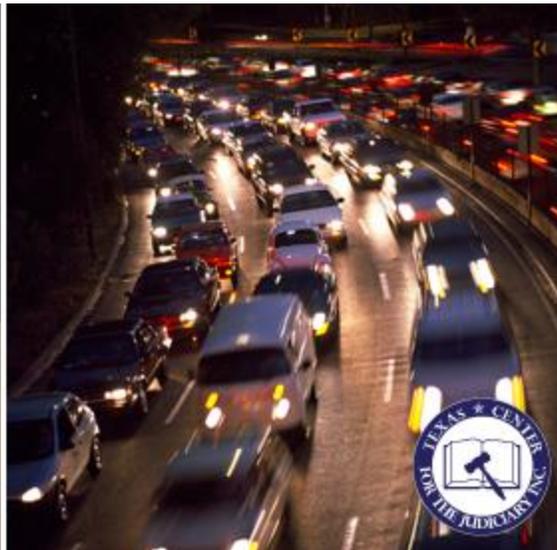


# THE DWI NEWSLETTER

*brought to you by*

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



## Fall 2012 Newsletter

### ***Table of Contents***

- [In This Issue](#)
- [Report from the Texas Traffic Safety Grant Program](#)
- [Lawyers' Perspectives on DWI in the Courtroom](#)
- [NHTSA, UT, NACo Publish Papers on Transdermal Alcohol Monitors](#)
- [Annual Judicial Education Conference Wrap-Up](#)
- [Thank You, 2011-2012 DWI Curriculum Committee!](#)
- [In the News](#)
- [Contact Us](#)

## IN THIS ISSUE



**Save a Life™**  
Texas Department of Transportation

**In the Fall 2012 Edition** of the DWI Newsletter will be found a report from [Judge Mark Atkinson](#), Judicial Resource Liaison and [Holly Doran](#), TxDOT Traffic Safety Grant Program, Program Director, regarding their activities engaged in on behalf of the Program.

Judge Diane Bull, Harris County Criminal Court at Law #11, introduces articles authored by both the prosecution and defense from the Harris County Criminal Courts at Law DWI Court program, SOBER Court.

Recent studies regarding continuous alcohol monitoring technologies can be found in an article by Royce McDonald, of Alcohol Monitoring Systems.

An overview of the Annual Judicial Education Conference's TxDOT-sponsored breakout sessions is provided.

The Texas Traffic Safety Grant Program thanks the 2011-2012 DWI Curriculum Committee for their hard work.

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

Links are provided to other newsletters of interest to judges who preside over DWI cases.

[Back To Top](#)

## REPORT FROM THE TEXAS TRAFFIC SAFETY GRANT PROGRAM

***Judge Mark D. Atkinson, TxDOT Judicial Resource Liaison, and Ms. Holly Doran, TxDOT Program Director***



**As the current** Grant year fades in the rear-view mirror, we, at the home of the TxDOT Traffic Safety Grant, reflect on the projects and activities of the past while looking forward with anticipation to those ahead. In addition to educational and training conferences conducted, and technical assistance provided to judges and policy-makers, new and exciting initiatives were launched. Among these was the unveiling of the Texas Judges' DWI Resource Website. We hope you have enjoyed this resource over the past year. We will continue to update it with the latest news and things of interest to the State's judges.

This year we hosted the DWI Court Operational Tune-Up Meeting; conducted the DWI College for DWI Court Team Members, Student Conduct Officers, Administrative Law Judges and County Judges; prepared, with the guidance of the DWI Curriculum Committee, and presented, impaired driving judicial education sessions at Texas Center conferences. The 2012-2013 Grant year will continue with these programs, as well as our DWI College for Trial judges. Judge Atkinson and Ms. Doran will visit and observe DWI Courts across the state.

With specific regard to Texas DWI Courts, the Texas DWI Court judges gathered twice, in March and July, to share ideas and discuss practices in their courts. The continued attendance at and participation in these meetings, shows a commitment by Texas' DWI Court judges to ensure the best possible outcomes for both offenders and communities. Phase One of the TxDOT Traffic Safety Grant's comprehensive evaluation of the performance of Texas DWI Courts, fulfilling a contract with researchers from Sam Houston State University to measure recidivism of DWI Court participants, will be completed this month. The researchers surveyed the practices of the state's DWI Courts, collected data gathered by those courts, and produced a report. The initial report will be available in the next issue of the Newsletter.

