



HIGHWAY SAFETY

LAW UPDATE



October 22, 2015

Office of the Prosecuting Attorneys Training Coordinator

Sept, Oct, 2015

Traffic Safety Resource Prosecutors Announce 2015-2016 Webinar Series

Susan Glass, Traffic Safety Resource Prosecutor (TSRP) for the State of Missouri, has announced the TSRP "Traffic Tuesdays" webinar series for 2015-2016.

"Traffic Tuesday" webinars focus on issues of impaired driving and traffic safety for an intended nationwide audience of prosecutors and law enforcement officers. The FY 2016 series' first presentation, "The Use of Drug Recognition Experts in Impaired Driving" drew the largest audience of the series, with over 700 persons registering for the webinar, and over 400 actually attending. The webinar was presented by Sarah Garner, TSRP for North Carolina. A recording of the webinar can be viewed at the following link:
<https://attendee.gotowebinar.com/recording/5990303545217155330>

Webinar topics for the coming year include responding to practical problems that arise at traffic safety checkpoints, issues surrounding the use of body cameras, suppression issues in impaired driving prosecutions, issues in marijuana impairment prosecutions, and other problems peculiar to impaired driving prosecutions. (Information concerning the February, 2016 webinar will be forwarded when that webinar is finalized.)

All webinars start at 2:00 p.m. Central Time. Law enforcement attendees and others will not receive certificates of attendance; lawyers who wish to apply for CLE credit must do so on their own. There is no guarantee that any webinar will qualify for CLE credit.

"Traffic Tuesdays" schedule for FY 2015-2016

November 10, 2:00-3:00 pm, "Checking out Checkpoints"

For states that allow checkpoints (in Iowa, these are governed by Iowa Code Chapter 321K), these effective, high visibility deterrence models have begun to run into practical challenges rather than legal ones. The webinar will examine legal basis of checkpoints and will discuss practical problems which arise at checkpoints. Presented by Joe McCormack, New York Traffic Safety Resource Prosecutor.

To register, go to:
<https://attendee.gotowebinar.com/register/6568556500984222466>

December 8, 2:00-3:00 pm, "Traps for the Unwary-- Recognizing and Avoiding the Suppression of Evidence"

Good defense attorneys look for ways to suppress good, reliable evidence. Good law enforcement officers and prosecutors need to collect and present evidence that is not only reliable, but also admissible. This webinar will explore the suppression of evidence in DWI cases. The webinar will not reduce the number of suppression motions filed (because, after all, good defense attorneys look for ways to suppress evidence) but should help reduce the number successful suppression motions. Presented by Pete Grady, Iowa Traffic Safety Resource Prosecutor.

To register, go to:
<https://attendee.gotowebinar.com/register/1976780439112903426>

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January 12, 2:00-3:30 pm, "Defending the Breath Test Result"

Because evidence of a defendant's BAC can be the most damning evidence presented in a DWI case, defense attorneys will make every attempt to keep a judge or jury from hearing the result. Many of these attempts at suppression are red herrings which can be easily defeated. This webinar will discuss how to defend a breath test result from claims that it was inaccurate or otherwise unreliable. Topics covered will include partition ratios, breath temperature, deep lung air, breathing patterns and other common challenges. Presented by Beth Barnes, Arizona Governor's Office of Highway Safety Traffic Safety Resource Prosecutor.

To register, go to: <https://attendee.gotowebinar.com/register/6673574155088386562>

March 8, 2:00-3:00 pm, "Body Cams 101"

The use of body cameras by law enforcement officers to record their interactions with suspects and the public at large has become a hot topic. This webinar will inform law enforcement officers and prosecutors on how to implement a body-worn camera program and how to approach some of the corresponding legal issues, including using video to prove an impaired driving case. The webinar will also discuss the legal, technical, and policy issues that are facing law enforcement agencies contemplating the use of body-worn cameras. Presented by Ken Stecker, Michigan Traffic Safety Resource Prosecutor.

