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## Risky-Driving Behaviors

### What Prosecutors and Law Enforcement Need to Know

*Joshua Saucier, Maine TSRP*

As a prosecutor, have you ever wondered why traffic-safety-oriented officers are so focused on a particular set of offenses? As an officer, have you ever questioned why funding was available for some details but not others? This article addresses those questions.

### Risky Driving: What Is It?

The National Highway Traffic Safety Administration (NHTSA) spotlights six driving behaviors as the most risky.<sup>1</sup> These six driving behaviors are drunk driving, drug impaired driving, distracted driving, not wearing a seatbelt, speeding, and drowsy driving.<sup>2</sup> Though other factors may also have been involved,<sup>3</sup>

<sup>1</sup> See *Risky Driving*, Nat'l Highway Traffic Safety Admin, [www.nhtsa.gov/risky-driving](https://www.nhtsa.gov/risky-driving) (last visited August 9, 2022).

<sup>2</sup> *Id.*

<sup>3</sup> Nat'l Highway Traffic Safety Admin, in email correspondence with the author, July 29, 2022 ("These behavioral factors largely explain the fatality increases from 2019 to 2020, although we cannot say that these factors were the only ones contributing to the rise in fatalities.").

these six behaviors “largely explain the fatality increase from 2019 to 2020.”<sup>4</sup> This increase brought the number of fatalities to its highest since 2007.<sup>5</sup> NHTSA determined those six most-risky behaviors by annually collecting, compiling, and reviewing data from traffic crashes across the country and by conducting studies that focused on those behaviors.<sup>6</sup>

The National Center for Statistics and Analysis (NCSA) is the NHTSA office responsible for providing this analytical and statistical information.<sup>7</sup> Its goal is to “[p]rovide the data and the analysis to allow complete understanding of: the nature, causes and injury outcomes of crashes and the strategies and interventions that will reduce crashes and their consequences.”<sup>8</sup> For example, as traffic safety professionals became more aware of the prevalence of drug-impaired driving, NHTSA responded.<sup>9</sup> Not only did the states and NHTSA begin tracking drug-impairment data, NHTSA also funded a study analyzing and comparing the riskiness of drug impaired driving, alcohol impaired driving, and combined alcohol and drug impaired driving.<sup>10</sup> The study indicated that of the three behaviors, alcohol impaired driving was the most prevalent cause of crashes.<sup>11</sup> It also appeared that marijuana impaired driving was a significant contributor to crashes, but further study was needed to better understand marijuana’s role in causing death and injury on America’s roadways.<sup>12</sup>

Below are the pertinent statistics regarding each of the six risky driving behaviors:

1. **Drunk Driving:** In 2020, drunk driving killed 11,654 people in the United States.<sup>13</sup> This was a fourteen percent increase from 2019 and equates to drunk drivers killing 32 people every day or one person every 45 minutes.<sup>14</sup>
2. **Drug Impaired Driving:** Based on a study of trauma centers in October and December of 2020, 56 percent of drivers involved in serious injury or fatal crashes had at least one drug in their system.<sup>15</sup>
3. **Distracted Driving:** Distracted driving killed 3,142 people in 2020<sup>16</sup> and injured an estimated additional 324,652 people.<sup>17</sup>
4. **Not Wearing a Seatbelt:** 51 percent of people killed in crashes in 2020 were not wearing a seatbelt.<sup>18</sup> In 2017, “[s]eat belts saved an estimated 14,955 lives and could have saved an additional 2,549 people if they had been wearing seat belts . . . .”<sup>19</sup>

<sup>4</sup> Nat’l Highway Traffic Safety Admin, in email correspondence with the author, July 29, 2022.

<sup>5</sup> The number of fatal crashes increased by 6.8 percent from 2019 to 2020, and the fatality rate per 100 million vehicle miles traveled increased 21 percent. In total, 38,824 lives were lost in traffic crashes nationwide. That number marks the highest number of fatalities since 2007. Timothy Stewart, *Overview of motor vehicle crashes in 2020*, DOT HS Doc. No. 813 266 (March 2022).

See also, Nat’l Highway Traffic Safety Admin, *Traffic Safety Facts: Early Estimates of Motor Vehicle Traffic Fatalities and Fatality Rate by Sub-Categories in 2021*, DOT HS Doc. No. 813 298 (May 2022).

