

## Traffic Safety Summit II

Over two and one-half years ago a group of prosecutors, defense attorneys, judges, law enforcement officials, highway safety specialists, and experts in the problems of alcohol and drug abuse met for two and one-half days. The purpose was to generate ideas to improve the prosecution and adjudication of traffic safety offenses. The result was a list of 188 recommendations. The highest priority recommendations fell into one of four major areas: training and education, records, assessment and treatment, and legislation. The Department of Transportation, invited the participants to this "Traffic Safety Summit" and appointed an oversight group to translate the ideas into action. To date the following progress has been made towards improvements in these areas:

- Experienced prosecutors are being trained to conduct trial advocacy courses in their states focusing on the prosecution of impaired driving due to alcohol and drugs.
- A judicial training course is being developed that can be adapted to the specific laws and practices of a given state.
- Current state driver and criminal record systems are being surveyed to develop a "model" records system for use by judges and prosecutors in adjudicating traffic offenses.
- A model computer system to track impaired driving offenders from arrest through case disposition is being developed for states to use. The tracking system will provide accurate information on the number of arrests, convictions, reduced charges, diversions, dismissals, fines, and sanctions imposed.
- Over 1200 studies pertaining to the effect of treatment for alcoholism on DWI offenders have been examined to identify the most effective methods. The results of this exhaustive research will soon be published.
- APRI's National Traffic Law Center was established to provide prosecutors and judges with access to legal research, technical assistance and timely updates on current issues affecting traffic safety.

On December 17, 1993, Secretary of Transportation, Federico Peña, was presented with the Traffic Safety Summit II Final Report. The Final Report lists the recommendations and summarizes the work that has been accomplished. If you would like a free copy of the report please contact the NTLC.

## HGN Expert Witnesses

An increasing number of state prosecutors are preparing what they anticipate to be "test" cases on the admissibility of HGN in their jurisdiction. A question we are frequently asked by prosecutors across the country is, "Who can I call as an expert witness to explain the physiological basis and significance of horizontal gaze nystagmus?" To establish the best record, in the event the case undergoes appellate review, prosecutors are eager to identify the appropriate experts, but are also mindful that budgetary constraints often preclude use of the leading experts. Many of the proven "star experts," who have previously testified in a handful of states, have become "unavailable" in a monetary sense.

So what do we advise those prosecutors who contact the NTLC? Cultivate your local expertise. Contact your state's professional associations. Track down necessary witnesses, as you would on any important case you are assigned. But let us offer you some suggestions on whom to call and what approach may be helpful. For HGN, contact schools of optometry and ophthalmology to determine faculty who may be receptive to discussing HGN and its correlation with depressants. If there are not any schools in your area with this expertise, contact the state professional associations for optometry and ophthalmology.

The American Optometric Association passed a resolution last year, "Horizontal Gaze Nystagmus as a Field Sobriety Test," that states in part:

"RESOLVED, that the American Optometric Association acknowledges the scientific validity and reliability of the HGN test as a field sobriety test when administered by properly trained and certified police officers: and be it further RESOLVED, that the American Optometric Association **urges doctors of optometry to become involved as professional consultants in the use of HGN field sobriety testing.**"

Your knowledge of this resolution may help to expedite a professional alliance with experts in this field. The National Traffic Law Center maintains a listing of expert witnesses and has the published caselaw and summaries of each state's decision(s) regarding HGN admissibility.

## Model State Laws

With all the emphasis and concern about what we are going to do to curb the drug problem we have in our nation today, let us not forget that alcohol is a drug. The President's Commission on Model State Drug Laws recognizes this fact in its mission statement:

Our mission is to develop comprehensive model state laws to significantly reduce, with the goal to eliminate, **alcohol** and other drug abuse in America through effective use and coordination of prevention, education, treatment, enforcement, and corrections.

The Commission has recently released its final report that includes two model state drug laws that deal with impaired driving and underage drinking. The model statutes are based for the most part upon legislation already enacted and implemented somewhere in the country. The Commission describes many of its legislative ideas as being "front-ended," i.e. focusing on prevention and education. The model laws expand assessment and treatment services for those individuals who have already abused alcohol or other drugs.

The model "Driving While Under the Influence of Alcohol and Other Drugs Act" provisions:

- Establish a BAC of .08 for adults and any measurable or detectable amount (.02% or more) for minors.
- Prohibit the operation of a motor vehicle with the presence of a controlled substance in the driver's blood.
- Provide for administrative revocation of licenses and administrative and judicial appeals procedures to protect due process rights.
- Require offenders to undergo an assessment, and where appropriate, to constructively participate in a court-ordered treatment program.

The model "Underage Alcohol Consumption Reduction Act" provisions:

- Prohibit the purchase, possession and consumption of alcohol by minors, and the fraudulent use of identification to obtain alcohol.
- Establish penalties for selling or furnishing alcohol to underage persons.
- Authorize law enforcement officers to seize any opened or unopened alcoholic beverage that is in the possession of an underage person.
- Provide options for the assessment and referral of underage drinkers to educate or treatment services.

To order a free copy of all the model laws contact the Drugs and Crime Clearinghouse, 800-666-3332. For questions concerning the model laws you may contact the National Alliance For Model State Drug Laws, 202-395-6788.

## Available Resources

*A Review of Federal and State Constitutional Laws Concerning Sobriety Checkpoints*, by Michele Fields and Karen Weinberg, Insurance Institute of Highway Safety, December 1993.

Reviews legal issues and research re: effectiveness of checkpoints. The appendix summarizes each state's appellate decisions indicating whether the decisions are based on the federal or state constitution.

*Legislative Resource Books*, U.S Department of Transportation, National Highway Traffic Safety Administration.

Contains three separate packets of information regarding .08 legislation, Zero Tolerance laws and Administrative License Revocation. The legislative resource books include model legislation, state legislative fact sheets, summaries of state laws, briefing packages and research studies on the three issues.

For information on how to obtain free copies of either of the above, please contact the NTLC, 703-549-4253.

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