

UPCOMING NDAА TRAININGS

- **Executive Course**
June 11–15, 2018
Washington, DC
- **2018 Summer Summit**
Identifying, Investigating and Prosecuting Human and Labor Trafficking
July 15–17, 2018
Spokane, WA
- **Prosecuting Sexual Assault and Related Violent Crimes**
August 13–17, 2018
Bellevue, WA

INSIDE THIS ISSUE

- **NTLC Activities** / page 6
- **State Supreme Court Decisions** / page 7
- **TSRP News** / page 17

STAFF

Executive Director
Nelson Bunn

Chief Operating Officer
Christine Mica

THE NATIONAL TRAFFIC LAW CENTER

Program Director
Tom Kimball: tkimball@ndaajustice.org

Senior Attorneys
M. Kimberly Brown: mkbrown@ndaajustice.org
Romana Lavalas: rlavalas@ndaajustice.org
Pete Grady: PGrady@ndaajustice.org

Staff Attorneys
Tiffany Watson: twatson@ndaajustice.org
Jeanine Howard: jhoward@ndaajustice.org

Project Coordinator
Metria Hernandez

The National Traffic Law Center is a program of the National District Attorneys Association. This document was prepared under Cooperative Agreement Number DTNH22-13-H-00434 from the U. S. Department of Transportation National Highway Traffic Safety Administration. Points of view or opinions in this document are those of the authors and do not necessarily represent the official positions or policies of the Department of Transportation or the National District Attorneys Association.



Are We in a Rush to Crash? SPEEDING AND FATALITIES

Traffic safety advocates have struggled to find best practices to lower the death rate on our highways. The number of people who die each year in the United States is staggering. In 2016 alone, 37,461 people died in traffic crashes.¹ In other words, for every 100,000 people, 11.59 died or, on average, 102 people per day.²

For years, hard battles have been fought to reduce impaired driving fatalities. Great measures have resulted in many lives saved. The millions of dollars spent to reduce alcohol-impaired

¹ National Center for Statistics and Analysis. (2018, March (revised)). Speeding (Traffic Safety Facts 2016 Data. Report No. DOT HS 812 480). Washington, DC: National Highway Traffic Safety Administration, p 1. Available at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812480>

² National Center for Statistics and Analysis. (2018, March). Police-Reported Motor Vehicle Traffic Crashes in 2016 (Traffic Safety Facts Research Note. Report No. DOT HS 812 501). Washington, DC: National Highway Traffic Safety Administration, p.2. Available at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812501>

driving since the 1970's have brought huge dividends. In the mid-1970's, 60% of roadway fatalities were alcohol-related.³ In 2016, notwithstanding many countermeasures, 10,497 people died in alcohol-impaired driving crashes.⁴ Though great strides have been made, there are still far too many lives lost because of impaired driving.

The fight to eliminate impaired driving fatalities must continue. Every life should be saved. It is wonderful to see the many advocates who

Nationwide in 2016, 27% of all traffic fatalities were speeding-related.

have joined in the effort to save lives. Moreover, the law enforcement officers who investigate instances of impaired driving should take pride in their efforts. Empirical evidence shows that lives can be saved through extensive efforts by numerous entities. There are other equally important traffic safety issues on which to work, too. One such issue is speeding.

Speeding lessens a driver's ability to steer safely around curves or objects in the road, extends the distance needed to stop, and increases the distance a vehicle travels while the driver reacts to danger.⁵ In 2016, 10,111 people died in speeding-related crashes compared to 10,497 deaths because of alcohol-related crashes.⁶ Speeding-related crashes now account for nearly as many fatal crashes as alcohol impaired driving.

Speeding is a huge problem that significantly contributes to the excessive deaths on our

highways; better enforcement efforts are needed to save lives. A poll by the American Automobile Association Foundation for Traffic Safety released in 2018 states that "...a majority of drivers, around 4 in 5 (79.3%), indicated that drivers speeding on freeways pose a very serious threat. . .to their safety, while a greater percentage (88.2%) indicated that they see drivers speeding on residential streets as a very serious threat. . .to their personal safety."⁷ Despite the threat perceived by drivers, however, nearly half of all drivers admit to

going 10 mph over the speed limit on residential streets and almost half of all drivers on the highway said they went 15 mph over the speed limit.⁸

The number of fatalities from speeding-related crashes is lower now than in the past; there were approximately 3,000 fewer people killed in 2016 compared to 2007.

In 2016, the percentage of crash deaths involving high speeds was higher on minor roads (33%) than on interstates and freeways (27%) or

Motor vehicle crash deaths involving speed as a contributing factor, 2007 and 2016⁹

Year	Speeding-related Fatalities	Percentage of Total Fatalities
2007	13,140	32
2016	10,111	27

³ National Institutes of Health. (2010, October (Updated)). Fact Sheet Alcohol-Related Traffic Deaths. Washington, DC: Department of Health and Human Services, p.1. Available at <https://report.nih.gov/nihfactsheets/ViewFactSheet.aspx?csid=24>

⁴ AAA Foundation for Traffic Safety. (2018, March). 2017 Traffic Safety Culture Index. Washington, DC: AAA Foundation for Traffic Safety, p. 4. Available at <https://aaafoundation.org/wp-content/uploads/2018/03/TSCI-2017-Report.pdf>

⁵ US Department of Transportation, Traffic Safety Marketing. (2015–2016). Stop Speeding Before It Stops You [Speeding Planner Social Norm-

ing Version Fact Sheet & Talking Points]. Available at <https://www.trafficsafetymarketing.gov/get-materials/speed-prevention/stop-speeding-it-stops-you>

⁶ AAA Foundation for Traffic Safety, *supra* note 4, p. 4.

⁷ AAA Foundation for Traffic Safety, *supra* note 4, p. 18.

⁸ *Id.* at 16–17.

