

NHTSA's Prioritizing of Prosecutors: TSRP, What Does it Mean and How Can It Help You?

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A couple of years ago, the National Highway Traffic Safety Administration (NHTSA) made a groundbreaking decision to prioritize prosecutors. Since that time, many states have recognized the need for a specialized prosecutor who focuses on providing training and technical assistance for various issues including: impaired driving, vehicular homicide, occupant protection, community awareness and highway safety. NHTSA, in cooperation with many of these states, have created in funded positions for statewide prosecution experts.

NHTSA's top three priorities for 2003-2004 included (1) continued high visibility enforcement; (2) impaired driving adjudication and supervision (prosecutors and the courts); and (3) brief screening and intervention. Since gaining NHTSA's support, the concept of having a single point of contact for highway-related issues has really taken off within the prosecutor coordinators' offices. Prior to this exposure, however, many states including Arkansas, Florida, Iowa, Michigan, New York, South Carolina and Vermont already had positions within their prosecutor coordinator's office specializing in impaired driving. Currently, there are 20 states with specific positions to address highway-related issues.

The specialized prosecutors' responsibilities vary from state to state, but the basics are the same. The specialized prosecutors provide education, training, and technical assistance to prosecutors and law enforcement and serves as "resident experts" in impaired driving in their respective states. (Finally! Defense attorneys have specialized in impaired driving for years!). The specialized prosecutors can provide a training in a variety of ways, from general DWI regional courses for law enforcement and prosecutors, to specific DWI-related topics at annual meetings and even one-on-one individual assistance.

Technical assistance also may come in different forms. Many specialized prosecutors maintain websites and/or newsletters that include question/answer forums, best practices, case law updates and DWI resource manuals. They may also be available to answer critical questions (even during a 10-minute break before a suppression hearing!). Additionally, many serve the law enforcement communities by answering technical assistance questions, providing training jointly with prosecutors and most importantly by strengthening the law enforcement-prosecutor partnership.

Across the nation, these individuals are assessing and addressing specific needs in their states and far surpassing anyone's original expectations of the position. Relationships with law enforcement, statewide contacts with victim advocacy groups and national connections with agencies like NHTSA, National Traffic Law Center and National Association of Prosecutor Coordinators have flourished since the inception of this program.

So, your question may be....what do we call a position or person like this? Totally Supportive Representative of Prosecutors, or how 'bout Typically Sensible Responsible and Professional?

Ideally, all of these adjectives will describe your Traffic Safety Resource Prosecutor (aka TSRP). TSRPs are here to serve you and to help you in every way we can. But remember, we are only as useful as you make us. To identify the TSRP in your state, or for assistance in securing one, you may contact your prosecutor coordinator's office or the NTLC.

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Stop, Look and Listen: Prosecutors at the Crash Scene

It's 2:00 a.m.; the ringing phone startles you into semi-wakefulness. Through your sleep-induced fog, you realize that a police supervisor is asking you to come to the scene of a fatal crash that appears to be alcohol related. You manage to find out where you need to go and fully wake up when it hits you – "What do I know about fatal crashes?" This is your first job out of law school; you've been with the office only four months and you happen to be assigned to the DUI/traffic courtroom. In many jurisdictions, this qualifies you as an "expert." Your heart skips a beat as you ask, "What do I do now?" Don't panic. We've all been there.

First, you should visit the scene immediately. When you arrive, borrow a popular safety mantra: "Stop, Look, Listen." The area probably will be sealed. Identify yourself to investigators and take a look at the scene. Get a broad view before you immerse yourself in the chaos close-up. Observe the physical attributes of the road, any intersections, and traffic control devices. Examine the area where the involved cars are located. Study those cars carefully, along with the pieces of cars and property, the locations of any victims found outside a car (they most likely will have been transported long before your arrival), and any marks in and around the roadway caused by the collision. Finally, speak to the law enforcement officers and investigators about the evidence they observed and any opinions they might have. The reconstructionist or technical accident investigator should be able to articulate a general theory of how the crash occurred and whether such factors as excessive speed or weather played a role.