<sup>6</sup> C.f., *Behavioral Research*, Nat’l Highway Traffic Safety Admin, [www.nhtsa.gov/behavioral-research](https://www.nhtsa.gov/behavioral-research) (last visited August 10, 2022); *Risky Driving*, *supra* note 1.

<sup>7</sup> *National Center for Statistics and Analysis (NCSA)*, Nat’l Highway Traffic Safety Admin (last visited August 17, 2022).

<sup>8</sup> *Id.*

<sup>9</sup> See, e.g., John H. Lacey et al., *Drug and alcohol crash risk: A case-control study*, DOT HS Doc. No. 812 355 (December 2016) (readers should also note the prior studies cited in this report and review the same).

<sup>10</sup> *Id.* at v-vi.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 68.

<sup>13</sup> *Drunk Driving*, Nat’l Highway Traffic Safety Admin, [www.nhtsa.gov/risky-driving/drunk-driving](https://www.nhtsa.gov/risky-driving/drunk-driving) (last visited August 9, 2022).

<sup>14</sup> *Id.*

<sup>15</sup> *Drug Impaired Driving*, Nat’l Highway Traffic Safety Admin, [www.nhtsa.gov/risky-driving/drug-impaired-driving](https://www.nhtsa.gov/risky-driving/drug-impaired-driving) (last visited August 9, 2022); see also Nat’l Highway Traffic Safety Admin, *Traffic Safety Facts: Update to Special Reports on Traffic Safety During the COVID-19 Public Health Emergency: Fourth Quarter Data*, DOT HS Doc. No. 813 135 (June 2021).

<sup>16</sup> *Distracted Driving*, Nat’l Highway Traffic Safety Admin, [www.nhtsa.gov/risky-driving/distracted-driving](https://www.nhtsa.gov/risky-driving/distracted-driving) (last visited August 9, 2022).

<sup>17</sup> Nat’l Highway Traffic Safety Admin, in email correspondence with the author, July 29, 2022.

<sup>18</sup> *Seatbelts*, Nat’l Highway Traffic Safety Admin, [www.nhtsa.gov/risky-driving/seat-belts](https://www.nhtsa.gov/risky-driving/seat-belts) (last visited August 9, 2022).

<sup>19</sup> *Id.*

5. **Speeding:** Speeding killed 11,258 people in the United States in 2020.<sup>20</sup> It was a factor in 29 percent of all traffic fatalities.<sup>21</sup>
6. **Drowsy Driving:** Drowsy driving killed 633 people in 2020.<sup>22</sup>

With the recent increases in fatal crashes, it is incumbent upon prosecutors and law enforcement officers to consider their role in reversing that increase.

### What Do These Numbers Mean for Prosecutors and Officers?

Changing risky driving behaviors begins with officers recognizing their role in so doing. For example, stopping a speeder and issuing a citation is important, but it might not be everything. With a simple stop and citation, one speeder is, at a minimum, slowed for an evening. The data, however, tells us that there is a greater aim in stopping a speeder, and it can be achieved during the traffic stop. That aim is to change the driver's future behavior.

An officer who understands and conveys why speeding is dangerous can affect lifelong changes in that driver, and this will save lives.<sup>23</sup> Keep in mind that officers are often a person's first contact with the justice system and taking that initial opportunity to inform a driver of the reasons why it is important not to speed can help that person understand the risks of their behavior. Hopefully, that knowledge will keep the driver from having any future involvement with the justice system and keep them and others alive.

Two examples of programs implemented by law enforcement to better communicate with the public are Round Rock, Texas Police Department's *Tom's Traffic Tips* and Concord, North Carolina Police Department's roadside strategy. Both are programs implemented at the local level and are tailored to meet their communities' needs.