To register, go to: <https://attendee.gotowebinar.com/register/3451730207797848578>

April 12, 2:00-3:30 pm, "Using Data to Prove Your Case: How Prosecutors Can Counter Defense Attacks and Jury Nullification Issues By Applying Current Scientific Research in Marijuana"

In this webinar, the Traffic Safety Resource Prosecutors from Colorado, Washington, Oregon and Wyoming will provide a comprehensive overview of current research on marijuana and impairment from preeminent marijuana researcher Dr. Marilyn Huestis. They will explain best practices for employing this research in support of marijuana-involved impaired driving cases. The TSRPs will also discuss strategies to counter defense arguments currently being made in their states.

To register, go to: <https://attendee.gotowebinar.com/register/5107359424048835329>

May 10, 2:00-3:30 pm, "The Real Pros of Law Enforcement Phlebotomy"

Professional law enforcement phlebotomists provide safe, secure means to collect blood for evidentiary testing. Blood evidence is increasingly needed in many crimes, including impaired driving, vehicular homicides, and vehicular assaults, and there are really very few drawbacks to a professionally implemented law enforcement phlebotomy program. This session will explore the advantages of developing a quality law enforcement phlebotomy program in your jurisdiction, and answer questions such as: What are the benchmarks of a professional program? How do I start a program? Where can I find resources? Why is Law Enforcement Phlebotomy the right choice? Presented by Jared Olson, Idaho Traffic Safety Resource Prosecutor

To register, go to: <https://attendee.gotowebinar.com/register/4094378261558603522>

June 14, 2:00-3:00 pm, "DWI Trial Procedure and the Art of the Objection"

This webinar will discuss procedural and evidentiary rules that apply to DWI cases and the need to object to specious arguments, experts and defense claims. The session will discuss navigating the rules of notices, motions, and pleadings. The webinar will also discuss "making the record" for appellate review of DWI cases. Presented by Ike Avery, North Carolina Traffic Safety Resource Prosecutor.

To register, go to: <https://attendee.gotowebinar.com/register/619133167949403906>

July 12, 2:00-3:00 pm, "Investigating Crashes in Rural Areas: The Importance of Teamwork"

Investigating fatal crashes is always a challenge to law enforcement and prosecutors, and the challenges increase in rural areas. Many rural areas are lightly patrolled and have very few people available to perform all of the tasks involved in a crash—emergency response services, crash scene management (before, during, and after emergency medical treatment), crime scene processing and evidence collection at the scene and at the hospital, and returning the roadway to regular use by traffic—and that is only the beginning of the process. A crash reconstructionist must review the evidence and crunch the numbers, and investigations must occur on the ground—where was the driver before the crash? What was the driver's condition? What agency has primary responsibility for investigating the crash? Can other agencies assist in the various investigations, and how can these investigations be coordinated?

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This webinar will discuss the need for coordinated investigations in cases which involve multiple law enforcement agencies and the crucial role of the prosecutor in assisting those investigations and in bringing everyone together to evaluate the evidence and make appropriate charging decisions. Presented by Pete Grady, Iowa Traffic Safety Resource Prosecutor.

To register, go to: <https://attendee.gotowebinar.com/register/9142528615431686145>

August 9, 2:00-3:00 pm, "Turning a Refusal Case into a Test Case"

The Supreme Court case of Missouri v. McNeely affected DWI enforcement by requiring search warrants for blood samples in "run of the mill" DWI cases where the suspect revokes his implied consent to submit to a test. However, in states like Iowa, Missouri v. McNeely had no impact, because officers can *never* seek search warrants in such cases—in Iowa, compelled testing can only occur in injury/fatality cases. Therefore, a refusal is a refusal—unless a refusal can be turned into a consent to testing. This webinar will explain how, through close cooperation among law enforcement officers and prosecutors, Dubuque County, Iowa developed a successful plan which turns refusal cases into test cases. Presented by Mike Whalen, Assistant Dubuque County Attorney.

To register, go to: <https://attendee.gotowebinar.com/register/4166855869520867842>

September 14, 2:00-3:00 pm, "Working with Your Highway Safety Office and Beyond to Help Finance Efforts to Curb Impaired Driving"

Budgetary constraints for law enforcement and prosecutors are getting tighter all the time. And, with the growing complexity of impaired driving investigations and prosecutions, public safety personnel have to be creative with resources to effectively and efficiently work toward our common goal of zero deaths. However, there may be resources available that agencies don't even know exist. This webinar will cover what resources may be available, how to apply for grants, and to use these sources to improve enforcement and prosecutorial efforts. Traffic resource prosecutors from Wyoming and Colorado will present this webinar.