We invite you to read through the Fall 2012 Newsletter and enjoy articles submitted by Ms. Bernadette Haby and Ms. Tracie Palmer of Harris County's SOBER Court, as they tackle driver licensing issues affecting DWI Court participants and detail experiences with alcohol monitoring devices. Mr. Royce McDonald presents the latest studies on continuous alcohol monitoring devices. Click [here](#) for the answer to the question: Why is Judge Atkinson pictured with Shaquille O'Neal?

We believe that the new grant year will be full of exciting challenges and productive activity. We

always welcome input as to new and different activities and projects, which would assist those handling impaired driving issues.

[Back To Top](#)

## LAWYERS' PERSPECTIVES ON DWI IN THE COURTROOM

### *Introduction by Judge Diane Bull*



**I am honored** to preside over one of three of Harris County Criminal Court at Law DWI Court dockets. The goal of these DWI Court dockets is to deal with high risk DWI offenders in a new way, that being a team approach where criminal justice stakeholders (the DA's office, probation, treatment, law enforcement, judiciary and defense bar) work together. These dockets aim to provide a higher level of individual attention to the offender, with the goal of breaking the cycle of impaired driving. We chose to name these dockets our S.O.B.E.R. Courts—Saving Ourselves by Education and Recovery.

Two of my team members have submitted articles for the Newsletter. Tracie Palmer, our team defense attorney, and Bernadette Haby, our team prosecutor, recently spoke in Austin at the Texas Center for the Judiciary's DWI College for DWI Court Teams, Administrative Law Judges, Student Conduct Officers and County Judges. They were so well received that they are still fielding calls and emails from program attendees. I invite you to follow the links and read their excellent articles.

## Alcohol Detection Devices

Bernadette Haby, Assistant District Attorney, Harris County



I became a member of a Harris County DWI Court Team in the Spring of 2011. Initially, I was not interested in the program. Much like some of our participants, I was resistant and did not want to be there. However, after working with the team and attending several trainings, I became more interested in the work we were doing. Now that I have learned more about the program, my role within the program, and what we can accomplish, I am thrilled to be a part of a DWI Court Team.

In order for me to get excited about the program, I needed to learn a lot to feel comfortable with what I was doing. I wanted to have a place on the team and show that I had something to offer as a team member. I love tackling projects, learning about issues in the program, and sharing information with the team. This article features one of the projects I spearheaded for our team: learning about alcohol-detection devices. I hope this encourages your team to learn about utilizing alcohol-detection devices or enhances any knowledge you already have about these devices.

DWI courts use different alcohol-detection devices to help monitor their participants. These devices are very beneficial for detecting alcohol and holding your participants accountable for their sobriety. While the technology can be beneficial, understanding the technology is vital. The following are some suggestions on how to benefit from these devices:

- Know what vendors and devices are available to your program;
- Know how each of the devices work;

- Know how to read the reports that are generated by the vendors; and
- Establish a good working relationship with the vendors.

[Continue reading here...](#)

## Driver License Issues Affecting DWI Court Participants

Tracie Palmer, Attorney



I serve as the defense attorney member of the Harris County Court 11 DWI SOBER Court team. In addition to court staffing and review, I help pre-screen participants, review contracts with participants before they enter the program, and I serve as the liaison between other defense attorneys and the program/team. I also help participants solve their driver license issues. My work on the DWI Court team is by far the most enjoyable and rewarding part of my law practice.

At a minimum, DWI Court participants have one DWI conviction. Most participants have multiple convictions along with suspensions for ALR refusals or failures, surcharge suspensions, and previous driving while license invalid suspensions. Before entering the program, most participants have already made a mess of their driver license status. Some participants do not even know that they owe reinstatement or other fees or that they are suspended for other reasons in addition to the mandatory DWI conviction suspension. I am going to skip the basics of occupational and other driver license issues, including the one year hard suspension for DWI convictions on offenses committed within five years, and focus on some practical information that will better equip you to serve your DWI Court participants.

[Continue reading here...](#)

[Back To Top](#)

### NHTSA, UT, NACO PUBLISH PAPERS ON TRANSDERMAL ALCOHOL MONITORS

**Royce McDonald, Alcohol Monitoring Systems**

**Last week** the National Highway Traffic Safety Administration (NHTSA) released a new report, *Transdermal Alcohol Monitoring: Case Studies*, which takes a multi-year, in-depth look at six jurisdictions across the country that are utilizing transdermal alcohol monitoring technology on drunk drivers.

