

APRI

# Between the Lines

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## Join NTLC's Multidisciplinary Forum

APRI's National Traffic Law Center (NTLC) recently created an online forum for prosecutors and other law enforcement officers, toxicologists, traffic safety personnel, physicians, victims, community activists and others committed to eradicating impaired driving.

If you would like to join this forum, please send your name, title, business contact, and e-mail address to [traffclaw@ndaa-apri.org](mailto:traffclaw@ndaa-apri.org). As a member you will have access to:

- A private discussion forum (with over 500 members from the United States and Canada)
- Over 200 links organized by topic
- Monthly legal updates
- Selected unpublished opinions
- Selected scientific articles and more!

You also will be added to the NTLC's mailing list and receive free copies of NTLC monographs and NTLC's quarterly newsletter, *Between the Lines*.



*Between the Lines* is published quarterly by the American Prosecutors Research Institute's National Traffic Law Center. Items may be reprinted if attributed to APRI's National Traffic Law Center. Please provide copies to *Between the Lines*. Contact us if you have inquiries or article suggestions at 703-549-4253.

## A New Tool for Better DUI/DWI Offense Reports

By David Sobel<sup>1</sup>

**P**aperwork may be the bane of officers making a DWI arrest, but it is the lifeblood of the DWI prosecutor. Forms and reports have proliferated in response to the needs of multiple law enforcement and criminal justice agencies, and particularly the need for accurate traffic safety data. However, the burden of excessive paperwork can keep arresting officers off the streets, where they are needed most. Pressure to fill out numerous forms, reports, and narratives in a timely manner can result in inconsistencies, omissions, or other errors.

The good news is that the Texas Municipal Police Association (TMPA), using advances in technology and a wealth of law enforcement and prosecution resources, has developed a way to decrease the time an officer spends creating these documents without sacrificing detail or comprehensiveness. Currently, the paperwork associated with a typical DWI arrest can take an officer off the streets for two to four hours. The new DUI/DWI Process Reduction System, developed by TMPA with funding from the Texas Department of Transportation and the National Highway Traffic Safety Administration (NHTSA), reduces this processing time by as much as 50%. The officer, therefore, is back on the street in much less time and should be less reluctant to make DWI arrests because of the paperwork requirements. An added benefit is that officers are actually able to compose a more thorough case report than in the past. Although designed primarily for officer assistance, this system will also be of enormous benefit to prosecutors both in and out of the courtroom.

The DUI/DWI Process Reduction System takes officers through a reporting "wizard," which prompts them for information regarding

the arrest in an organized fashion and in sufficient detail to support prosecution. For example, officers receive prompts about Standardized Field Sobriety Test observations, physical evidence, and suspect statements. Because the system is not a "boiler plate" or "template," it allows the officers to complete a comprehensive report based on their training and experience. Further, an officer using the system cannot complete the arrest report without entering a minimum amount of information required to cover the elements of the offense, thereby leading to more successful prosecutions with fewer challenges to the evidence based on scrivener error. For the prosecutor, every case is organized in a standardized format, allowing for a more efficient and thorough review. Clay Abbott, Traffic Safety Resource Prosecutor for Texas, states, "Prosecutors should be pleased by this product that not only puts officers back on the street faster, but also continually gives them prompts to do more complete investigations and write more complete—and persuasive—reports."

The DUI/DWI Process Reduction System, which is currently available in Texas, is in pilot development in Georgia and will be available in a third state to be selected by NHTSA. Because the system is being developed through grant funding, agencies can use the secure Web-based solution for free. There are no licensing fees, and the only equipment required is a computer with Internet access. Training on the use of the system and effective report writing is also provided free of charge. For information regarding this system and implementing it in your state, please contact TMPA at 800-848-2088 or [dwhelp@tmpa.org](mailto:dwhelp@tmpa.org).

<sup>1</sup> Program Manager, Texas Municipal Police Association

### Dedication

This edition of *Between the Lines* is dedicated to Mr. Robert Koch. Mr. Koch, who passed away in August, was a drug therapist who dedicated his life to helping others overcome their addictions. Among his many positions, Mr. Koch served as a drug court coordinator for Miami-Dade County Florida's Drug Court and a board member with the National Association of Drug Court Professionals. He will be missed.