To register, go to: <https://attendee.gotowebinar.com/register/7913096494516541954>

**RECENT
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Citation of unpublished cases is governed by I.R.App.Pro. 6.904(2)(c), which provides that unpublished opinions do not constitute binding authority and requires that when citing an unpublished opinion, a party include an electronic citation where the opinion can be readily accessed on-line. (Note: all opinions may be accessed online in the Archives section of Opinions of the Iowa Court of Appeals or Supreme Court, at <http://www.iowacourts.gov/>).

Recent Unpublished Decisions of the Iowa Court of Appeals Arranged by County

Black Hawk County State v. Tamaris Quintez Gary, No. 14-1087 (Iowa Court of Appeals, filed September 10, 2015.) **Factual basis established for various pleas.** Plea agreement involving multiple offenses (including OWI and driving while revoked) affirmed; reviewing court, in determining whether a factual basis exists for a given plea, may look to the entire record (including the minutes of testimony); reviewing court is not limited to considering only the defendant's statements. See State v. Finney, 834 N.W.2d 46 (Iowa, 7/5/13).

Black Hawk County State v. Cicero McGee, No. 14-1099 (Iowa Court of Appeals, filed October 14, 2015.) **'Public' intoxication not proven; case remanded for further record.** Defendant who had been taken to the hospital involuntarily and who, while there, became disruptive, could not, on the record in the case, be convicted of 'public intoxication' as the only reason he was at the hospital was because he submitted to police authority, see State v. Lake, 476 N.W.2d 55 (Iowa 1991) (person ordered out of a private place—a car—cannot be charged with 'public' intoxication); case remanded to permit the State to prove that the defendant was in a public place, and intoxicated, before coming into contact with authorities.

Dickinson County State v. Nathan Lee Rouse, No. 15-0148 (Iowa Court of Appeals, filed September 10, 2015.) **Factual basis for OWI 3rd offense; felony sentence not illegal.** Prior OWI's needed to elevate OWI to OWI 3rd were supported in the record; at sentencing, the defendant was asked of the offense was his fourth OWI, and he answered "(o)n the record it's the third"; also, the defendant's criminal history showed prior convictions supporting enhancement to OWI 3rd and therefore, "imposition of the sentencing enhancement pursuant to section 321J.2(5) was not illegal."

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Johnson County State v. Cordero Robert Seals, No. 14-1183 (Iowa Court of Appeals, filed September 10, 2015.) **Speedy indictment claim rejected; defendant not ‘arrested’ until arrest warrant was served.** Defendant who provided his brother’s name to Johnson County authorities (for fear of getting picked up on an outstanding Linn County warrant) and who was picked up anyway (because his brother had an outstanding Johnson County warrant) was not “arrested” for purposes of a subsequent tampering with records charge filed in Johnson County simply because he was held for Linn County authorities to execute their warrant, nor could he have reasonably believed that he had been arrested for a new Johnson County charge; defendant’s speedy indictment clock for the new charge did not start until later, when he was arrested on a Johnson County warrant for tampering with records based on a complaint filed and an arrest warrant issued after he was taken into custody by Linn County authorities.

Johnson County State v. Cordero Robert Seals, No. 14-1183 (Iowa Court of Appeals, filed September 10, 2015.) **Filing of complaint is not an arrest.** Defendant was not “arrested” simply because authorities filed a complaint and requested an arrest warrant; a “complaint” is not the same as a “citation and complaint”; a citation, the functional equivalent of an arrest, starts the speedy indictment calendar whereas a complaint begins the process by which arrest warrants are issued.

Johnson County State v. Kevin Duane Fisher II, No. 13-1238 (Iowa Court of Appeals, filed September 23, 2015.) **License revocation is collateral consequence of marijuana conviction.** Defendant did not receive ineffective assistance of counsel where attorney and court failed to advise him of license revocation attendant to conviction for possession of marijuana; license revocations are collateral consequences of convictions and therefore, failure to advise a defendant of such consequences is not ineffective assistance of counsel. State v. Carney, 584 N.W.2d 907 (Iowa, 9/23/98).