The study, commissioned in 2010, was designed to serve as best-practice case studies for other courts and agencies looking to implement a transdermal alcohol monitoring program. According to the report, which was done for NHTSA by the Pacific Institute for Research and Evaluation (PIRE), researchers found transdermal alcohol monitoring to be increasing in prevalence, to be a reliable way to monitor alcohol use by offenders, and to be more reliable than previous alcohol testing methods, making them beneficial to programs that are properly implementing the technology.

The selected jurisdictions varied in size and scope, and the evaluation looked at the implementation

of transdermal testing as well as other program elements, such as treatment, the use of ignition interlocks, sanctions, and program compliance.

NHTSA focused on programs utilizing SCRAM monitoring systems, the first transdermal system introduced to the market in 2003. That selection was based on a 2008 NHTSA study of the SCRAM system, which found it to be a reliable way to monitor offenders for alcohol. In Texas, 21,000 offenders have been monitored by SCRAM technology. Nationwide 246,000 offenders have been monitored in 48 states.

NHTSA is currently engaged in a third study of SCRAM transdermal monitors, comparing recidivism data for offenders sentenced to wear the monitors in South Dakota, Nebraska, and Wisconsin. The recidivism study is slated for release in mid-2013.

### **University of Texas Health Sciences Center Compares Transdermal, Breath Testing**

In June, researchers from the University of Texas Health Sciences Center at San Antonio and Wake Forest University published a study, "Comparing the Detection of Transdermal and Breath Alcohol Concentrations During Periods of Alcohol Consumption Ranging From Moderate Drinking to Binge Drinking" in *Experimental and Clinical Psychopharmacology*, published by the American Psychological Association.

Researchers were focused on the issue of binge drinking as a public health concern, but noted that previous studies of binge drinking used self-reported alcohol consumption to classify binge drinking episodes. Finding the data limited in both detail and accuracy, researchers utilized transdermal alcohol monitors, and compared test data (known as Transdermal Alcohol Concentration, or TAC) to Breath Alcohol Concentration (BrAC) to test the validity of TAC results as a measure of alcohol consumption. The researchers utilized SCRAM technology for the transdermal system and Drager Alcotest portable breathalyzers were used to measure BrAC.

The researchers concluded that TAC data is reliably related to alcohol consumption and has convergent validity with BrAC. Researchers also noted that "TAC monitoring has unique advantages over other methods of monitoring drinking behavior that can improve the quality of data obtained and decrease the interference of monitoring procedures with wearers' normal behavior." They noted future research applications for TAC monitors including looking at patterns of problematic alcohol use and alcohol use disorder treatment.

### **Article, Resolution From the National Association of Counties**

In July the National Association of Counties (NACo) also tackled the issue of transdermal alcohol monitoring, also known as Continuous Alcohol Monitoring (CAM) because of its every-30-minutes testing cycle. At NACo's annual meeting in Pittsburgh, the Justice and Public Safety Steering Committee approved a Resolution in Support of Continuous Alcohol Monitoring for Pre-Trial Populations. The resolution encourages counties to integrate CAM technology into jail management strategies, in particular for defendants incarcerated during pre-trial stages of case adjudication. Also during the NACo conference, the NACo *County News* published "Dealing With Drunk Drivers: Balancing Cost and Safety," which looks at the issues counties face when balancing costs of incarceration and the risks repeat offenders place on communities.

For more information on transdermal alcohol monitoring, you can contact Royce McDonald, [rmcdonald@alcoholmonitoring.com](mailto:rmcdonald@alcoholmonitoring.com).

[Back To Top](#)

## ANNUAL JUDICIAL EDUCATION CONFERENCE WRAP-UP

**The 2012 Annual Judicial Education Conference** was held September 9 - 12, at the Westin Galleria and Westin Oaks in Houston. Over 130 judges attended one of three one-hour DWI-focused breakout sessions sponsored by the Texas Center's Traffic Safety Grant Program on Tuesday afternoon, September 11.



relate to.

The opening session, "No Pre-requisites Required: Gas Chromatography and Mass Spectrometry for the Non-Scientist Judge" presented by [Dr. Sarah Kerrigan](#), Program Director, Forensic Science Program, Sam Houston State University, introduced the basic principles of gas chromatography, including the operation of the headspace gas chromatograph, for the testing for alcohol, and the gas chromatograph mass spectrometer for the testing of drugs. Dr. Kerrigan translated highly detailed and scientific processes into language that the non-scientist judge could

Dr. Kerrigan continued with the session "Challenges to Analytical Testing in Blood Draw Cases," which discussed pre-analytical testing issues (sample storage, expiration dates, drawsite prep, material recalls) that may affect lab testing results; laboratory record keeping, discovery requests and laboratory compliance with discovery orders. She also addressed the principles of laboratory quality control and quality assurance and how labs document and respond to nonconforming events.