⁹ *Id.*

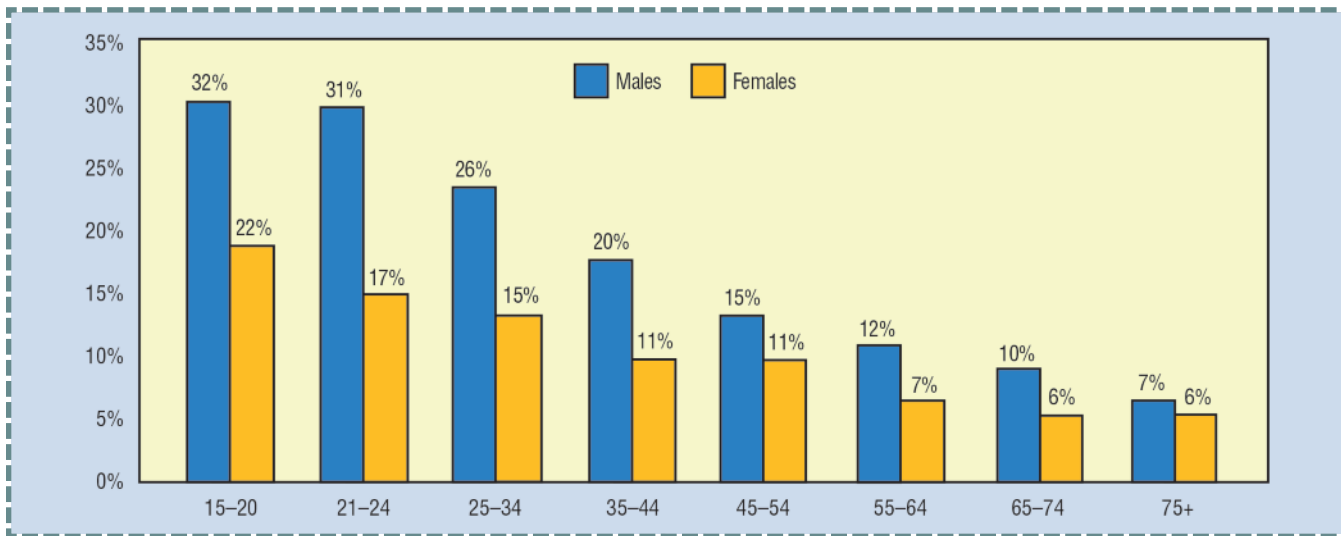
on other major roads (25%).¹⁰ As seen in the below-graph, speeding-related deaths are higher for young drivers than others, which should add to our societal concern. The young people who die in these crashes could have been contributing members of society. The lost lives of our youth affect everyone.

Some states have a bigger problem with speed

Other states with more than 30% speeding-related traffic fatalities include: Alabama, Arizona, Colorado, Delaware, Illinois, Maine, Missouri, Montana, Nevada, New Mexico, New York, North Carolina, South Carolina, South Dakota, Virginia, and Wisconsin.¹⁴

States with the lowest percentage of speeding-related fatalities include: Florida, 10%; Georgia,

Percentage of Speeding Drivers in Fatal Crashes, by Age and Gender, 2016¹¹



Source: FARS 2016 ARF

Age Group

than others. Nationwide in 2016, 27% of all traffic fatalities were speeding-related. In sheer numbers, Texas and California had the highest number of traffic fatalities, with 3,776 and 3,623 deaths, respectively.¹² The speeding-related deaths in those states accounted for 28% of fatalities in Texas and 29% in California. Twenty-three states had a higher percentage of fatalities from speeding, including: District of Columbia, 59%; New Hampshire, 57%; Vermont, 47%; and Hawaii and Rhode Island, with 45% each.¹³

17%; and Tennessee, 18%.¹⁵ Interestingly, each of these states are part of Operation Southern Shield.

Operation Southern Shield was a breakthrough in the National Highway Traffic Safety Administration's (NHTSA) Region 4.¹⁶ The states in Region 4 experienced an alarming increase in motor vehicle deaths in 2014 and 2015. In response, the state highway patrols in Region 4, along with more than 500 local law enforcement agencies, conducted "...a week-long high visibility enforcement and awareness campaign targeting a

¹⁰ Insurance Institute for Highway Safety, Highway Loss Data Institute. (2017, December). 2016 Fatality Facts. Arlington, VA, p. 10. Available at <http://www.iihs.org/iihs/topics/t/general-statistics/fatalityfacts/overview-of-fatality-facts>

¹¹ Speeding, *supra* note 1, p. 2.

¹² Speeding, *supra* note 1, p. 8.

¹³ *Id.* at 8-9.

¹⁴ *Id.* at 9.

¹⁵ *Id.* at 8.

¹⁶ NHTSA's Region 4 is comprised of Alabama, Florida, Georgia, South Carolina, and Tennessee. See www.nhtsa.gov/about-nhtsa/regional-offices, accessed on April 24, 2018.

variety of unsafe driving behaviors[,]” including speeding.¹⁷ During this one week of Operation Southern Shield in July 2017, “...participating law enforcement agencies wrote nearly 50,000 citations, nearly half of which were for speeding violations and the initiative generated more than 250 television, radio, and print stories.”¹⁸

New York City’s Vision Zero is another example of a successful program focused on reducing traffic fatalities. Vision Zero, originally developed in Sweden, employs more than a hundred different initiatives to eliminate traffic deaths including lowered speed limits, increased speed enforcement utilizing speed cameras, and high-profile ticketing campaigns, in addition to driver outreach and education. The most striking decline in New York City’s traffic-related fatalities was the decreased number of pedestrian casualties. In 2017, the number fell 32% and, for the first time, comprised less than half of the city’s overall traffic fatalities. Since 2013, pedestrian deaths have fallen by 45%.¹⁹ While stressing that even a single traffic death is one too many, officials said that New York City was moving in the opposite direction of the national trend. As part of this effort, law enforcement issued “...nearly 150,000 speeding summonses, and automated speed cameras issued nearly 1.2 million Notices of Liability in 2017...”²⁰ New York City plans to redesign more streets to make them safer and police will “deepen” their traffic enforcement efforts under the new plan of action.