Round Rock's *Tom's Traffic Tips* is a social media campaign designed, among other things, to educate viewers about the dangers of risky driving and the related laws.<sup>24</sup> The ultimate product is a series of videos, available on the City of Red Rock's YouTube Channel.<sup>25</sup> The videos combine humor, data, and the law to create informative, entertaining, and short videos. The campaign facilitated an improvement in communication with the public.<sup>26</sup> More importantly, "[a]fter implementing *Tom's Traffic Tips*, crashes actually decreased [in the area] by four percent while the population continued its upward trajectory."<sup>27</sup>

Just as Round Rock recognized a new approach was necessary to better educate the public, so did Chief Gary Gacek. When Gacek took over as Chief of Police for the City of Concord, North Carolina, he brought with him a fresh approach to traffic safety.<sup>28</sup> During his tenure, the number of traffic stops dramatically increased, and the nature of those stops significantly changed.<sup>29</sup> Officers in Concord know their local crash data, and they tap into that knowledge when interacting with drivers on the side of the road. High visibility stops occur in dangerous, high-crash locations or areas, and officers are seen conducting them.<sup>30</sup> Here's where things get even more interesting: following such a data- and knowledge-driven stop, the officer informs the driver of both

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<sup>20</sup> *Speeding*, Nat'l Highway Traffic Safety Admin, [www.nhtsa.gov/risky-driving/speeding](http://www.nhtsa.gov/risky-driving/speeding) (last visited August 9, 2022).

<sup>21</sup> *Id.*

<sup>22</sup> *Drowsy Driving*, Nat'l Highway Traffic Safety Admin, [www.nhtsa.gov/risky-driving/drowsy-driving](http://www.nhtsa.gov/risky-driving/drowsy-driving) (last visited August 9, 2022).

<sup>23</sup> See, c.f., Nat'l Highway Traffic Safety Admin, *Countermeasures That Work*, 10th Edition, at 1-58, 2-25, 3-32, 4-17, 10-12 (discussing the effectiveness of communication and outreach programs in reducing impaired driving, seatbelts, speeding, distracted driving, and drowsy driving, respectively).

<sup>24</sup> Round Rock Police Department, City of Round Rock, Texas, *Tom's Traffic Tips*, YouTube (June 10, 2021) [www.youtube.com/playlist?list=PLk7nkdisby9g2rZGcZZFP3ZBhmtgmsANt](https://www.youtube.com/playlist?list=PLk7nkdisby9g2rZGcZZFP3ZBhmtgmsANt).

<sup>25</sup> *Id.*

<sup>26</sup> See Tom Sloan, *Traffic Safety Initiatives: "Tom's Traffic Tips," Police Chief Magazine*, [www.policechiefmagazine.org/traffic-safety-initiatives-toms-traffic-tips/?ref=8e580c523caa3b77ee534f6891f15d94](http://www.policechiefmagazine.org/traffic-safety-initiatives-toms-traffic-tips/?ref=8e580c523caa3b77ee534f6891f15d94) (last visited August 17, 2022).

<sup>27</sup> *Id.*

<sup>28</sup> Gary Gacek, Chief of Police, Concord, NC, Address at the Traffic Safety Resource Prosecutor Conference (May 2, 2022).

<sup>29</sup> Telephone Interview with Gary Gacek, Chief of Police, Concord, NC (August 18, 2022).

<sup>30</sup> *Id.*

the legal reason for the stop, e.g., speeding, *and* the strategic purpose behind it.<sup>31</sup> So, one of an officer's initial statements in interacting with a stopped driver might look something like this:

Officer: Hi, I stopped you for running that red-light back there. We've had three recent serious injury crashes at that intersection in the past year, and some of them were caused by people running that light. So, we are out trying to prevent that behavior from happening and hopefully stop some crashes and keep people safe.<sup>32</sup>

It's through this education and communication that Chief Gacek continues to simultaneously increase traffic safety and improve relations between the police and the other citizens of Concord.<sup>33</sup>

Just as law enforcement agencies should tailor their activities to reduce the occurrence of the six risky driving behaviors, so should prosecutors' offices. The first obstacle for prosecutors in implementing changes in driving behavior is getting buy-in from colleagues and courts. Most citations involving the six risky driving behaviors are written to drivers in cases where no injury occurs. These offenses are often referred to as "victimless crimes" and are typically non-jailable offenses or misdemeanors. Thus, in the realm of criminal justice, they are frequently considered low priority cases. In busy, overworked, and under-staffed prosecutors' offices, lower priority cases may be pled down or even dismissed. Yet the data gathered by NHTSA suggests these cases should be treated seriously because the risk of injury or death resulting from the behavior is high. It is the role of the traffic prosecutor, therefore, to reconcile the pressure to dismiss or plead down these cases with the need to give them the attention necessary to change drivers' behaviors and ultimately save lives. Ideally a prosecutors' office should consider the six risky driving behaviors in designing its case management policy.

