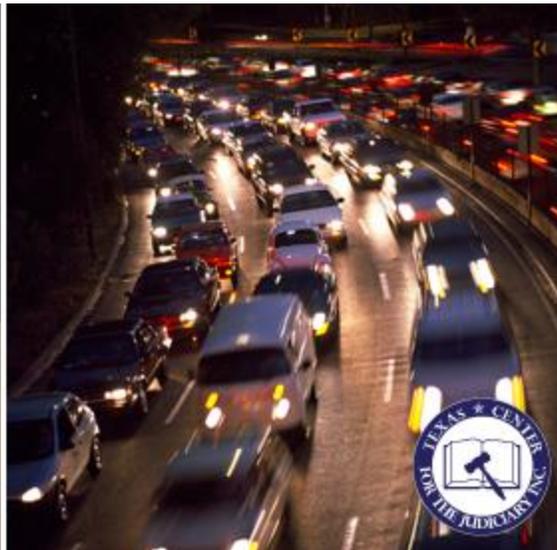


THE DWI NEWSLETTER

brought to you by

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



Summer 2013 Newsletter

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IN THIS ISSUE



Save a Life™
Texas Department of Transportation

In the Summer 2013 Edition of the DWI Newsletter, the "Report from the Texas Traffic Safety Grant Program" addresses the recent activities engaged in by [Judge Laura Weiser](#), Judicial Resource Liaison, and Ms. Holly Doran, TxDOT Program Director, on behalf of the Program.

An overview of the DWI Summit and the Annual Judicial Education Conference's TxDOT-sponsored breakout sessions is provided in "Upcoming Programs."

The success of the 2013 DWI College for DWI Court Teams and Student Conduct Officers Conference, including the Spotlight on Success award winners, is highlighted in the "DWI College Wrap-Up."

Judge Weiser provides insight into the Supreme Court's decision in [Missouri v. McNeely](#).

The "Program Partner Spotlight" showcases Sherry Matthews Advocacy Marketing's latest TxDOT campaign, "Faces of Drunk Driving."

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

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REPORT FROM THE TEXAS TRAFFIC SAFETY GRANT PROGRAM

Judge Laura A. Weiser, TxDOT Judicial Resource Liaison, and Ms. Holly Doran, TxDOT Program Director



The summer of 2013 continues to be a busy time for us at the Texas Center Traffic Safety Grant Program. Conducting educational conferences, traveling to attend trainings and providing technical assistance to Texas judges and court personnel made for an active period.

At the end of April we traveled to El Paso for the DWI Court Team Training, instructing judges and team members on the "nuts and bolts" of starting a DWI Court. The Traffic Safety Grant Program would like to extend a special thank you to Judge Anchondo and the El Paso DWI/Drug Court and the Honorable and Mrs. Tom Spieczny for their hospitality.

In May, three outstanding presentations were given at the Criminal Justice Conference held in Rockwall. The presentations for all three sessions, "Understanding Alcohol Monitoring Technologies," "CSCD Perspective on Alcohol Monitoring" and "Blood Alcohol Analysis and Related Issues" were well received by the judges in attendance.

We spent much of the summer preparing for the DWI College for DWI Court Teams and Student Conduct Officers. Activities included conducting pre-conference surveys, communicating with faculty and attendees, and addressing the educational needs of the various disciplines in attendance. A conference wrap-up with a link to the presentations can be found below.

The past few months also provided opportunities for us to attend training conferences around the country. By attending the 19th Annual National Association of Drug Court Professionals Training Conference and the American Probation and Parole Association's 38th Annual Training Institute, we learned about national and statewide trends in handling impaired driving cases.

We also continued our regular monthly Grant activities which included Judge Weiser's sitting by assignment as a visiting judge, observational visits to DWI Courts and responding to questions and addressing issues from judges and court personnel.

We are continuously adding to the [Texas Judges' DWI Resource Website](#) with news articles and upcoming educational opportunities and encourage you to contact us with any suggestions or comments. We hope you find this Newsletter interesting and helpful.

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UPCOMING PROGRAMS



DWI Summit: Nacogdoches

August 15, 2013

Hotel Fredonia, Nacogdoches

The DWI Summit is a four-hour continuing judicial education program targeting rural jurisdictions. The agenda is designed especially for Texas judges by the Texas Center for the Judiciary's DWI Curriculum Committee in conjunction with the Judicial Projects Director of the Texas Association of Counties. For more information or to register click [here](#).