Operation Southern Shield and New York City’s implementation of Vision Zero are two

Help Save Lives by Obeying Posted Speed Limits²¹

- Our goal is to save lives. Please join us in reminding all drivers to be alert, watch for speed limit signs, and obey those signs, especially in school zones, residential neighborhoods, and on secondary roads.
- Drivers need to remember that there is a reason for posted speed limits. The roadways are a dangerous place and the speed limits are designed to protect everyone including drivers, passengers, and pedestrians!
- Please remember, *Stop Speeding Before It Stops You*.
- For more information, visit <http://trafficsafetymarketing.gov/>.



examples of successful initiatives that led to fewer speeding-related fatalities. While continuing to fight against impaired driving, prosecutors can help spread the word about the dangers of speeding at schools, community events, and media interviews. The National Traffic Law Center can serve as a resource to help prepare prosecutors for speaking engagements on this and other traffic safety topics.

¹⁷ Broome, C. (2017, October). Region 4 Launches Operation Southern Shield. *The LEL Law Enforcement Improving Traffic Safety*, p. 1. Available at <http://www.nlelp.org/wp-content/uploads/2017/10/The-LEL-Oct-2017-Final.pdf>

¹⁸ *Id.* at 2.

¹⁹ NYC Government, Office of the Mayor. (2018, January 8). Vision Zero: Mayor de Blasio Announces Pedestrian Fatalities Dropped 32% Last Year, Making 2017 Safest Year on Record [Press release]. Retrieved April 24, 2018, from <http://www1.nyc.gov/office-of-the->

²⁰ *Id.*

²¹ US Department of Transportation, Traffic Safety Marketing. (2015-2016). Stop Speeding Before It Stops You [Speeding Planner Social Norming Version Fact Sheet & Talking Points]. Available at <https://www.trafficsafetymarketing.gov/get-materials/speed-prevention/stop-speeding-it-stops-you>

Resources

Many resources are available to help focus on this issue. This is a small sample:

- The National Highway Traffic Safety Administration (NHTSA) has produced tools to help prosecutors and other leaders focus on reducing speeding-related fatalities and are available at: <https://www.nhtsa.gov/risky-driving/speeding#issue-what-drives-speeding>
- The Network of Employers for Traffic Safety (NETS) has produced an outstanding Power Point

presentation on the dangers of speeding and is available at: http://www.trafficsafety.org/dsw2016/materials/LifeGoesByWayTooFast_SlowDown.pptx

- The National Transportation Safety Board (NTSB) released a safety study in 2017 that summarizes the risks of speeding, the scope of the problem, and promotes the use of proven and emerging countermeasures that can reduce the impact of speeding.²²

What Drives Speeding?²³

Speeding is a type of aggressive driving behavior. Several factors have contributed to an overall rise in aggressive driving.



TRAFFIC

Traffic congestion is one of the most frequently mentioned contributing factors to aggressive driving, such as speeding. Drivers may respond by using aggressive driving behaviors, including speeding, changing lanes frequently, or becoming angry at anyone who they believe impedes their progress.

RUNNING LATE

Some people drive aggressively because they have too much to do and are “running late” for work, school, their next meeting, lesson, soccer game, or other appointment.

ANONYMITY

A motor vehicle insulates the driver from the world. Shielded from the outside environment, a driver can develop a sense of detachment, as if an observer of their surroundings, rather than a participant. This can lead to some people feeling less constrained in their behavior when they cannot be seen by others and/or when it is unlikely that they will ever again see those who witness their behavior.

DISREGARD FOR OTHERS AND FOR THE LAW

Most motorists rarely drive aggressively, and some never do. For others, episodes of aggressive driving are frequent, and for a small proportion of motorists it is their usual driving behavior. Occasional episodes of aggressive driving—such as speeding and changing lanes abruptly—might occur in response to specific situations, like when the driver is late for an important appointment, but is not the driver’s normal behavior.

If it seems that there are more cases of rude and outrageous behavior on the road now than in the past, the observation is correct—if for no other reason than there are more drivers driving more miles on the same roads than ever before.

²² See National Transportation Safety Board. (2017) *Safety Study, Reducing Speeding-Related Crashes Involving Passenger Vehicles*. NTSB/SS-17/01, PB2017-102341, Notation 56821. Washington, DC.

²³ <https://www.nhtsa.gov/risky-driving/speeding#issue-what-drives-speeding>

NTLC ACTIVITIES 2018

This year began with a flurry of activities in our Arlington, VA offices. We were fortunate to add Staff Attorney Jeanine Howard to our team. Jeanine came from the Philadelphia DA's office with three years' experience. Jeanine earned her Juris Doctorate from Widener University—School of Law in Delaware and her Bachelor of Business Administration from Temple University, where she studied Legal Studies in Business. Jeanine works on the Commercial Driver's License grant from the Federal Motor Carrier Safety Administration (FMCSA). When asked, Jeanine indicated she is "excited to join the team and support the organization by providing services to prosecutors around the country."

NTLC staff participated in meetings with the following groups this year:

- Autonomous Vehicle Public Policy Working Group, Minding the Public Interest;
- Institute for Behavior and Health, Inc., Drugged Driving Committee;
- Highway Safety Coalition;
- National Governors Association;
- Lifesavers Planning Committee;
- The Office of the Attorney General of the District of Columbia, DUI Enforcement Committee;
- American Association of Motor Vehicle Administrators, Ignition Interlock Working Group;
- National Academies of Sciences, Engineering, and Medicine;
- Institute for Behavior and Health;
- National Highway Traffic Safety Administration Drugged Driving Public Meeting;
- Road to Zero Coalition; and
- American Association of State Highway Transportation Officials- American Association of Motor Vehicle Administrators, Stakeholder Working Group (re: Autonomous Vehicles).

NTLC staff participated in training sessions and webinars conducted by the following groups:

- National Academies of Sciences, Engineering and Medicine webinar titled, "Reducing Alcohol-Impaired Driving Fatalities: Report Release;"

- Maryland DUI Institute training conducted by Maryland TSRP David Daggett;
- Webinar: "After the ELD Mandate: Tips to Stay Compliant;"
- TSRP Webinar Series, "Un-Masking CDL Violations;" and
- American Bar Association, Traffic Court Seminar.

