on a verified petition and some will require that the petitioner appear for a hearing. The laws regarding license suspensions and occupational licenses can be quite a challenge to navigate. Even judges who regularly handle these petitions know that there are many pitfalls and challenges in this area. This article is meant to help you navigate through the process successfully. Remember that granting an ODL is ALWAYS discretionary. If you believe that the petitioner would be a danger to the community, DON'T feel compelled to grant the petition.

Click [here](#) to read the complete article as published in the 2014 Summer Edition of *In Chambers*.

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CONFERENCE WRAP-UP



The 2014 DWI Conference for DWI Court Teams was held July 9-11 at the Radisson Downtown Austin. More than 150 DWI Court team members, which included judges, prosecutors, defense attorneys, probation personnel, treatment providers, law enforcement personnel, coordinators and data evaluators, participated in sessions on trauma, cultural competence and confidentiality. To review the PowerPoint presentations and handouts from the conference, please visit the resource page [here](#).



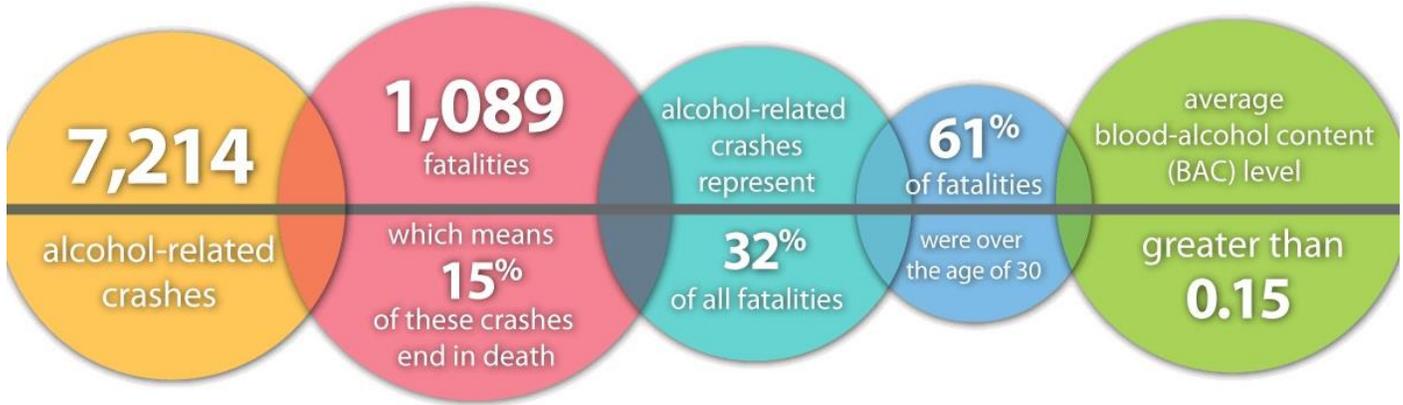
Spotlight on Success

The second annual Spotlight on Success Awards presented at the 2014 DWI Court Team Conference recognized the efforts of two outstanding DWI Court team members and an exemplary DWI Court program. The Harris County S.O.B.E.R. (Saving Ourselves By Education & Recovery) Court Program was honored with the Spotlight on Success Outstanding Team award. The SOBER Court Program's continued willingness to share resources with other DWI Courts is a significant contribution to continuing education throughout the state. Claire George, felony probation officer, Tarrant County Felony Alcohol Intervention Program (FAIP), and Tracie Palmer, defense attorney, Harris County SOBER Court, were both honored with Spotlight on Success Outstanding Team Member awards. Ms. George and Ms. Palmer were nominated by their respective judge based on their hard work and dedication to the program. Read the press release for the Harris County SOBER Court Program and Ms. Palmer [here](#) and for Ms. George [here](#).



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PROGRAM PARTNER SPOTLIGHT



*2013 Texas Crash Statistics

The Texas A&M Transportation Institute

Texas has a critical problem with impaired driving resulting in thousands of deaths and serious injuries on our roadways. The problem is complex, but we can prevent these crashes.

The 2014 Impaired Driving Forum, hosted by the Texas Impaired Driving Task Force through the support of the Texas Department of Transportation and the Texas A&M Transportation Institute's Center for Transportation Safety, created a team effort in fighting alcohol-related crashes. In what will become a yearly event, 110 professionals gathered for the first Forum in Austin April 9, joining forces in hopes of battling the more than 7,200 fatal and serious crashes in Texas last year related to alcohol use.