The final session, "DPS Addresses Alcohol and Drug Conviction Reporting," presented by Ms. Cheryl Garren and Ms. Patti McBee, Texas Department of Public Safety, discussed the basic process for conviction reporting of alcohol, drug and other offenses with court ordered or statutory requirements, such as ignition interlock devices, education programs and drivers' license suspensions. It also gave a detailed overview of the appropriate forms to use and when to use them, the fields required to be reported, when to report suspension dates for these offenses and the importance of timely and accurate reporting.

All three PowerPoint presentations can be found on the home page of the Texas Judges' DWI Resource Website or by clicking [here](#).

[Back To Top](#)

## THANK YOU, 2011-2012 DWI CURRICULUM COMMITTEE!

The Texas Center for the Judiciary wishes to thank the members of the Texas judiciary who served on this year's DWI Curriculum Committee:

Chair, Judge Patrice McDonald, Montgomery County Court at Law #3



Judge Robert Anchondo, El Paso County Court at Law #2  
Judge Diane Bull, Harris County Court at Law #11  
Judge Elizabeth Crowder, Dallas County Criminal Court at Law #7  
Judge Donald Dowd, Cass County Court at Law  
Judge Alex Hernandez, Calhoun County Court at Law #1  
Judge Liza Rodriguez, Bexar County Court at Law #8  
Judge Virgil Vahlenkamp, Denton County Criminal Court at Law #2  
Judge Dibrell Waldrip, Comal County 433rd Judicial District Court  
Judge Ray Wheless, Collin County 366th Judicial District Court  
Judge Timothy Wright, Williamson County Court at Law #2

These judges helped guide the curriculum for the 2012 DWI Court Judges Conference, the 2012 DWI College for DWI Court Teams, and the TxDOT-sponsored sessions at the Winter Regional Conferences, Criminal Justice Conference and Annual Judicial Education Conference. The Texas Center's Traffic Safety Grant would like thank these judges for taking the time away from their courts and families to help further the education of their fellow judges to reduce the number of impaired drivers and alcohol-related traffic fatalities in the state of Texas.

[Back To Top](#)

## IN THE NEWS



### **Should cops get a warrant before ordering blood test for DWI suspects?**

*(Press & Sun-Bulletin, 09/25/2012)*

**WASHINGTON (AP)** — The Supreme Court will decide when law enforcement officers must get a warrant before ordering a blood test on an unwilling drunken-driving suspect.

The issue has divided federal and state courts around the country and the justices on Tuesday agreed to take up a case involving a disputed blood test from Missouri.

### **DUI Tragedy Forces Russian Road Safety Rethink**

*(ABC News, 09/25/2012)*

It took a weekend road tragedy to jolt Russia into action over one of its most deadly threats: a chronic culture of drunken driving.

Five orphaned teens were waiting for a bus with their guardians in Moscow on Saturday when a car careened into them, killing all seven. Grief turned to outrage when it emerged that the driver was heavily drunk and had a string of traffic violations on his record — including a DUI arrest two years ago.

### **Troubleshooter starts at embattled Harris probation office**

*(Houston Chronicle, 09/21/2012)*

Helen Harberts, who spent 25 years in criminal justice and praises drug courts as the most important innovation she has ever seen, is grim as she talks about how drugs, alcohol and crime are intermingled.

"When you watch a repeat DWI offender walk out of court, you should be very concerned," she says

intently. "They are predictable killers."

**Court: Interlocks for drivers impaired by drugs**

*(Amarillo Globe-News, 09/21/2012)*

SANTA FE, N.M. — People convicted of driving under the influence of prescription or illegal drugs must have an ignition interlock installed on their vehicles as required by New Mexico's drunken driving law although the devices don't detect the use of drugs, the state Court of Appeals has ruled.

The court's precedent-setting ruling overturned a decision last year by a district judge in Santa Fe who determined that the ignition interlock requirement was unconstitutional for someone whose impairment was caused by drugs rather than alcohol.

**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 Mark D. Atkinson  
Judicial Resource Liaison  
[matkinson@yourhonor.com](mailto:matkinson@yourhonor.com)



Holly Doran  
TxDOT Program Director  
[hollyd@yourhonor.com](mailto:hollyd@yourhonor.com)

[Back To Top](#)