NTLC staff is committed to training today's prosecutors and providing pertinent materials and has:

- Conducted the Cross Examination of Experts working group with 10 TSRPs;
- Met with the Foundation for Advancing Alcohol Responsibility for development of an online "Prosecuting the Impaired Driver" course;
- Presented on "Human Trafficking in Transportation" at NDAA's conference on Investigating and Prosecuting Human Sex Trade and Labor Trafficking Cases;
- Conducted a TSRP Traffic Tuesday Webinar entitled "Un-Masking CDL Violations;"
- Presented at NDAA's national Prosecutor 101: Boot Camp course on "DUI Prosecution Primer;" and
- Conducted the "CDL Train the Trainer" working group with the assistance of five TSRPs, a CDL Enforcement Officer and a representative from FMCSA's Legal Division to redevelop the CDL Train the Trainer Course.

NTLC staff distributed the following published materials:

- 280 Second Edition CDL monographs; and
- 80 CDL Quick Reference Guides.

STATE SUPREME COURT DECISIONS

Reading Between the Lines

In the field of traffic safety, the same issues tend to arise in trials across the country. Issues determined in two states, whether they are adjacent or distant, are sometimes resolved in the same way, opposite ways, and often somewhere in between. To keep prosecutors, law enforcement officers, judges, and other traffic safety partners informed, here are a few notable decisions of various State Supreme Courts.

FLORIDA

Goodman v. Fla. Dep't of Law Enf't, 2018 Fla. LEXIS 270, 43 Fla. L. Weekly S 61, 2018 WL 654442 (February 1, 2018).

Facts & Procedural Posture:

Petitioner, John Goodman, was involved in a car crash resulting in death. *Id.* at 2. The Petitioner's blood was subsequently drawn for testing, pursuant to Florida's implied consent law. *Id.* The Petitioner was ultimately convicted of Driving Under the Influence Manslaughter/Failure to Render Aid and Vehicular Homicide/Failure to Give Information or Render Aid. *Id.* At trial, the Petitioner moved to exclude the blood alcohol test results, based on the collection method utilized. *Id.* at 2. "[The Petitioner] asserted that the nurse who collected his blood substituted a 25-gauge butterfly needle for the 21-gauge needle in the blood collection kit supplied by law enforcement." *Id.* The Petitioner's expert testified that "use of a 25-gauge butterfly needle for blood collection is below the standard of care." *Id.* at 5.

The trial court reserved its ruling pending outcome of the Petitioner's challenge in the Division of Administrative Hearings (DOAH). *Id.*

In his DOAH petition, the Petitioner challenged the validity of rules promulgated by the Florida Department of Law Enforcement (FDLE) related to blood collection. *Id.* at 3. The Administrative Law Judge rejected the Petitioner's challenges and upheld the rules as valid. *Id.* at 12. The Fourth District Court of Appeal affirmed the Administrative Law Judge's decision. *Id.* This appeal followed, in which the Supreme Court of Florida reviewed the Fourth District's decision. *Id.* at 1. "Testimony [from the Petitioner's hearing] indicated that improper blood collection practices, such as using the wrong needle or improperly applying a tourniquet, can increase the chance of a sample having clotting or hemoconcentration." *Id.* at 6. "...[C]lotting changes the composition of a blood sample, and it can artificially increase the alcohol content in the sample..." *Id.* at 5.

Issue #1:

"Are the current rules of the Florida Department of Law Enforcement (FDLE) inadequate under *State v. Miles*, 775 So. 2d 950 (Fla. 2000), for purportedly failing to sufficiently regulate proper blood draw procedures, as well as the homogenization process to 'cure' a clotted blood sample?" *Id.* at 1. Specifically, whether Rule 11D-8.012 is inadequate because it fails to prescribe any requirements for needle gauge or tourniquet usage?

Analysis:

The Supreme Court of Florida analyzed Rule 11D-8.012, considering *Miles* and the core policies of Florida's implied consent law. *Id.* at 20-32. The Court concluded, "Rule 11D-8.012 facially ensures reliable blood test results and any

questions as to the accuracy of a particular test is best determined on a case-by-case basis.” *Id.* at 30. Distinguishing *Miles*, the Court reasoned, here, “[b]lood analysts routinely check for blood clots when they prepare samples for testing under headspace GC. Conversely, in *Miles*, no evidence suggested that there was any way for analysts to know if heat or bacteria affected the sample.” *Id.* at 28. The Court noted, “the core policy of the implied consent law to ensure scientifically reliable test results cannot be interpreted as strictly as [the Petitioner] contends.” *Id.* at 29. The Court further stated, “any clotting that could affect a test result would be noticeable when an analyst pipettes the sample because the pipette would be unable to cleanly draw a subsample. All analysts testified that they make a notation of any noticeable clotting on the laboratory file, which defendants can obtain via a public records request.” *Id.* at 30.

Issue #2:

“Are the present rules similarly inadequate for failing to specifically regulate the work of analysts in screening blood samples, documenting irregularities, and rejecting unfit samples?” Specifically, whether Rule 11D-8.013 is inadequate because it fails to specify that analysts must screen, document, and reject unfit samples?

Analysis:

The Supreme Court of Florida analyzed *Rule 11D-8.013*. The Court again distinguishing *Miles*, concluded that *Rule 11D-8.013* is not inadequate. *Id.* at 32-38. The Court reasoned, “nothing in *Miles* suggested that blood samples were being properly preserved prior to the decision... [h]owever, here, the evidence demonstrates that there is no risk to the accuracy of blood tests in the absence of a Rule on screening, documenting, and rejecting unfit samples, because blood analysts are already doing this as a matter of standard

laboratory practice.” *Id.* at 35. The Court further stated, “[a]lthough it may be preferable for FDLE to promulgate a Rule that specifically lays out every minute detail of a test, this Court is not positioned to make that determination...such an exercise ‘would swiftly devolve into a hopeless endeavor and serve only to expand [FDLE’s] regulations to epic lengths.’” *Id.* at 38.

ILLINOIS

People v. Brooks, 2017 IL 121413, 2017 Ill. LEXIS 1294 (November 30, 2017).

