

Traffic Safety Standard

Providing relevant information to Montana's prosecutors, law enforcement and judges

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Montana's Traffic Safety Resource Prosecutor (TSRP) position is funded by the Montana Department of Transportation as part of a comprehensive effort to reduce the number and severity of traffic crashes, injuries, and fatalities on Montana highways.

The views presented in this newsletter are meant to inform but do not neces-

Bars and Cars Task Force: A Novel Approach to Interceding in Over Service and DUIs by Warren Diepraam with an introduction by Erin Inman

Many people do not realize over service of alcohol in bars is illegal in Montana* and many other states. Over service is linked to DUIs, because some of these obviously intoxicated patrons choose to drive themselves home after drinking at bars or restaurants. But is there anything prosecutors can do to prevent these DUIs? Two prosecutors in Montgomery County Texas led the charge to tackle this problem head-on. Their approach was novel and effective and something Montana can easily duplicate. Here is what they did:

Identify the Issue

The blood alcohol levels of three impaired drivers over a two week period last summer resulted in six deaths and shocked even the most seasoned DUI prosecutors in Montgomery County, Texas. One driver, whose blood alcohol level was about 0.20, killed himself on Interstate 45 in the City of Oak Ridge North. The next driver, whose blood alcohol level was about 0.30, killed two people and seriously injured another in a wrong way fatality on the same stretch of roadway in the City of Shenandoah. A third man, whose blood alcohol level was also about a 0.30, killed three people in another wrong way freeway crash in the City of Oak Ridge North. All of these drivers had one thing in common: they were over served alcohol at local establishments. Police and prosecutors responded by creating the "Bars and Cars Task Force" to educate the businesses about the dangers of over serving through both education and enforcement efforts.

Form the Task Force

The task force has two components: 1) To educate bar personnel about the dangers of over serving including criminal, administrative, and civil implications; and 2) To enforce state laws both in the bars and on the roads. Warren Diepraam and fellow prosecutor, Tyler Dunman, led the group in its formation and implementation of the task force's goals. Traditionally, Texas Alcoholic Beverage Commission (TABC) agents would be in charge of these operations. In fact, TABC plays an active role in vehicular homicide investigations with source investigations; however, due to budget cuts and other developments around the state, their enforcement role and manpower were significantly limited. The result is that only a handful of cases for over serving or liquor violations were filed in recent times. The manpower shortage translated into a need for prosecutors to seek assistance from several other police agencies in addition to the TABC. In addition to the sole Montgomery County TABC agent, Oscar Williams, and others from surrounding counties, prosecutors obtained assistance from office investigators, Department of Public Safety troopers, Conroe Police Department vehicular crimes officers, Montgomery County Sheriff's Office deputies, and some assistance from other agencies. In all, the task force consisted of about 20 personnel or volunteers. The cooperation of multiple agencies was crucial in getting the necessary manpower as well as ensuring little opportunity for violators to slip through the cracks. ...continued on page 2

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Educate Bar Owners, Employees, and Patrons

After the group was formed and before they began their operation, a one hour planning meeting was held. The TABC agent discussed the authority of peace officers when conducting bar investigations into liquor violations and public intoxication. TABC pamphlets and flyers with legal warnings were distributed to the volunteers to leave with bar managers, owners, and bartenders. Also discussed was police safety in the bar and how to respond to obviously intoxicated patrons. The volunteers agreed that since the first effort was purely educational, officers would not arrest individuals except for the most obvious and egregious violations. The officers were divided into four equally sized groups with one supervisor or sergeant taking the lead role. Each group was sent to different parts of the county in order to reach as many bars as possible. Of course, emphasis was placed on bars that were identified in the recent fatalities. The first night's operations (as well as the next few operations to cover as many of the 800 or so licensed premises) went smoothly with little drama and the effort was well received by the bar staff. However, they were warned that the group would soon be back, and in greater numbers with enforcement in mind rather than education.

Enforce Existing Statutes

The enforcement aspect was arguably the most complex part of the task force duties. Enforcement consisted of three different areas of focus: 1) DUI enforcement with saturation patrols; 2) Uniformed operations in the bars and in the parking lots to stop public intoxication as well as prevent liquor code violations; and 3) Undercover enforcement in the bars. Coordinating such a diverse group of officers handling different types of investigations required significant planning and cooperation. Despite these challenges, all volunteers got along well and worked together with no major problems. This multi-faceted enforcement approach is what ultimately resulted in the name of the group, the Bars and Cars Task Force.