# Going on the Offensive at Administrative License Suspension Hearings: One State's Approach

By Dee Brophy<sup>1</sup>

**A**dministrative license suspensions are a key component to our strategy to remove dangerous drivers from our roadways. Law enforcement officers, however, typically present the State's cases without the benefit of legal representation. Georgia, which prides itself on vigorously handling DUI cases, recently adopted a novel approach to deal with the issues and strengthen these cases. The State hired former prosecutor Dee Brophy to train state troopers and litigate on their behalf. In the following article, Ms. Brophy describes the development and preliminary successes of this innovative and effective approach.

In Georgia, under certain circumstances, the State can administratively suspend the driver's license of a motorist arrested for driving under the influence of alcohol or drugs (DUI). The motorist may contest the suspensions at an Administrative License Suspension (ALS) hearing. At this hearing, the Respondent (the State) has the burden of proof and must establish certain statutory elements by a preponderance of the evidence. The arresting law enforcement officer testifies at the hearing on behalf of the Respondent and introduces testimony and documentary evidence to the Court without legal representation. In a large number of these hearings the motorist is represented by an attorney specializing in DUI, creating a significant challenge for the Respondent.

In 2004, the Department of Public Safety-Georgia State Patrol applied for and received a grant from the Georgia Governor's Office of Highway Safety (GOHS) to start an ALS Law Enforcement Assistance Program. Funding was provided to hire one attorney to represent Georgia State Troopers at the ALS hearings. The GOHS currently is studying the program to determine its effectiveness.

As the ALS Attorney for the Georgia State Patrol since September 2004, I represent state troopers at ALS hearings. These troopers come from the multiple counties that make up three of Georgia's nine State Patrol Troops. In this capacity, I file pre-trial motions or assist the state troopers with filing them. At the hearings, I provide representation for the state troopers by conducting the direct examination of the troopers' testimony, introducing relevant documents, conducting cross examination, making objections, and arguing the case at the close of the evidence. I am also available to conduct legal research, and file written briefs and post hearing

motions. I have represented state troopers on approximately 250 ALS cases. I have filed for or assisted troopers with a number of pre-hearing and post-hearing motions and have written a number of letters, briefs, and affidavits on behalf of the state troopers.

Although the multiple counties that make up the six remaining troops do not receive representation at the ALS hearings, I am available to assist these state troopers with preparing their cases prior to the hearings. I am also available to assist those six troops with filing pre-hearing and post-hearing motions, legal research, and filing briefs.

I am presently conducting ALS and DUI training for all of Georgia's state troopers. The training is designed to assist troopers with the type of testimony and documents that are to be presented at an ALS hearing, and to help them improve their efficiency and effectiveness regarding their DUI cases. I train them on a variety of issues related to DUI cases including the basis for vehicle stops, probable cause to arrest for DUI, implied consent issues, independent test issues, cross examination issues, objections, and a number of other pertinent issues. I also update the troopers on emerging DUI issues and recent changes in DUI laws. To date, approximately 650 of Georgia's state troopers have received the ALS and DUI training. Three training sessions will be held for each of the nine troops so that all troopers will have an opportunity to attend.

Although the GOHS has not completed its evaluation of the ALS Law Enforcement Assistance Program, troopers routinely tell me that they are much more comfortable testifying in court when they have legal representation, and that they also appreciate not having to argue complex legal issues. We expect that the study will show that the program has increased the percentage of suspensions upheld at ALS hearings.

The Department of Public Safety-Georgia State Patrol is presently seeking renewal of the ALS grant through the Georgia GOHS. We hope to expand the program so that all Georgia law enforcement officers will receive legal representation on their ALS cases. For further information, please contact Dee Brophy at [dbrophy@gsp.net](mailto:dbrophy@gsp.net).

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The National Traffic Law Center is a program of the American Prosecutors Research Institute, the non-profit affiliate of the National District Attorneys Association. This document was prepared under Cooperative Agreement Number DTHN22-98-H-05881 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 position or policies of the Department of Transportation, NDA or APRIL.



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