Facts & Procedural Posture:

The Defendant, Michael Brooks, was charged with DUI following a motorcycle crash. *Id.* at 1. Officer testimony established that on the night of the crash, two witnesses stated that the Defendant was driving the motorcycle. *Id.* at 4. While speaking to the Defendant on scene, officers noticed his “speech was slurred, his eyes were red, and he had an odor of alcohol emitting from his mouth when he spoke...” *Id.* One officer believed the Defendant had a serious leg injury, but the Defendant refused medical treatment. *Id.* at 5. Emergency professionals told the officer that the Defendant needed to go to the hospital and requested the officer’s assistance in getting him to the hospital to receive medical treatment *Id.* at 4. Because the Defendant refused to get into the ambulance, the officer physically placed him onto a gurney and then into the ambulance. *Id.* at 5. As the ambulance drove to the hospital, the Defendant attempted to get out. *Id.* at 6. Emergency personnel asked for the officer’s assistance again. *Id.* At that point, the officer put the Defendant on the gurney again, handcuffed him and rode in the ambulance along with the Defendant. *Id.* At the hospital, the Defendant refused a blood draw. *Id.* The officer subsequently

left the hospital and had no further contact with emergency personnel or the hospital regarding the Defendant and had no knowledge as to whether any blood was taken. *Id.* The medical staff at the hospital set the Defendant's leg, which was found to be broken. *Id.*

The Defendant filed a motion to suppress citing violation of the Fourth Amendment, based on a governmental search of his blood without a warrant, consent and in the absence of exigent circumstances, after refusing medical treatment. *Id.* at 2. While the Defendant's motion was pending, the State issued a subpoena to the hospital, requesting "all lab results ('blood work')" originating from the date of the crash. *Id.* During the suppression hearing, the court noted it was in receipt of an envelope from the hospital but had not opened it. *Id.* at 3. Both the State and defense counsel told the court that the envelope likely contained the Defendant's medical blood work. *Id.*

The envelope was never opened, however, and the parties did not stipulate to the envelope's contents. *Id.*

The circuit court granted the Defendant's motion to suppress. *Id.* at 7. The appellate court affirmed the circuit court's order. *Id.* at 9. The Illinois Supreme Court allowed the State's petition for leave to appeal. *Id.* at 1.

Issue:

Whether the blood draw violated the Fourth Amendment?

Analysis:

The Court laid out a 2-prong analysis, required to make out a prima facie case for suppression: first, the defendant must show that a search occurred in the form of a blood draw and, secondly, that the blood draw violated the Fourth Amendment. *Id.* at 10-11. The Court concluded

that the Defendant failed to establish a prima facie showing for suppression. *Id.* at 16. The Court found that the Defendant failed to establish the first prong because there was no evidence that a blood draw occurred at the hospital, as the Defendant "never testified that he was subjected to a blood draw," though it was his burden to make such a showing. *Id.* at 11. Moreover, the Court concluded that the Defendant failed to establish the second prong because there was no evidence that the officer, who assisted emergency personnel, or any other officer, "sought or encouraged a blood draw or was even aware that one had been done." *Id.* at 14. The Court further reasoned, "there was no evidence that any individual who may have drawn defendant's blood did so while acting at the behest, or under the influence, of the police." *Id.* at 14.

MASSACHUSETTS

Commonwealth v. Camblin, 478 Mass. 469, 86 N.E.3d 464, 2017 Mass. LEXIS 887 (December 8, 2017).

Facts & Procedural Posture:

The Defendant, Kirk P. Camblin, who was charged with operating a motor vehicle under the influence of alcohol, moved to exclude breath test evidence, which was generated by the Alcotest device. *Id.* at 466. The Defendant argued that the Alcotest device contained errors and other deficiencies in its computer system, rendering its results unreliable. *Id.* The lower court denied the Defendant's motion without conducting a *Daubert-Lanigan* hearing. *Id.* The Defendant then filed a petition seeking interlocutory relief, which was also denied. *Id.* A jury convicted the Defendant of "operating a motor vehicle while under the influence of alcohol and operating a motor vehicle with a blood alcohol level of or

exceeding 0.08 per cent.” *Id.* at 466. The Defendant appealed, and the Massachusetts Supreme Judicial Court granted his application for direct appellate review. *Id.* at 467. The Massachusetts Supreme Judicial Court vacated the lower court’s order and remanded the case back to the lower court for a Daubert-Lanigan hearing. *Commonwealth v. Camblin*, 31 N.E.3d 1102 (Mass., June 12, 2015). On remand, the judge concluded that the Alcotest provides reliable results. *Camblin*, 86 N.E.3d at 467. The lower court remitted its findings to the Massachusetts Supreme Judicial Court for review. *Id.*

Issue #1:

Whether the lower court judge abused his discretion in holding that the Alcotest breathalyzer had been subject to sufficient independent testing to be deemed reliable?

Analysis:

Deferring to the lower court’s reliance on testing conducted by the National Highway Traffic Safety Administration (NHTSA), and the Organisation Internationale de Metrologie Legale (OIML), the Court found no abuse of discretion. *Id.* at 471. The Court reasoned, “NHTSA certification is widely accepted by courts as evidence of a device’s reliability.” *Id.* (internal citations omitted). The Court noted, “[t]he Alcotest appears on the NHTSA’s published list as having met specific performance criteria.” *Id.*

Issue #2:

Was it proper for the lower court to rely on the Commonwealth’s expert testimony that the NHTSA and the OIML certifications demonstrated that the Alcotest was capable of testing exclusively for ethanol?

Analysis:

The Court concluded that the lower court

judge was warranted in crediting the expert testimony. *Id.* at 472. The Court reasoned, “[t]he OIML’s [an agency that regulates the use of alcohol breath-testing devices in Europe] certification requirements generally are viewed as being much more stringent than those applicable in the United States...the Alcotest was even able to meet the certification requirements of the OIML ‘draft three’ set of specifications. The draft three certifications were so stringent that the testing agency itself decided to remove some of those requirements from the ‘draft four’ specification level...” *Id.*

Issue #3:

Whether the technology underlying the Alcotest has been subjected to peer review and publication?

Analysis:

Allowing the Commonwealth to supplement the record by submitting additional peer-reviewed articles, the Court concluded that the Alcotest had been subject to adequate testing and peer review. *Id.* at 473. The Court noted that in addition to adequate testing and peer review... [the Alcotest] “has been generally accepted in the scientific community, it does not have an unacceptably high known or potential rate of error, and it is governed by recognized standards.” *Id.*

Issue #4:

Whether the Alcotest has received general acceptance in the scientific community?