2013 Annual Judicial Education Conference



September 3-6, 2013

JW Marriott, San Antonio

The Texas Traffic Safety Grant will sponsor three one-hour DWI breakout sessions which will include "DWI Case Law and Legislative Update" and "Reducing Recidivism of the DWI Offender."

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CONFERENCE WRAP-UP: DWI COLLEGE



The 2013 DWI College for DWI Court Teams and Student Conduct Officers was held June 30 – July 2 at the Omni Downtown Austin. 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 defining team

roles, building alumni support groups and treatment and testing. To review the PowerPoint presentations and handouts from the conference, please visit the conference page [here](#).



Spotlight on Success



Judge Robert Anchondo, El Paso County Criminal Court at Law #2, and the DWI Drug Court Intervention and Treatment Program Team were honored with the Spotlight on Success Award for their implementation of DWI Court Guiding Principle #5 -- Developing Community Partnerships. By reaching out to community colleges, health and wellness facilities and work placement agencies, the El Paso DWI/Drug Court has been able to provide a variety of services to their program participants.

Judge Diane Bull, Harris County Criminal Court at Law #11, was the recipient of the Spotlight on Success Outstanding Team Member Award for her work with the Harris County SOBER Court and her tireless effort as DWI Curriculum Committee Chair. The Harris County SOBER Court Program was recently recognized by the Harris County Commissioners' Court for increasing public safety.



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SUPREME COURT DECISION IN MISSOURI V. MCNEELY

Judge Laura A. Weiser, TxDOT Judicial Resource Liaison



On April 17, 2013, the United States Supreme Court handed down their decision in Missouri v. McNeely. [133 S. Ct. 1552, 185 L. Ed. 2d 696 \(2013\)](#) A summary of the facts are: Respondent McNeely was stopped by a Missouri police officer for speeding and crossing the centerline. After declining to take a breath test to measure his blood alcohol concentration (BAC), he was arrested and taken to a nearby hospital for blood testing. The officer never attempted to secure a search warrant. McNeely refused to consent to the blood test, but the officer

directed a lab technician to take a sample. McNeely's BAC tested well above the legal limit, and he was charged with driving while intoxicated (DWI). He moved to suppress the blood test result, arguing that taking his blood without a warrant violated his Fourth Amendment rights. The trial court agreed, concluding that the exigency exception to the warrant requirement did not apply because, apart from the fact that McNeely's blood alcohol was dissipating, no circumstances suggested that the officer faced an emergency. The State Supreme Court affirmed, relying on *Schmerber v. California*, [384 U.S. 757](#), in which this Court upheld a DWI suspect's warrantless blood test where the officer "might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened 'the destruction of evidence,'" *id.*, at 770. This case, the state court found, involved a routine DWI investigation where no factors other than the natural dissipation of blood alcohol suggested that there was an emergency, and, thus, the nonconsensual warrantless test violated McNeely's right to be free from unreasonable searches of his person.

The US Supreme Court upheld the decision of the State Supreme Court stating that in drunk-driving investigations, the natural dissipation of alcohol in the bloodstream does not constitute an exigency in

every case sufficient to justify conducting a blood test without a warrant.

Justice Sotomayor wrote the majority opinion (5-4) but Justice Kennedy wrote a concurring opinion for two sections of the majority opinion, Chief Justice Roberts, along with Breyer and Alito, filed an opinion concurring in part and dissenting in part, meaning that these three Justices agreed with some of the court's opinion but not all. Justice Thomas wrote the lone dissent. So you can see that even in the Court, opinions varied on the proper approach to this question.

So where does that leave Texas and Texas Transportation Code Section 724.012?



This statute requires blood draws without a warrant when:

A Subject is arrested for DWI and refuses to submit a specimen; and
Subject is involved in an accident where the officer believes someone will die; or
Another person other than the subject has suffered serious bodily injury; or
Another individual has suffered bodily injury and has been transported to a hospital or other medical facility for treatment; or
The subject is under arrest for DWI with a child passenger TPC 49.045; or
The Officer has reliable information that the subject has a prior DWI with child passenger, Intoxication Assault or Intoxication Manslaughter conviction; or
The officer has reliable information that the subject has two prior convictions for DWI, FWI, BWI, Assembling or Operating an Amusement Ride While Intoxicated; or any combination of the above.

The circumstances above constitute some of the most serious DWI cases and thus highlight the importance of the evidence obtained through a blood draw.

So what should a Judge do when faced with a Motion to Suppress citing McNeely? The US Supreme Court did not hold the Texas statute or any other states' mandatory blood draw statutes unconstitutional. Motions to Suppress based on this opinion have been filed and heard in the trial courts but none have made it to the Texas Court of Criminal Appeals as of this newsletter.