Polk County State v. Ty Andre Patrick, No. 13-1575 (Iowa Court of Appeals, filed September 10, 2015.) **Cracked taillight “showing white” supports stop.** District court finding that vehicle had a cracked taillight affirmed; “(w)hile the car taillight color was obscured by the light from the officer’s car during the first part of the stop, the taillight crack is visible when the car is loaded onto the tow truck”; district court properly denied the motion to suppress; defendant-passenger’s conviction for possession of marijuana affirmed.

Polk County State v. Alfred Anthony Gallardo, No. 14-0350 (Iowa Court of Appeals, filed September 10, 2015.) **“Ultimate user” defense in drug cases recognized.** Where defendants have possession of another person’s prescription drugs and there is evidence that the “ultimate user” of the drugs is a member of the person’s household or is to be an animal owned by the person or the person’s household, the defense is entitled to present an “ultimate user” defense and receive appropriate instructions concerning the defense. (Here, the defendant claimed that the drugs found were prescribed for the defendant’s mother, and the trial court did not permit evidence from the mother to that effect, nor did it instruct the jury on the defense; case reversed and remanded for a new trial.)

Polk County State v. Richard Lee David Brown, No. 14-0667 (Iowa Court of Appeals, filed September 23, 2015.) **No seizure where officers called the defendant’s name and asked to speak with him, and no search where officers recovered drugs the defendant had thrown onto the ground.** In the absence of coercion, show of authority, or intimidation, uniformed officers in a marked patrol car who observed the defendant walk quickly away from them did not “seize” him merely by calling out his name and, when he approached, asking him questions; further, by throwing a baggie of drugs away before speaking with the officers, the defendant abandoned the property and so no “search” or “seizure” occurred in recovering the drugs; finally, even if the

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officers had “seized” the defendant by calling out his name, the recovery of the drugs was not dependent upon that purported seizure and would not have been suppressed as the fruit of that purported seizure.

Polk County State v. Terry Joe Rowe, No. 14-1354 (Iowa Court of Appeals, filed October 14, 2015.) **Challenge to prior convictions waived by failing to assert in trial court.** Court of Appeals declined to respond to OWI 3rd defendant’s claim that he did not knowingly and intelligently stipulate to his prior convictions; the defendant “failed to move to withdraw his affirmation of prior convictions” at the trial court level and could not raise the contention for the first time on appeal.

Polk County State v. Terry Joe Rowe, No. 14-1354 (Iowa Court of Appeals, filed October 14, 2015.) **Sufficient evidence to support OWI-drug conviction.** Sufficient evidence to support conviction for OWI-drugs where defendant was found sleeping in his running vehicle at a red light, was unresponsive to verbal attempts to wake him, and had bloodshot and watery eyes, slurred speech, and poor balance; where a DRE officer/instructor was called, who noted that the defendant did not show either horizontal or vertical nystagmus and concluded after testing that the defendant “was experiencing the ‘downside’ of being under the influence of a stimulant”, and where the defendant admitted to using methamphetamine the night before, and urine tests showed the presence of both amphetamine and methamphetamine.

Polk County State v. Christopher Nicholas Montinguisse, No. 14-1075 (Iowa Court of Appeals, filed October 14, 2015.) **OWI conviction affirmed; arraignment delay did not affect speedy trial rights.** Defendant’s complaint of a delay in his arraignment following the filing of his trial information did not require dismissal of charges; the Court declined to place a time limit on when an arraignment could occur, noting that the proceedings in this case occurred within applicable time periods for speedy indictment and speedy trial, that the defendant could have filed a written arraignment but did not do so, and that to artificially require a deadline for arraignments “would generally be prejudicial and not helpful to an accused”; OWI conviction affirmed.