Analysis:

Rejecting the Defendant’s argument that approval by governmental actors does not constitute scientific communities for purposes of the *Daubert-Lanigan* standard, the Court concluded that the Alcotest has received general

acceptance in the scientific community. *Id.* at 474. The Court reasoned, “[g]overnmental standard-setting agencies, such as the NHTSA, routinely conduct investigations, evaluate new and developing technologies, and set relevant scientific standards.” *Id.*

NEW HAMPSHIRE

State v. Sage, 2018 N.H. LEXIS 9 (February 9, 2018).

Facts & Procedural Posture:

The Defendant was observed speeding on the interstate highway. *Id.* at 1. Upon observing the speeding vehicle, a trooper activated his emergency lights and the vehicle pulled over. *Id.* at 2. The Trooper approached the vehicle and made contact with the Defendant, Meghan Sage who was the sole occupant. *Id.* The trooper noticed that the Defendant had red, watery eyes and an odor of alcohol emanating from her vehicle. *Id.* Upon further conversation, the Defendant gave contradicting explanations as to where she was headed that night. *Id.* However, the Defendant denied having recently drank alcohol. *Id.* The Defendant performed field sobriety tests which indicated signs of impairment. *Id.* at 3. The Defendant then submitted to a breath test, which revealed the existence of alcohol in her system. *Id.* The Defendant, subsequently, requested an independent blood test on three separate occasions. *Id.* The trooper denied the Defendant’s requests. *Id.* The trooper then secured the Defendant and transported her to the county house of corrections. *Id.* While in protective custody, the Defendant made multiple calls to family members, but did not again seek an independent blood test. *Id.* at 4. After a bench trial, the Defendant was convicted of DUI. *Id.*

The Defendant appealed her conviction to the intermediate appellate court for a de novo jury

trial. *Id.* at 4. Prior to trial, the Defendant filed a motion to suppress evidence, which was denied. *Id.* at 5. The Defendant was again convicted of DUI. *Id.* at 6. The Defendant received an enhanced sentence based on a prior DUI conviction from another state. *Id.* An appeal to the Supreme Court of New Hampshire followed. *Id.*

Issue #1:

Whether the trooper unlawfully expanded the scope of the traffic stop, by asking the Defendant to perform field sobriety tests?

Analysis:

The Court, applying a totality of the circumstances test, found that extension of the stop was “justified by a reasonable, articulable suspicion that the Defendant was driving under the influence.” *Id.* at 8. The Court reasoned that expanding the stop was justified based on: “(1) the Defendant’s inability to maintain a correct speed; (2) the odor of alcohol emanating from her vehicle; (3) her red and watery eyes; and (4) her inconsistent explanations regarding her travels.” *Id.*

Issue #2:

Whether the Trooper violated the Defendant’s due process and statutory rights by denying her request for an independent blood test?

Analysis:

The Court concluded that there was no violation of the Defendant’s statutory or due process rights. *Id.* at 15. The Court reasoned, “the [D]efendant was informed of her statutory right to an independent blood test and, after the Defendant requested such a test, the police afforded her a meaningful opportunity to obtain one by providing several opportunities to use a telephone.... [T]here is no indication in the

record that the Defendant sought any further accommodation from the police following her unsuccessful calls, such as requesting assistance with arranging testing.” *Id.* at 14.

Issue #3:

Whether the trial court erred in sentencing the defendant as a subsequent offender?

Analysis:

The Court concluded that the trial court did not err. *Id.* at 23. Applying an elements-based approach to equating statutory language from differing states, the Court recognized a narrow exception in circumstances “where the non-equivalent element has little, if any, bearing on the harmfulness of the conduct proscribed.” *Id.* at 22. The Court reasoned, “there are...likely to be few, if any, instances in which an out-of-state impaired-driving conviction will stem from operation upon some type of “way” that does not fall within the scope of our definition....To permit these rare instances to prohibit sentence enhancement for prior impaired-driving convictions from the majority of out-of-state jurisdictions would be...to require out-of-state jurisdictions’ offenses to be ‘identical,’ and not simply ‘reasonably equivalent,’ to our own.” *Id.*

PENNSYLVANIA

Commonwealth v. Livingstone, 174 A.3d 609 (Pa. 2017) (November 27, 2017).

Facts & Procedural Posture:

At 9:30pm, Trooper Jeremy Frantz found Defendant, Victoria Livingstone, pulled over on the right shoulder of an interstate highway, with the engine running but no hazard lights on. *Id.* at 614. Trooper Frantz activated his emergency lights and pulled up next to the Defendant’s vehicle. *Id.*

The Defendant was in the driver’s seat entering an address into her navigation system. *Id.* Trooper Frantz testified that the Defendant’s eyes were glossy and, when she looked at him, it seemed as though she was looking through him. *Id.* After briefly speaking with the Defendant and learning that she did not need assistance, Trooper Frantz parked in front of the Defendant’s vehicle, got out of his car and approached the Defendant’s vehicle. *Id.* Upon further questioning, the Defendant said that she had not been drinking. *Id.* However, based on the appearance of the Defendant’s eyes and because she was acting “confused,” Trooper Frantz asked the Defendant to perform field sobriety tests. *Id.* The Defendant became emotional. *Id.* After the Defendant submitted to a preliminary breath test (PBT), which showed the presence of alcohol, Trooper Frantz arrested the Defendant and transported her to the police station for a chemical test. *Id.* at 615. The test showed the presence of alcohol and the Defendant was charged accordingly. *Id.*

The Defendant filed a motion to suppress the results of the chemical test. *Id.* The trial court denied the Defendant’s motion. *Id.* The Defendant was convicted on all charges and sentenced. *Id.* The Defendant appealed to the intermediate appellate court, which affirmed the trial court’s decision. *Id.* The Supreme Court of Pennsylvania granted the Defendant’s petition for allowance of appeal. *Id.* at 617.

Issue #1:

Whether the Defendant was subjected to an investigatory detention without reasonable suspicion of criminal activity?

