



RED LIGHT ALERT

New report shows prosecutors are frustrated by flaws in system which allow repeat drunk drivers to get off hook

Frustrated by a lack of critical evidence and buried by paperwork arising from defense arguments, prosecutors attempting to convict repeat drunk drivers say it's time to make simple but important reforms to improve the system. This is the bottom line of a new study released in June.

According to a survey of 390 prosecutors from 35 states, the top problems they face are a lack of accurate and complete evidence; inadequate laws that don't sufficiently penalize suspects who refuse to cooperate with law enforcement during arrests; and a chronic lack of time and resources to respond to excessive technical motions.

"Sadly, repeat drunk drivers are slipping through the cracks because prosecutors simply don't have the preparation time, resources or evidence they need in court," said **Herb Simpson**, Ph.D., President and CEO of the Traffic Injury Research Foundation (TIRF). "However, the good news is our study shows prosecutors believe the tables can be turned by making practical changes, such as improving communication and dialogue with police; more efficient and timely access to records; and passing new laws to streamline the system."

TIRF, an independent road safety institute, conducted the survey as part of a comprehensive three-year study, "Stopping the revolving door: DWI system improvements for dealing with hard core drinking drivers." This landmark study examines problems and proposes solutions directly from police officers, prosecutors, judges and probation and parole officers who face special challenges in dealing with the hard core offenders.

Specifically, the top five problems uncovered in the survey include:

- **Problems with evidence:** Prosecutors say the quality and quantity of evidence obtained by

police during DUI investigations is often not sufficient. In fact, 50% of prosecutors surveyed cite technicalities and the suppression of evidence as the most common factors leading to dismissal or acquittal. As a result, tough punishments passed into law in recent years aren't imposed. The solution? Greater police training in evidence collection and documentation, and more regular communications between prosecutors and law enforcement personnel – recommendations supported by police.

- **Test refusal:** 73% of prosecutors say that a blood alcohol test result is the single most critical piece of information needed to obtain a conviction, and 92% of prosecutors surveyed say test refusal is common among repeat offenders. Although there are penalties for test refusal, they are much less severe than those imposed for a drunk driving conviction. The solution? Make test refusal a criminal offense, increase penalties for refusal, or admit refusal to cooperate as evidence in court.

- **Excessive motions and continuances:** Numerous and complex motions complicate and delay the pre-trial process. As a result, it's easier for the defense to get an acquittal or dismissal when prosecutors are unable to respond to these motions. The solution? Increase the flow of communications to prosecutors about new rulings and scientific evidence. Also, 45% of prosecutors want stricter adherence to guidelines on the allowable time for resolving a case.

- **Incomplete records:** Records containing data necessary to build a case against hard-core drunk drivers are kept by multiple agencies, increasing

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*Consult your prosecutor before adopting practices suggested by reports in this newsletter.
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the difficulty for prosecutors to track down critical information. In addition, because of accessibility or accuracy problems, prosecutors estimate that at least 15% of repeat offenders are incorrectly charged as first-time offenders. The solution? There is a need for standardized driver records and court-reporting practices, and uniformity in the timeframe over which records are maintained.

Inadequate penalties: Prosecutors believe that the penalty structure for repeat offenders is inadequate or applied inconsistently. Because of this, repeat offenders do not receive the sanctions needed to change their behavior. The solution? Establishment of tiered penalties that increase punishments with each offense, which are common in some but not all states. Also, 75% of prosecutors want stricter sentencing guidelines.

The remaining problems encountered by prosecutors include defendant's failure to appear, legislative complexities, lack of expert witnesses, excessive plea agreements, and inadequate prosecutor training. Taken together, Simpson explains, these problems represent both a major obstacle and opportunity for policy leaders concerned about drunk driving.

"The unprecedented growth in DWI legislation over the last two decades has made a complex system even more complicated and technical. This is frustrating, discouraging and intimidating to some prosecutors," Simpson says. "The system needs to be streamlined in order to make it more efficient and effective. This is a primary concern to prosecutors and a linchpin to successfully improving the DWI system."

Newman Flanagan, Executive Director of the National District Attorneys Association, agrees the study findings are valuable. "This report voices the challenges

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faced every day by America's prosecutors who fight for convictions against habitual impaired driving offenders. The insightful suggestions in this report echo the mission at the National Traffic Law Center, a component of the American Prosecutors Research Institute, which provides training and assistance to local prosecutors."

Another group that faces daily challenges in dealing with hard-core drunk drivers also said the conclusions of this study would provide a clear road map for improvement. "This report recognizes the stumbling blocks prosecutors face in effectively bringing repeat offenders to justice while offering tangible means of removing these blocks," said **Peg Dorer**, president of the National Association of Prosecutor Coordinators.

About the Traffic Injury Research Foundation

Established in 1964, the Traffic Injury Research Foundation's (TIRF) mission is to reduce traffic-related deaths and injuries. TIRF designs, promotes and implements effective programs and policies, based on sound research. In 1991, TIRF was the first traffic safety organization to identify hard-core drunk drivers as the top priority for policy measures to address drunk driving. Hard-core drunk drivers cause nearly 80% of drunk driving fatalities. TIRF is a registered charity and depends on grants, contracts, and donations to provide services for the public. TIRF is headquartered in Ottawa, Canada.

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A copy of the full report, "DWI System Improvements for Dealing with Hard Core Drinking Drivers: Prosecution" is available on the Traffic Injury Research Foundation's website at: www.trafficinjuryresearch.com.