

Mandatory Chemical Testing

Forty-one (41) percent of the drivers killed in vehicle crashes in 1992 had alcohol in their systems. Chemical test evidence in a driving under the influence case often assists to establish whether a defendant was under the influence of alcohol or drugs at the time of the crash. If a suspect consents to a breath or blood test and which is administered properly, it can support the prosecution of a DUI case. This evidence is particularly crucial in cases involving death or injury. When a driver is injured in a crash and requires medical treatment, the blood sample taken by medical personnel for treatment purposes may be the only available means of determining the driver's BAC.

Twenty-eight states have established procedures for chemical testing, either by statute or case law, which permit medical personnel to test the blood of a driver involved in a crash that **results in a fatality or serious bodily injury, without his or her consent**. The results of the blood test taken by medical personnel can be used as evidence of impairment. Some states require that the law enforcement officer arrest the suspect or have probable cause to believe that the driver was under the influence at the time of the crash. In Nebraska DUI suspects may be required to submit to a chemical test after a crash regardless of whether the crash involved death or serious bodily injury. Delaware, New Jersey and Illinois allow law enforcement officers with probable cause, to require a driver to submit to a blood test for any DUI offense.

The National Committee on Uniform Traffic Laws and Ordinances has developed, as a part of the Uniform Vehicle Code and Model Traffic Ordinance the following model statute for mandatory chemical testing:

§6-210-Chemical test of drivers in serious personal injury or fatal crashes.

Notwithstanding the provisions of §6-207 (Implied Consent), when the driver of a vehicle is involved in an accident resulting in death or serious personal injury of another person, and there is reason to believe that the driver is guilty of a violation of §11-902(a) (Driving Under the Influence of Alcohol or Drugs), the driver may be compelled by a police officer to submit to a test or tests of driver's blood, breath or urine to determine the alcohol concentration or the presence of other drugs.

California, Illinois and South Dakota have established case law, based on the United States Supreme Court decision *Schmerber v. California*, 384 U.S. 757 (1966), that under the proper conditions nonconsensual blood tests are constitutional. Following the rationale of the Schmerber opinion, a blood sample can be obtained from a driver (1) if incident to a lawful arrest;(2) by a reliable and accepted method;(3) in a medically approved manner; and (4) if there is probable cause.

The Drug Recognition Expert Program

The Drug Recognition Expert (DRE) Program is law enforcement's primary tool in identifying the driver who is impaired by a drug other than alcohol. This program trains selected police officers to use a step-by-step evaluation procedure to identify whether an individual is under the influence of drugs, and to determine the type of drug causing the observable impairment. Importantly, the DRE procedure enables the expert to rule in (or out) many medical conditions that may be contributing to the impairment. The Drug Recognition Program was developed in the 1970s by traffic enforcement officers of the Los Angeles Police Department (LAPD) who observed many individuals who were clearly impaired, but who, when administered a breath alcohol test, registered a very low or .00 reading.

The "two-beer" defense is one of the most common defenses in impaired driving prosecutions. Often prosecutors rely on breath test instruments, or blood or urine tests to measure the concentration of alcohol that is in the defendant's body. Through the use of expert testimony the state can demonstrate that two beers would not equate to the high BAC reading registered by a defendant. In states with per se statutes the legislature has recognized and established that certain levels of alcohol in the body correlate to impairment. However, for drugs there are no established body levels

that correlate consistently with a particular degree of impairment. Unlike alcohol, urine or blood tests for drugs generally prove only the presence or use of the substance, and do not necessarily prove that the user was adversely affected by the drug. Consequently, the drug recognition evaluation has become a vital tool in accurately determining drug impairment. A drug recognition expert is trained to look for the signs and symptoms that support non-alcohol drug impairment.