The next obstacle that prosecutors face is seeking an adjudication and sentence that satisfies justice and changes the driver's risky behavior. This is in line with one of the general principles of sentencing: to reduce future crimes and, thus, have fewer victims.<sup>34</sup> This is why, in the case of impaired driving—whether impairment caused by alcohol, drugs, or polysubstance—treatment is often a necessary component of the sentence. DUI Courts are an example of an effective sentencing or programmatic tool proven to achieve lasting changes in driving behavior.<sup>35</sup> These courts are designed to target two of the six risky driving behaviors: drunk driving and drug impaired driving. NHTSA has long recognized the effectiveness of DUI Courts and, thus, supported through research and education these Courts nationwide.<sup>36</sup>

As for sentencing options designed to address the other risky driving behaviors, an example of a program supported by NHTSA is the National Safety Council's *Alive at 25*. This program is a four-hour classroom course and is available in some states virtually.<sup>37</sup> It targets teens and adults under 25 years of age and is designed

<sup>31</sup> Telephone interview with Gary Gacek, *supra* note 29; Gacek, *supra* note 28.

<sup>32</sup> Telephone interview with Gary Gacek, *supra* note 29; Gacek, *supra* note 28.

<sup>33</sup> Gacek, *supra* note 28. Police administrators should note that Chief Gacek sees this approach as a way to turn an inherently negative interaction into a positive one. In fact, he receives emails and voicemails from citizens thanking him and his officers for the way that they handle traffic stops. Telephone interview with Gary Gacek, *supra* note 29.

<sup>34</sup> See *Seven Sentencing Principles: December 2011*, Nat'l. Coll. of State Legislators, [www.ncsl.org/research/civil-and-criminal-justice/seven-sentencing-principles.aspx](http://www.ncsl.org/research/civil-and-criminal-justice/seven-sentencing-principles.aspx) (last visited August 17, 2022).

<sup>35</sup> See *DWI Courts*, Found. for Advancing Alcohol Resp., [www.responsibility.org/end-drunk-driving/strategies/treatment-and-rehabilitation/dwi-courts/](http://www.responsibility.org/end-drunk-driving/strategies/treatment-and-rehabilitation/dwi-courts/) (last visited August 17, 2022) (stating that "[a] large body of research supports the effectiveness of DWI Courts in reducing recidivism"); James C. Fell et al., *An Evaluation of Three Georgia DUI Courts*, DOT HS Doc. No. 811 450 (March 2011) (concluding that "DUI courts in Georgia worked as intended and were effective in reducing the recidivism of these repeat DUI offenders compared to traditional DUI sanction programs in Georgia").

<sup>36</sup> See, e.g., Fell, *supra* note 35; Alan Block, *Survey of DWI Courts*, DOT HS Doc. No. 812 283 (June 2016). For additional effective sentencing programs, readers should review *Strategies for Addressing the DWI Offender: 10 Promising Sentencing Practices*, Nat'l Highway Traffic Safety Admin, DOT HS Doc. No. 809 850 (March 2005) and *Staggered Sentencing*, Found. for Advancing Alcohol Resp., [www.responsibility.org/wp-content/uploads/2020/01/Staggered-Sentencing-2020.pdf](http://www.responsibility.org/wp-content/uploads/2020/01/Staggered-Sentencing-2020.pdf) (last visited August 17, 2022).

<sup>37</sup> See, e.g., *Alive at 25 – 4 Hours Virtual (Zoom Format)*, Safety and Health Council of NC, [www.safetync.org/product/alive-at-25-4-hours-virtual/](http://www.safetync.org/product/alive-at-25-4-hours-virtual/) (last visited August 22, 2022); *Saving Lives Through Education*, Texas Alive Team, [texasaliveteam.org/#:~:text=The%20Texas%20Alive%20Team%20is%20a%20non%2Dprofit%20multi%2Dagency,death%20among%20Texas%20young%20drivers](https://texasaliveteam.org/#:~:text=The%20Texas%20Alive%20Team%20is%20a%20non%2Dprofit%20multi%2Dagency,death%20among%20Texas%20young%20drivers) (last visited August 22, 2022).



to change risky driving behavior through education.<sup>38</sup> Participants learn about the dangers of “speeding, tailgating, distracted, impaired, aggressive, and drowsy driving.”<sup>39</sup> It culminates in a final exam, after which participants receive a certificate of completion.<sup>40</sup> The course is attributed with reducing the “death toll among teenage drivers [in Kentucky] . . . 60%”<sup>41</sup> and is recognized throughout the United States.