Scott County State v. Valerie Ann Giddings, No. 14-1564 (Iowa Court of Appeals, filed September 10, 2015.) **Trial court did not rely on death of motorcyclist in fashioning sentence.** Defendant (whose OWI 3rd charge arose in the context of a motorcycle crash where the defendant was not at fault but where the motorcyclist died) argued on appeal that the trial court relied upon the death of the motorcyclist for the sentence imposed; however, although the death was “noted”, “it does not appear that the district court relied upon that fact as a reason for imposition of the sentence” and the record revealed that the court reviewed and relied upon the defendant’s criminal history, which was “replete with crimes”; conviction and sentence affirmed.

Story County State v. Vincent Lee Hanson, No. 14-1161 (Iowa Court of Appeals, filed October 14, 2015.) **OWI 3rd prison sentence affirmed.** Trial court’s imposition of 5 year prison sentence was permitted by the statute and cloaked with a presumption of validity; the defendant did not overcome this presumption and show the sentence was an abuse of discretion; sentence affirmed.

Story County State v. Lucas James Burbridge, No. 14-1324 (Iowa Court of Appeals, filed October 14, 2015.) **Probable cause to believe a lane change violation occurred.** Officer had probable cause to believe the defendant violated Iowa Code section 321.306(1) (which requires that persons drive in a single lane and not move from such lane “until the driver has first ascertained that such movement can be made with safety”) where the defendant “not only made a lane change in close proximity to the police car without signaling but also forced the officer to decrease his speed from approximately forty miles per hour to twenty-seven miles per hour”; the action was such that it was objectively reasonable for the officer to believe that the defendant had *not* “ascertained that such movement” could be made safely; trial court properly denied motion to suppress, and OWI conviction affirmed.

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Story County State v. Deyawna Leanett Taylor, No. 14-2075 (Iowa Court of Appeals, filed October 14, 2015.) **Driving while barred conviction affirmed.** Defendant's convictions resulting from guilty pleas to driving while barred and "selling her services in a sex act" affirmed.

Story County State v. Deyawna Leanett Taylor, No. 14-2075 (Iowa Court of Appeals, filed October 14, 2015.) **Speedy trial waiver upheld although speedy trial time period had run.** Defendant who had not waived speedy trial nevertheless entered into a plea agreement in which "she was aware the trial would be further delayed until after the trial of her codefendant, thus impliedly waiving her right to a speedy trial by agreeing to a delay in the proceedings"; that agreement served as a waiver of speedy trial and therefore defeated a motion to dismiss filed after the 90 day trial period had run.

Wright County State v. David Edward Vrba, No. 14-0894 (Iowa Court of Appeals, filed October 14, 2015.) **Alcohol condition in probation lessened on appeal.** Trial court, in granting probation, forbade the defendant from "being at any location where alcohol or illegal drugs are present, regardless of whether Defendant is actually in possession of or consuming such alcohol or illegal drugs"; on appeal the defendant argued that this would prohibit him from visiting friends who had alcohol in their refrigerator; the Court of Appeals modified the alcohol condition to provide that the "Defendant is prohibited from consuming or possessing alcohol or any illegal drug or any drug for which Defendant does not have a valid prescription. In addition, Defendant is prohibited from being at any business establishment whose primary purpose is the serving of alcohol."

**Citations from previous issue of the
Highway Safety Law Update**

State v. Paye, 865 N.W.2d 1 (Iowa, 6/12/15)
State v. Gaskins, 866 N.W.2d 1 (Iowa, 6/30/15)

**Prepared by the
Prosecuting Attorneys Training Coordinator (PATC)**

Under a project approved by the Governor's Traffic Safety Bureau (GTSB), in cooperation with the National Highway Traffic Safety Administration (NHTSA). The opinions, findings, and conclusions expressed in this publication are those of the author and not necessarily those of the PATC, GTSB, NHTSA, or the Iowa Department of Justice. *We almost left this out just to see if anybody noticed. And then we realized that would only be a pathetic ploy aimed at self-aggrandizement. You got a problem with that?*

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OWI & Traffic Offenses in Iowa



A Prosecution Manual 4th Ed. (2015-09)
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Note: The OWI Manual is included in both the Criminal Law Handbook and the Charging Manual

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This version (2015-09) of the OWI & Traffic Offenses in Iowa will expire (be inoperable) September 30, 2016, and a new, updated version (2016-09) will be available for purchase in September, 2016.

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