What are the first responding officers expected to do at crash scenes? Their first priority is to ensure the safety and welfare of the crash participants. If someone is hurt, they will call rescue personnel, who will remove trapped participants from their cars and attend to their injuries. Evidence might be and often is damaged or destroyed during this process. Firefighters may have to cut a car door or even remove the roof in order to extricate victims. They may also have to spread water or foam to suppress or prevent a fire.

The first responding officers may or may not be trained to investigate crashes. Regardless, observant officers will make note of road conditions, lighting, general damage to the vehicles, and location of victims, both in and out of the cars. These officers will often make initial observations about any possible impairment of a driver. They may be the only law enforcement officers to see and observe a suspect up close for some period of time. They will be in the best position to observe odors, initial statements, slurring of speech, and any other perceptible signs of alcohol or drug impairment, particularly if the suspect is rushed to the hospital.

After police and rescue personnel attend to the crash participants, the investigation will begin in earnest.¹ Police will cordon off the scene and the adjacent area in an effort to protect evidence and those gathering it. Investigators with experience or expertise in documenting and reconstructing crashes will examine the scene and evidence closely. They will document physical evidence, including damage to the cars, the cars' final resting spot, the location of victims found outside the cars, various marks in the roadway left by the cars in the crash, and other physical evidence that might answer questions, such as who was driving and what factors contributed to the crash. Speak with these officers at the scene. They can show you pre-impact brake marks and post-impact tire marks and can tell you which car left those marks. They can show you the area of impact of the cars and explain how and why the cars traveled as they did after the collision. Also, have them show you any physical evidence that may be in or on the cars. For example the interior windshield may be damaged and have hair or blood on it. A rear-view mirror may be torn off the windshield, a gear shifter bent, or seat back broken. All of this and more can provide valuable information in preparing a case.

If an officer suspects a driver is impaired, an officer trained in identifying and investigating impaired drivers should examine the subject. If the subject is injured, the officer may not be able to administer traditional field sobriety tests. If possible, the officer should at least conduct the HGN test. Regardless, the investigator's main tool will include common sense observations, such as statements, speech, appearance of the subject's eyes and muscle tone. The investigator will also

consider the physical evidence from the scene and witness statements, including the attending paramedics and medical personnel's opinions about the subject's sobriety. At some point, the investigator will determine whether he or she has sufficient cause to obtain a blood, breath or urine sample. Quite often, this is where you, the prosecutor, come in.

Your state's laws will determine when and how a blood, breath or urine sample may be acquired. Be familiar with the law so that you can properly advise law enforcement officers when needed. For example, some states have a forcible draw statute under which law enforcement can compel the suspect to give a blood/urine sample regardless of consent. Others have no such provision, requiring law enforcement to obtain a search warrant for the withdrawal. If a warrant is required, time is of the essence and your assistance may be needed in preparing the proper documents. Your office may have "boilerplate" documents available to make your job easier.

Your assistance also may be needed in obtaining other information. For example, most cars now are equipped with event data recorders (EDRs).² Most states require the police to obtain warrants before removing parts of a vehicle as evidence. The warrant should permit the police to obtain EDR instrumentation and data, car parts with evidentiary value (such as the air bag, headlights, taillights, etc.), and any contraband or other evidence that might be present (including alcohol bottles, drug pipes, blood and hair fibers).

Traffic crash investigations are extremely complex. Too often prosecutors learn under fire, but motivated prosecutors will do what they can to prepare for that jarring 2:00 a.m. phone call. Again, the mantra applies: Stop, Look, Listen. Stop and take time to read and know the statutes and case law in your jurisdiction. Bring the proper information with you, including statutes, boilerplate motions, and phone numbers. Look for and learn from resources such as training manuals or experienced prosecutors and investigators. Listen to their advice, which is based on wisdom gathered through their own experiences. With these tips in mind, going to a crash scene on a case that you later prosecute will be an invaluable experience.

1 See [Crash Reconstruction Basics for Prosecutors](#), American Prosecutors Research Institute Special Topic Series. Available on-line at www.ndaa-apri.org

2 See "Event Data Recorders (EDR) – Recording Automotive Crash Event Data," [Between the Lines, Vol. 13, No. 4](#) by Chip Chidester and Marcia Cunningham. Available on-line at www.ndaa-apri.org.