Not all risky driving behaviors, however, have such well-established or researched solutions. For example, how do prosecutors recommend a sentence for an adult in a way that ensures they will always wear a seatbelt? Do prosecutors need to rethink whether dismissing seatbelt tickets in DUI cases minimizes or enables that behavior? In sum, how can prosecutors design sentencing recommendations with an eye toward addressing the six most risky driving behaviors? These are the questions leadership in prosecutors’ offices need to ask, consider, and strive to resolve.

## Conclusion

Given the identification of the six risky driving behaviors, all traffic safety professionals should recognize the role of effective traffic stops, public education, adjudication, and the appropriate sentencing of offenders in changing these behaviors. To reduce crashes and injuries on our roadways and thereby save lives, prosecutors and law enforcement should prioritize the detection, education, and rehabilitation of those who commit any of the six risky driving behaviors.

## About the Author

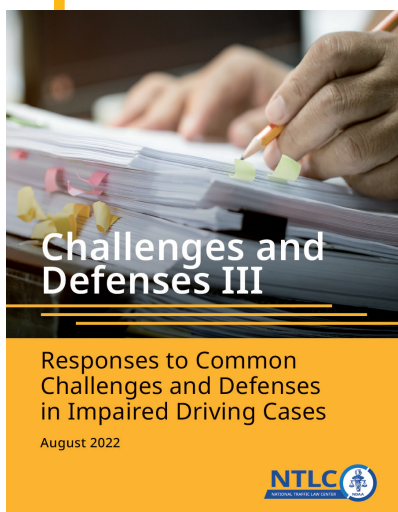
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<sup>38</sup> *Teach Young Adults to be Safe Drivers with Alive at 25*, Nat’l. Safety Council, [www.nsc.org/safety-training/defensive-driving/teen-young-adult-defensive-driving-courses](http://www.nsc.org/safety-training/defensive-driving/teen-young-adult-defensive-driving-courses) (last visited August 17, 2022).

<sup>39</sup> Nat’l. Safety Council, *Alive at 25* (4th Ed. 2019).

<sup>40</sup> See Nat’l. Safety Council, *Alive at 25 Instructor Guidelines* (4th Ed.).

<sup>41</sup> *Teach Young Adults to be Safe Drivers with Alive at 25*, *supra* note 38.



With contributions from the country’s leading Traffic Safety Professionals and the National Highway Traffic Safety Administration, the National Traffic Law Center is pleased to announce the publication of our latest monograph ***Challenges and Defenses III, Responses to Common Challenges and Defenses in Impaired Driving Cases***.

This monograph was developed to assist prosecutors and law enforcement in understanding and countering challenges often faced in impaired driving cases with a particular focus on the drug-impaired driver. It will assist prosecutors in formulating effective responses to newer issues including challenges relating to a toxicologist’s opinion and report; an incomplete drug influence evaluation; recalled or expired equipment; driving proofs, or the lack thereof, blood draws, search warrants, and jury selection, among others. This monograph may be accessed and downloaded for free [here](#).

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September 15, 2022

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Please note there is no cost to attend this training. Space is limited. Attendees must register. Participants who live more than 50 miles away from the training site are eligible for travel reimbursement pursuant to GSA guidelines. Travel days are September 14, 2022 and September 15, 2022.

## Mastering Masking

Legal and Ethical Consequences of Plea Negotiations Involving Commercial Driver's Licenses



Photo courtesy of <https://www.emstlawgroup.com/blog/semi-tractor-trailer-vehicle-crash-highway-166/>

The National Traffic Law Center is pleased to offer this course designed to provide prosecutors and other traffic safety professionals with the materials and techniques necessary to train other prosecutors and traffic safety professionals in their respective jurisdictions on the fundamentals of the federal and state prohibitions against Masking Commercial Driver License convictions.

### Participants will be able to:

- Understand the Federal definition of "Masking," "Conviction" and "Disqualification" pursuant to the Federal Motor Carrier Safety Regulations
- Learn about the ethical consequences of Masking
- Explore various techniques and skills to educate other professionals on Masking

<sup>49</sup>CFR §384.226: "The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the driver's record, whether the driver was convicted for an offense committed in the State where the driver is licensed in another State."