Analysis:

The Pennsylvania Supreme Court went through various illustrations of current case law.

Id. at 618. After outlining the constitutional framework for its analysis, the Court began with whether the Defendant had been seized and if so, whether the seizure was justified under the circumstances. *Id.* During this analysis, the Court declared, it is “eminently reasonable that a motorist would believe he or she is not free to leave” when a police vehicle, with its emergency lights on, pulls alongside a person’s vehicle. *Id.* at 622. The Court noted that in Pennsylvania a driver is subject to a second-degree misdemeanor conviction for failing to stop when given a visual and audible signal to stop by a police officer. *Id.* With respect to the case at bar, looking to various sister states, the Court concluded that a seizure had occurred when Trooper Frantz pulled his patrol vehicle alongside the Defendant’s vehicle, with the emergency lights activated because the Defendant would not have felt free to leave. *Id.* at 625. Because the seizure was not supported by reasonable suspicion, the Court proceeded to the Community Caretaking Doctrine to determine its applicability in deciding whether the seizure was justified. *Id.*

Issue #2:

Whether the Community Caretaking Doctrine is applicable under these circumstances?

Analysis:

The Court articulated a “reasonableness” test for determining whether the public servant exception of the Community Caretaking Doctrine should apply. *Id.* at 634. In applying the test to the instant case, the Court held that Trooper Frantz’s seizure of the Defendant was not justified under this exception to the warrant requirement and, therefore, the results of the blood test should have been suppressed. *Id.* at 638. The Court reasoned, “Trooper Frantz was unable to articulate any specific and objective facts that would reasonably suggest that [the Defendant] needed assistance...., [Trooper Frantz] did not observe anything that outwardly suggested a problem with [the Defendant’s] vehicle...., [and the Defendant] did not have her hazard lights on.” *Id.*



NTLC ANNOUNCES

The New Masking Quick Reference Guide

Through the efforts of Senior Attorney Romana Lavalas, the CDL Masking Quick Reference Guide is now available to download at <https://ndaa.org/pdf/Masking%20Quick%20Reference%20Guide.pdf>.

Below is the first page of the four-page document.



MASKING QUICK REFERENCE GUIDE

Reporting CDL Violations:

The Federal Motor Carrier Safety Administration issues commercial motor vehicle safety regulations via the Code of Federal Regulations (CFRs). These regulations create a uniform system of licensing commercial drivers from state to state. Although a state may have stricter licensing and license oversight regulations, compliance with the commercial driver license (CDL) federal regulations is required. Failure to comply may result in sanctions against the state. Federal legislation mandated that CMV drivers possess a single license. The CFRs implemented this requirement. The single license concept equates to ONE driver, ONE license, and ONE record (see, 49 C.F.R. §383.21). This single license makes it much easier to accurately track the driving history of any driver and makes the cooperation of prosecutors and courts in reporting all CDL violations more critical.

Prompt Reporting of CDL Convictions under 49 C.F.R. § 384.208, § 384.209, § 384.225

The Code of Federal Regulations requires states to report CDL convictions promptly (within 10 days) for CDL holders or those who should have held a CDL because of the nature of their violations. This includes reporting to the Commercial Driver's License Information System (CDLIS) and reporting all violations for out-of-state drivers to his or her home state (state of CDL issuance). Courts are the first link in this chain of events, so prompt and accurate reporting of violations is essential. Prosecutors and judges should be aware that some crimes other than traditional "traffic offenses" (drug trafficking, any felony in committed in any type of vehicle) carry mandatory CDL disqualification (see, 49 C.F.R. § 383.51) and must be reported. *Any time a vehicle is involved*, a prosecutor or court should inquire if the defendant holds a CDL.

The Commercial Driver's License Information System (CDLIS)

CDLIS is a nationwide computer system that enables state driver licensing agencies (SDLAs) to ensure that each commercial driver has only one driver's license and one complete driver record. SDLAs use CDLIS to complete various procedures, including: transmitting out-of-state convictions and withdrawals, transferring the driver record when a commercial driver's license holder moves to another state, responding to requests for driver status and history.

Masking is Prohibited by 49 C.F.R. § 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."

Conviction Defined in 49 C.F.R § 383.5

A conviction is "(a)ny unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or *nolo contendere* accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or prorated."





COMMERCIAL MOTOR VEHICLE VIOLATIONS: ENFORCEMENT, PROSECUTION, & REPORTING - LOS ANGELES

This course is designed to assist prosecutors, law enforcement personnel, judges, court clerks, motor vehicle administrators, and other allied professionals with vested interests in Commercial Driver's License (CDL) enforcement and public safety, overcome the challenges involved throughout all stages of Commercial Motor Vehicle safety enforcement.



2018 CDL
CONFERENCE

JUNE 13-15, 2018

LOS ANGELES,
CALIFORNIA

[REGISTRATION
OPEN NOW!](#)

HOSTED BY:
NATIONAL DISTRICT
ATTORNEYS
ASSOCIATION'S
NATIONAL TRAFFIC
LAW CENTER

PHOTO FROM POLICE CHIEF MAGAZINE ONLINE

FOR MORE INFORMATION,
PLEASE CONTACT:

Jeanine Howard, Staff Attorney,
NDAA
jhoward@ndaajustice.org

Romana Lavalas, Senior Attorney,
NDAA
rlavalas@ndaajustice.org

Tom Kimball, NTLC Director, NDAA
tkimball@ndaajustice.org

Mark Your CALENDAR *for these Spring Training Dates*

CONNECTICUT—*Brenda Hans*

Courtroom Success in the Impaired
Driving Case July 10-12, 2018

FLORIDA—*Vin Petty*

TSRP Advanced DUI Seminar June 4-5, 2018
LEO Basic DUI Trial Preparation June 19, 2018
TSRP Basic DUI Trial Advocacy Week July 16-20, 2018
LEO Basic DUI Trial Preparation August 8, 2018
LEO Basic DUI Trial Preparation September 19, 2018
LEO Basic DUI Trial Preparation October 3, 2018

ILLINOIS—*Jennifer Cifaldi*

DUI Prosecutor Boot Camp May 21-22, 2018
Underage Drinking June 13, 2018
DUI Prosecutor Boot Camp June 25-26, 2018
Ignition Interlock August 23, 2018
Impaired Driving Conference October 15-16, 2018