It is probably not enough to find that the law enforcement officer complied with the requirements of TTC Chapter 724. The Court should consider whether the State has presented any additional evidence that would constitute exigent circumstances and justify a warrantless search. When the Court is preparing findings of fact and conclusions of law, ensure that, if such facts were presented, they are listed in the findings.



What, then, would constitute exigent circumstances? Each case will have to be considered in a "totality of the circumstances" approach. The Supreme Court states: *"We do not doubt that some circumstances will make obtaining a warrant impractical such that the dissipation of alcohol from the bloodstream will support an exigency justifying a properly conducted warrantless blood test. That, however, is a reason to decide each case on its facts, as we did in Schmerber, not to accept the "considerable overgeneralization" that a per se rule would reflect."*

Such circumstances would likely include: (1) Whether the officer was investigating a crash that required hours of the officer's time and thus, did not allow sufficient time to apply for and receive a warrant; (2) Whether the officer made a good faith effort to contact a judge for a warrant and was unable to reach him/her in a reasonable time period; (3) other circumstances that would make obtaining a warrant impractical.

Out of an abundance of caution, while these cases percolate through the appeals process, most law enforcement agencies are instructing their officers to get a warrant for a blood draw whenever possible and, when it is not possible, to thoroughly document the facts that show exigent circumstances.

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PROGRAM PARTNER SPOTLIGHT: SHERRY MATTHEWS ADVOCACY MARKETING



TxDOT's "Faces of Drunk Driving" Campaign Shares Victim's Stories

In an effort to save lives and prevent roadway crashes during the especially busy summer months, the Texas Department of Transportation introduced the Faces of Drunk Driving safety campaign in early July to urge motorists to be smart and drive sober.

TxDOT held press events across the state with safety advocates, law enforcement and victims of alcohol-related crashes sharing their stories. At each location, there were 1,170 Texas flags on display representing the number of people killed in alcohol-related crashes in Texas last year.

One of the new faces of this year's campaign is 9-year-old Xitclalli "Chilli" Vasquez, who was paralyzed from the chest down after being hit by a drunk driver in Fort Worth on July 9, 2011. Also sharing their story is the family of Aaron Pennywell, 20, who was killed by a drunk driver two years ago in Cypress, northwest of Houston. These stories, along with those of more than a dozen others impacted by drunk driving, can be found at www.FacesofDrunkDriving.com, the campaign's award-winning website.

The public service announcements for the campaign are running on television, in movie theaters and online.



Arabella Vasquez, mother; "Chilli" Vasquez and Dallas County Sheriff Lupe Valdez at Faces of Drunk Driving press event, Lee Park in Dallas



Aaron Pennywell's crashed Mustang displayed at Faces of Drunk Driving press events around the state

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IN THE NEWS



DWI Court Closes with End of State Funding for Brown County

(Brownwood News (blog), 7/15/2013)

Brown County Commissioners Court approved the closing of DWI Court and also approved that the remaining funds for DWI Court be moved to the county's general fund...

Colorado state toxicology lab suspends blood-alcohol testing in wake of withering report

(The Daily Caller, 07/02/2013)

The Colorado Department of Health and Environment is suspending all testing of blood-alcohol and blood-drug levels at its state toxicology lab pending an investigation to see if they are being done correctly.

Manila enacts tougher law against drunk driving

(Gulf Today, 06/01/2013)

MANILA: President Benigno "Noyoy" Aquino has signed a new law imposing heavy penalties on drunk driving induced by alcohol or drugs with a maximum fine of \$10,000 and imprisonment of up to 12 years, according to a Malacanang Palace official.

'Sleep driving' defense gets drunk driving conviction tossed

(kgw.com, 06/01/2013)

PORTLAND -- The Oregon Supreme Court tossed out a Portland man's drunk driving conviction. The ruling allows him to use a sleep driving defense.

Can Friends Still Let Friends Drive Drunk? A look at social host liability in Texas.

(Texas Bar Journal, 05/01/2013)

A new case from the 14th Court of Appeals could open the door for negligent social hosts to be liable to their intoxicated guests.

Texas: Court Finds Breath Mints Are Evidence of DUI

(theNewspaper.com, 04/29/2013)

Texas Appeals Court upholds DUI conviction of man caught after he popped a breath mint during a traffic stop. Use of breath mints can be considered evidence a driver is intoxicated, according to a divided Texas Court of Appeals ruling delivered earlier this month.

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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:

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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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