In 1984, the National Highway Traffic Safety Administration (NHTSA), in conjunction with the National Institute on Drug Abuse (NIDA), sponsored a controlled laboratory evaluation of the DRE procedure at John Hopkins University. This study was followed in 1985 by a Field Validation Study that was also sponsored by NHTSA. Each study demonstrated that the trained DRE could predict with approximately 90% accuracy not only those who were under the influence of drugs, but the category (or categories) of drugs used. Because of the success of these studies, NHTSA worked with the LAPD to standardize the procedure and the curriculum so it could be applied to other states. The DRE program rapidly expanded with funding authorized in the 1988 Anti-Drug Abuse Act. Currently, 25 states and the District of Columbia have trained DREs.

The DRE procedure has successfully met a number of court challenges. The defense bar has attempted to characterize the DRE procedure as a new or novel scientific phenomenon that must meet the Frye standard to be allowed into evidence. Furthermore, opponents have argued that because police officers are not medically trained they are not qualified or skilled to conduct the evaluation. Thus far, courts in Arizona, Colorado, and Minnesota have ruled that the DRE procedure is not new or novel and is therefore admissible. A New York court that did apply the Frye test also allowed the DRE evaluation into evidence. The DRE procedure applies accepted medical knowledge about the effects of drugs, with accepted procedures for determining drug influence, to a step-by-step, standardized and systematic evaluation process.

Police officers undergo extensive training that requires both comprehensive written examinations and a specified number of drug evaluations that must be confirmed by toxicological analysis. Minimum certification standards have been adopted by the International Association of Chiefs of Police (IACP). The IACP is the certifying and regulating body for all DREs. Prosecutors in many states are unaware of the DRE program until a case with a DRE report comes across their desks. Likewise, judges are rarely familiar with the scope and significance of the DRE evaluation. To obtain information about the DRE program, and training in the prosecution of the drugged driver, please contact NTLC at the number listed below.

Campaign Safe & Sober

If you are interested in initiating or contributing to your community's efforts to reduce traffic fatalities and injuries, an up-coming National Highway Traffic Safety Administration (NHTSA) program may address your need. Campaign Safe & Sober is a two-year traffic safety program that seeks to unite national, state and local efforts to reduce alcohol-related crashes and increase safety belt and child safety seat use. During the program's two year period, a different area will be emphasized in each of the eight quarters. For the first quarter (October - December 1994) the emphasis will be on impaired driving. Campaign Safe & Sober has three components: public information and education, legislation and enforcement. The Campaign is unique because states and local communities set their own numerical goals for reducing alcohol-related fatalities and increasing safety belt and child safety seat use. NHTSA will provide media and resource materials during each quarter. To receive more information about Campaign Safe & Sober and the Campaign resource packets please contact NTLC at the number listed below.

Uniform Vehicle Code

The *Uniform Vehicle Code* (UVC) is a comprehensive set of motor vehicle laws, designed as a guide, that contains essential legislation for states to use when formulating or revising their laws. The UVC is based on actual experience under various state laws throughout the nation. It reflects the need for uniformity in highway safety offenses throughout the United States and to this end, serves as a reliable, contemporary guide for use by state legislatures. The concept of the UVC is not that all laws on all aspects of traffic safety need to be the same everywhere, but that situations alike in nature should be treated similarly. The code includes provisions that address chemical testing, impaired driving due to alcohol or drugs, vehicular homicide and post conviction remedies.

The National Committee on Uniform Traffic Laws and Ordinances (NCUTLO), an independent, non-profit, voluntary association that was created in 1926, produces the UVC. Over 100 representatives of highway safety specialists, insurance companies, judges, motor vehicle administrators, police officers, prosecutors, traffic engineers and others involved with transportation issues are members of the Committee. The broad scope of members' professional associations precludes undue influence by any one viewpoint or interest. The motto of the National Committee, "Salus, Libertas, Lex," -- "Safety With Freedom Through Law," summarizes its philosophy to provide every highway user, through law, a maximum degree of safety within the framework of traditional freedoms.

For information regarding the *Uniform Vehicle Code* and how you can obtain a copy contact Daniel Gilbert, Executive Director, NCUTLO, 405 Church Street, Evanston, Illinois 60202, 800-323-4011.

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