

## APRI's National Traffic Law Center

The mission of the National Traffic Law Center (NTLC) is to improve the quality of justice in traffic safety adjudications by increasing the awareness of highway safety issues through the compilation, creation and dissemination of legal and technical information and by providing training and reference services to prosecutors, judges and others in the justice system. To accomplish this mission, the NTLC has developed a clearinghouse of resources including caselaw, model legislation, lists of experts, research studies, training materials and trial documents. The information catalogued by the Center covers a wide range of topics with particular emphasis on impaired driving issues.

The NTLC is designed to assist with evidentiary and technical issues. For example: how to establish the proper foundation for the admissibility of blood test results, or how to counter defense challenges to the accuracy of breathalyzer instruments. The NTLC staff includes an experienced trial attorney and a research staff attorney who can provide assistance with specific legal questions relating to traffic safety offenses.

Whether you are looking for research studies to support your legislative proposals or want to track national legislative changes, the NTLC can provide or help you locate the information you need. The services of the NTLC were created to assist those individuals who are most directly involved in the prosecution and adjudication of traffic safety offenses. We encourage you to contact the NTLC with your questions and comments; or to report on issues and cases that you have handled.

### Manslaughter or Murder?

Increased public awareness to the possible fatal results of driving under the influence of alcohol or drugs has prompted many citizens to advocate charging impaired drivers who cause deadly crashes with manslaughter or even murder. The issue becomes whether a prosecutor can establish that the defendant who was under the influence of alcohol or drugs and caused a fatal crash had the *mens rea* or criminal intent required to prove manslaughter or second degree murder.

In most cases, to prove the criminal intent necessary to sustain a manslaughter conviction a prosecutor must establish that the defendant's voluntary intoxication and reckless driving rises to the level of criminal negligence or recklessness. In the context of manslaughter, acting recklessly is commonly known as a conscious disregard for a substantial and unjustifiable risk. Is driving under the influence reckless or criminally negligent? Some states have answered this question by enacting legislation which creates a criminal offense of vehicular manslaughter if the defendant kills another person while driving under the influence of alcohol or drugs.

Other states have successfully prosecuted persons that cause fatal crashes with manslaughter or second degree murder depending upon the mitigating circumstances of a particular case. Criminal negligent behavior is not enough to prove murder. A second degree murder charge may be appropriate when the defendant exhibited an extreme indifference to the value of human life, which is known as recklessness often an element of second degree murder. A second degree murder charge may be appropriate when the defendant exhibited an extreme indifference to the value of human life, i.e., recklessness which is often an element of second degree murder.

An important factor when determining whether to charge a defendant with manslaughter or second degree murder is whether the defendant recognized the reckless nature of his or her conduct. For example, in Alaska a defendant's conviction for second degree murder was upheld by the court of appeals, after he killed two and injured a third member of a family while driving with a .16 blood alcohol concentration level. As the defendant left a bar, he was told that he was too drunk to drive, after which he drove his truck through a red light and collided with several other vehicles before crashing into the victim's car.

### Prior Convictions Manual

The next time you prosecute a defendant for an impaired driving offense and want to prove his or her prior impaired driving conviction in another state, the NTLC will have a guide that will make the process of obtaining the necessary information much easier.

Currently, the NTLC is preparing a prior convictions manual which will be a valuable resource for you in proving that a prior impaired driving offense in another state would also have been an offense if committed in your state. If you have prosecuted a case like this, you will appreciate the time and effort it takes to obtain the required documentation to prove the prior conviction at trial. Information in the manual will include:

- The text of impaired driving statutes from the 50 states and the District of Columbia for the past 5 years.
- The process to follow to obtain copies of driving records from another state including the address and telephone number of the agency that provides the record, an explanation of what the record will show, and how to identify the court/jurisdiction where a prior conviction was entered.
- How to obtain the address and telephone number of the court to request a certified copy of a prior conviction.

We anticipate the manual will be completed by June, 1994. Should you need any assistance in the meantime please contact the NTLC.

### **States Lowering the Illegal Per Se Limit**

In response to a congressional mandate, the National Highway Traffic Safety Administrative (NHTSA) has developed legislative recommendations encouraging states to adopt .08 as the blood alcohol concentration (BAC) level at which a driver is considered impaired. Presently, seven states have .08 illegal per se offenses, while Florida, New Hampshire and New Mexico's .08 laws will be in effect as of January 1, 1994. An illegal per se offense is one in which the act itself is illegal (in this case driving with a BAC level of .08 or more).

Forty-one states consider it an illegal per se offense if a driver has a .10 BAC level. Some states presume drivers to be unimpaired if their BAC is below .05. Recent scientific evidence has determined the .10 BAC level is an arbitrary limit and that .08 is a more accurate point at which a person is too impaired to drive. Studies have also found that a driver's concentrated attention, speed control, braking, steering, gear changing, lane tracking and overall judgement are significantly affected when their BAC level reaches .08. NHTSA studies have shown that California's motor vehicle fatality rate dropped 12% due to .08 legislation and enforcement of administrative licensing revocation.

NHTSA proposed a number of recommendations to Congress regarding states enacting .08 illegal per se legislation. The following are several of the recommendations made to Congress by NHTSA in the final report:

- States should be encouraged to enact .08 as the BAC level at and above which it is a per se criminal offense.
- States that lower their BAC limit to .08 should accompany the change with public information and education.
- All states should have per se laws that refer to the BACs of drivers. Measurement of alcohol either in breath or blood should be established as a fully acceptable and complete indication of alcohol concentration.
- The practical issues of implementing and enforcing BAC limits should be the subject of further study with the participation of state, local and national officials.

- All states should repeal laws that create a presumption that a driver is not under the influence at any BAC above zero.

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