Saturation Patrols

Saturation patrols were focused on the locations near the fatal crash investigations. All of those fatal crashes occurred on a two mile stretch of Interstate 45 in the cities of Shenandoah and Oak Ridge North. This is also where some of the targeted businesses were located. In addition, two other establishments located close to this area were focused on. Officers with the participating agencies worked those roadways in large numbers looking for drunk drivers. The officers working patrol in marked units not only did traditional patrols in the area, but also focused on the bars identified in the fatal crash investigations. One officer worked a radar device and called out to other waiting officers parked next to him. The street being worked was a freeway feeder road with many bars. It was also likely the road the wrong way driver used before their crash. The District Attorney's Office provided prosecutors and nurses in their mobile blood draw vehicle, an ambulance called the District Attorney Response Team (DART) Van. The prosecutors drafted warrants for DUI refusals and emailed them to judges while the nurses were there to do blood draws, both for warrants and consent blood draws. This enabled the officers in the area to return to the streets faster, rather than deal with hospital blood draws. Due to the expeditious process, officers were able to get back on the road quickly.

Bar Enforcement

At the same time the street enforcement was being done, uniformed officers continued their operations in the bars and parking lots. Several individuals were arrested for minor crimes, such as Public Intoxication. These individuals were arrested, because they were about to get in their vehicles and drive. Officers also patrolled the bars and approached highly intoxicated individuals and reminded them about the dangers of DUI. Most of them, despite their level of obvious intoxication, opted for taxi rides and designated drivers obtained after the fact. The bar staff were again advised that several individuals were intoxicated in these businesses and that serving them was a crime which would be investigated. In all, the officers arrested about 20 suspects for DUI and about 40 for other lesser violations seen in the bars and parking lots.

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Undercover Operations

After the overt and street operations were conducted, planning began for undercover operations. The most significant operation involved a local bar that was not involved in the fatalities but had recently been implicated for over serving in several DUI cases. The Conroe Police Department provided two officers from their vehicular crimes unit to do the undercover work looking for impaired individuals being served. Officers Jason and John Blackwelder had experience that the District Attorney's Office felt would be important, namely they were DUI officers with a significant history of DUI enforcement. The theory being that they would be best suited to detect the signs of impairment that a regular undercover officer would not be capable of doing. They were assisted by two prosecutors and the local TABC agent mentioned above. The officers used an undercover camera and recording device to record any activities inside the bar. Keeping in mind that enforcing a statute that is not widely known and is rarely used could be controversial, we wanted to ensure that all enforcement was recorded.

Although one bar was targeted, the undercover group also went to several bars that were implicated in the recent fatalities. However, the activities at those bars were slow. As a result, the group went to the bar that was the focus of the operation. The bar was crowded with a lot of patrons and the undercover officers began searching for impaired individuals. There were many different candidates to be watched, but the bar seemed to do a generally good job of stopping the worst offenders from purchasing alcohol. Towards the end of the night, one subject brought attention to himself by his loud demeanor. As the officers began to focus on his activities, they noticed that he appeared to be obviously intoxicated. Although the law states that it is illegal to, with criminal negligence, serve anybody who is intoxicated or impaired, the officers were not looking for close call cases. They wanted somebody who was obviously intoxicated and, by watching this individual for a while, they found their target.

During the encounter, the officers were careful to note as many signs of impairment as possible as well as watching his drinking habits. They felt comfortable that due to his actions and demeanor, he was clearly intoxicated and should not be served. Toward closing time, he approached a bartender and began asking her for drinks. The officers saw the bartender turn him down, which was an indication to them that she knew he should not be served. After the subject continued to ask for alcoholic beverages, she ultimately relented and served him three alcoholic beverages. At this point, the undercover operation became an overt operation and the officers asked the subject outside of the bar. They asked him questions about his drinking that night and also conducted field sobriety tests on him. This was done to ensure that he was in fact intoxicated. He also provided a breath sample on a portable device confirming the officer's suspicions. After identifying, testing, and speaking to him, he was released to a sober driver who took him home. They next focused their investigation on the bartender.

The bartender was also removed from the bar. The officers asked her about her activities and inquired as to why she served an obviously intoxicated person. They followed up with several questions about the case and the training as a bartender, thereby confirming that this bartender had received training in detecting intoxicated individuals. After obtaining this information, she was arrested for "Providing Alcohol to an Intoxicated Individual" which is a misdemeanor offense in Texas punishable by both fine and jail time. The bartender was arrested and transported to the local jail for the offense, creating a slew of onlookers at the bar. As of this writing, the case is set for trial, and it is still pending.