"By working together, we have a much better chance of discovering new ways to decrease the incidence of impaired driving," Melissa Walden, the forum's mistress of ceremonies, says. Walden is the program manager of the Center for Transportation Safety (CTS) Planning and Evaluation Group. "The issue of impaired driving is very complex, and that's why it will take professionals from all the various stakeholder groups to make progress." To read more click [here](#).

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MARK YOUR CALENDARS!



The 2015 DWI Court Team Training will be held in conjunction with the DWI Court Team Conference at the Sheraton by the Galleria in Dallas. The DWI Court Team training, open to both new DWI Court teams as well as new individual DWI Court team members, will be held Monday - Wednesday, February 9-11. The purpose of this conference is to provide training and technical assistance to assist Courts in the design and implementation of an Adult DWI Court. The training program is modeled on the [10 Guiding Principles of DWI Courts](#) and is designed to take the Court team

through the various stages involved in planning and designing a DWI Court, with particular attention to implementation and institutionalization issues. The training program incorporates interactive exercises, plenary speakers, team discussions and a trip to observe an operational DWI Court. The DWI Court Team Conference, to be held Thursday and Friday, February 12-13, will focus on more advanced issues facing DWI Court teams with opportunities to explore best practices and learn from Courts across the state.

The Impaired Driving Forum to be held at the Westin Austin Downtown, July 27-28, is a new initiative in 2015. With participation from the Texas Association of Counties, the Texas Municipal Courts Education Center and the Texas Justice Court Training Center, the Forum aims to gather all levels of the judiciary together in one room to discuss impaired driving issues. The conference will tackle topics such as conditions of bond, blood warrants, occupational licenses and the ordering of ignition interlock. Please make plans to attend this very important program.

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IN THE NEWS



DWI offenders avoid jail, graduate from county program

(KVUE.com, 09/23/2014)

AUSTIN -- Tuesday evening a Travis County courtroom was filled with applause and expressions of gratitude as 13 people graduated from the Travis County DWI Court Program for repeat offenders.

Chile imposes mandatory jail time in DUI accidents

(Fox News Latino, 09/15/2014)

Chilean President Michelle Bachelet signed into law on Monday a measure mandating at least one year of prison time for anyone convicted of driving under the influence in an accident that resulted in death or or serious injury.

The DUI themed Summer 2014 issue of American Probation and Parole Association's publication, *Perspectives*, can be found [here](#).

DWI rules for new breath-test machines expanding

(Cleburne Times-Review, 09/12/2014)

AUSTIN – The state is plunking down \$5 million for 590 new breath-test machines, the Department of Public Safety confirmed Monday, and new rules accompanying the purchase have the state's DWI defense lobby stirred up.

Texas court could settle DWI policy

(mysanantonio.com, 08/27/2014)

SAN ANTONIO — Driving while intoxicated is a major problem on Bexar County roadways, and criminal court dockets jammed with DWI defendants reflect that.

S.D. Supreme Court: No implied consent in DUIs

(Argus Leader, 08/21/2014)

The South Dakota Supreme Court confirmed Thursday that police cannot collect blood samples from DUI suspects without consent or a warrant.

Washington Court: DUI Blood Sample Test Requires Warrant

(The Newspaper.com, 07/28/2014)

Police in Washington state may not skip the constitutional requirement to obtain a warrant before sending a blood sample from a drunk driving suspect to a lab for analysis. The state Court of Appeals

last week came to the conclusion in the case of Jose Figeroa Martines, who crashed his SUV on State Route 167 on June 20, 2012.

For more news stories please visit the DWI Resource Website News page [here](#). [Back To Top](#)

CONTACT US

This newsletter has been provided by the Texas Center for the Judiciary pursuant to a grant from TxDOT. If you have suggestions for items to be included in this Newsletter or wish to be removed from the Newsletter mailing list, please contact:

Judge Laura A. Weiser
Judicial Resource Liaison
lweiser@yourhonor.com

Holly Doran
TxDOT Program Director
hollyd@yourhonor.com

The DWI Listserv is now open to all judges handling DWI cases. If you would like to be added to the Listserv please send an email to hollyd@yourhonor.com

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