KENTUCKY—*Tom Lockridge*

Lethal Weapon (with Tennessee) June 12-14, 2018
Kentucky Prosecutors
Conference, Traffic Safety Track August 29-31, 2018

MICHIGAN—*Kinga Canike and Ken Stecker*

Prosecuting the Drugged Driver June 6, 2018
Visual Trial School June 13-15, 2018
Cops in Court July 19, 2018
Nuts and Bolts August 8, 2018
Cops in Court September 13, 2018

MINNESOTA—*Bill Lemons*

Impaired Driving: New Laws;
New Issues June 15, 2018

Trial Advocacy June 18-21, 2018
DUI and Traffic Safety Webinar August 2018

NORTH CAROLINA—*Sarah Garner*

Basic DWI for Prosecutors May 10-11, 2018
Summer Meeting July 17-18, 2018

OHIO—*Holly Reese*

Prosecuting the Drugged Driver June 1, 2018

TENNESSEE—*Terry Wood and Linda Walls*

Protecting Lives, Saving Futures May 23-24, 2018
Lethal Weapon (with Kentucky) June 12-14, 2018
Prosecuting the Drugged Driver August 8-9, 2018

VERMONT—*Heather Brochu*

Cross Examination of Defense
Experts and Voir Dire June 7-8, 2018

WASHINGTON—*Moses Garcia, Courtney Popp, Miriam Norman,
and Katie McNulty*

Prosecuting the Drugged Driver May 25, 2018
Prosecuting the Impaired Driver July 1, 2018
Regional Law Enforcement and
Prosecutor Impaired Driving August 3, 2018
Regional Law Enforcement and
Prosecutor Impaired Driving September 1, 2018

WEST VIRGINIA—*Nicole Cofer-Fleming*

Prosecuting the Drugged Driver September 2018

Traffic Safety Resource Prosecutor NEWS

Arkansas

Mark Carpenter attended the Train the Trainer course and proposed a subcommittee, which was accepted, of the Impaired Driving Task Force responsible for the reform of DUI training.

Connecticut

Brenda Hans presented on High Visibility Enforcement Campaigns for State's Attorneys.

Delaware

Barzilai Axelrod assisted with the Delaware Court of Common Pleas DUI Treatment Court. The Court was able to expand to an additional county.

District of Columbia

Melissa Shear convicted a multiple DUI offender at trial without SFST's or toxicology results. The driver was impaired by PCP and crashed into a utility pole and four cars.

Florida

Vin Petty trained over 80 prosecutors and 95 law enforcement officers in courses on Prosecuting the Drugged Driver, DUI Manslaughter, and Trial Preparation.

Georgia

Gilbert Crosby and *Jason Samuels* presented a three-day course on the Basics of DUI to 95 law enforcement officers and prosecutors.

Illinois

Jennifer Cifaldi arranged for Illinois law enforcement officers and the Dean of the Richmond Community College to attend phlebotomy training at Phoenix College in

Arizona. Phlebotomy training will now be offered in Illinois by Richmond Community College. The trip was funded by the Buffett Foundation.

Kansas

Corey Kenney presented at the 2018 Lifesavers conference on the topic of drugged driving.

Kentucky

Tom Lockridge participated in two moot court exercises for DUI classes at the Department of Criminal Justice Training at Eastern Kentucky University. Tom also conducted a Prosecuting the Drugged Driver course in Covington, KY for law enforcement officers and prosecutors.

Maryland

David Daggett conducted a three-day DUI Institute for 26 prosecutors.

Minnesota

Bill Lemons argued before the Minnesota Supreme Court on the issues of implied consent and the right to counsel.

Mississippi

Molly Miller participated with the DUI Advisory Board to recommend improvements to DUI laws for the legislature.

North Carolina

Sarah Garner helped plan, coordinate, and present at the North Carolina Traffic Safety Conference and Expo for 800 attendees with 99 break-out sessions.

Ohio

Holly Reese presented a three-hour session at

the Ohio Municipal Judges Conference about DRE training. Holly also participated in NDAA's Opioid Conference and discussed drugged driving.

Oregon

Deena Ryerson presented a webinar with Wyoming TSRP Ashley Schluck on SFST's and marijuana for 490 people.

Pennsylvania

Ashley Goshert was hired as the new TSRP and presented at her first Prosecuting the Drugged Driver course.

Tennessee

Linda Walls wrote an article for the TN District Attorneys General Conference DUI News about the case of *State v. Decosimo*, No. E2017-00696-CCA-R3-CD, 2018 Tenn. Crim. App. LEXIS 85* (February 6, 2018). Tennessee law provides a \$250 fee assessed for individuals convicted of DUI, Vehicular Homicide, or Vehicular Assault. The fee is for the testing of alcohol and drugs in blood, breath, and/or urine and is deposited into a fund available to the Tennessee Bureau of Investigation. The Criminal Court of Appeals ruled that "[b]ecause the fee system at issue in this case calls into question the trustworthiness of the TBI forensic scientists' results, it violates the due process of the defendant." Oral arguments before the Tennessee Supreme Court are scheduled for May 31, 2018, in Nashville. Linda's article is available here: [DUI Newsletter: Issue 62](#)

Texas

Clay Abbott trained 900 officers and prosecutors in regional courses on the topics of drugged driving and effective courtroom testimony.

Utah

Tyson Skeen assisted other prosecutors in a regional courtroom training for certified DRE officers.

Virginia

John Bowers assisted prosecutors with a case involving a truck crash fatality by teaching them about the medical evaluation of CDL drivers, which is now a strong part of the Commonwealth's evidence.

Washington

Miriam Norman trained 30 newer prosecutors on courtroom skills and impaired driving. She also successfully argued in favor of pretrial conditions in court.

West Virginia

Nicole Cofer-Fleming held DUI and DUID Nuts and Bolts training at the Jefferson County Prosecutors Office for elected and assistant prosecutors from six counties.

Wyoming

Ashley Schluck presented a webinar with Oregon TSRP Deena Ryerson on SFST's and marijuana for 490 attendees.