Conclusion

The Bars and Cars Task Force is still in operation conducting primarily educational efforts in the local bars. Enforcement operations on the streets are also conducted, especially on holidays or when large events are held in the county. The comprehensive approach has proved to be extremely effective from a traffic safety perspective. *There have been...continued on page 4*



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no repeats of the fatalities in the areas of focus, and the I-45 corridor which saw the slew of deaths has been fatal crash free since the operation started. In fact, vehicular homicide charges this year are down significantly compared to last year.

Although no direct nexus has been statistically proven, it is believed that the group's efforts have played a role. One objective indicator of the success of the effort is the average county wide breath test result average which dropped from 0.17 prior to the effort to 0.14. This may be a small drop in scale, however, it is reflective of the efforts of not only law enforcement, but also the bars becoming more responsible. Indeed, the bar owners in the area formed a coalition to educate their patrons and provide them with alternate forms of transport if intoxication is suspected. This educational component seems to be having a great effect at saving lives! Because of these improvements, Montgomery County plans to continue their Bars and Cars Task Force operations and save even more lives from being taken by DUIs.

Other Resources

For more information on over service trainings, go to www.AlcoholServerTraining.mt.gov. Also read *A Montana First: Server Charged in DUI Case* in the April, 2010 Issue of *The Traffic Safety Standard*.

* Editor's note: Reference Mont. Code Ann. §16-3-301(46) (2013) and Mont. Code Ann. §16-6-304(2013).

Science of DUI a Success

The TSRP program hosted over 40 law enforcement officers and prosecutors from across the state for *the Science of DUI* training in Missoula September 11 and 12. This first of its kind course featured scientists from the Crime Lab and covered topics such as the effects of alcohol on the brain, current trends in drugged driving, and common challenges to breath testing instruments and toxicological results. It even included a tour of the Crime Lab. "Because of this course, I now understand what our crime lab personnel do and what it practically means to my cases. I have another tool to use to successfully prosecute and respond to common defense tactics and am no longer intimidated by the science inherent in most DUI prosecution," said Angela Wetzstemon, Deputy Ravalli County Attorney. For information on other upcoming DUI courses, see the "Training Dates" section of this newsletter.



Crime Lab personnel and *Science of DUI* instructors Doug Lancon, Sarah Braseth, Scott Larson, and Ben Vetter pose in front of the Crime Lab

Did You Know?

-Responsible Alcohol Sales and Service training has been mandatory in Montana since the 2011 Legislature passed Senate Bill 29. All servers and sellers of alcohol are required to receive the training within 60 days of hire and every three years thereafter.

-MDT funds selective traffic patrols via the Selected Traffic Enforcement Program (STEP). In Federal Fiscal Year 2013, STEP contracts with 49 law enforcement agencies totaled approximately \$792,000. In Federal Fiscal Year 2014, contracts with 52 law enforcement agencies equal \$806,000.

Montana TSRP

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Past issues of the Traffic Safety Standard are online at:

www.mdt.mt.gov/tsrp/newsletters.shtml



Training Dates

Course Title	Date	Location	Registration Information
Cops In Court Course description	Available upon request		Email barb@inmantraining.com
DUI Task Force Statewide Meeting	November 5-6	MDT Auditorium	Email ldemont@mt.gov for more information- no cost
Sex, Drugs, and Trafficking	Nov 12-14	Sidney	Email barb@inmantraining.com no cost
Montana County Attorneys Association Winter Conference	Dec 4-6	Crowne Plaza, Billings	Email perryee@mt.net for more information
Prosecuting the DUI	April 1-3, 2014	Fort Harrison, Helena	Email barb@inmantraining.com no cost
Conducting Compliance Check Operations	Ongoing	Free - Online course	course details
Environmental Strategies	Ongoing	Free - Online course	course details
Party Prevention and Controlled Party Dispersal	Ongoing	Free - Online course	course details
Techniques for Managing Special Events	Ongoing	Free - Online course	course details
Source Investigations	Ongoing	Free - Online course	Coming soon

For information about more trainings and conferences, please go to <http://www.mdt.mt.gov/tsrp/> and click on "Education and Training Opportunities"

MDT attempts to provide accommodations for any known disability that may interfere with a person participating in any service, program, or activity of the Department. Alternative accessible formats of this information will be provided upon request. For further information call (406) 444-3423, TTY (800) 335-7592, or the Montana Relay at 711.